



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-2107/P2
GMM:emw:ew

P3
RMR

SN 612
wanted 615

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA
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Regon.

1 **AN ACT to renumber** 48.623 (6) and 48.977 (3r); **to amend** 48.623 (1) (c), 48.623
2 (2) (intro.), 48.623 (3) (c) 3., 48.623 (6) (title), 48.685 (1) (ag) 1. b., 48.685 (1) (b),
3 48.685 (2) (am) 5., 48.685 (2) (b) 1. e., 48.685 (3) (a), 48.685 (4m) (a) (intro.),
4 48.685 (4m) (ad), 48.685 (5) (bm) (intro.) and 48.977 (4) (b) 2.; and **to create**
5 48.623 (6) (bm), 48.623 (7) (d), 48.977 (3r) (a) (title), 48.977 (3r) (b), 48.977 (4)
6 (c) 1. gm. and 48.977 (5m) of the statutes; **relating to:** appointment of a
7 successor guardian for a child in need of protection or services and eligibility
8 of a successor guardian for subsidized guardianship payments, providing an
9 exemption from emergency rule procedures, and granting rule-making
10 authority.

Analysis by the Legislative Reference Bureau

This bill permits the appointment of a successor guardian for a child in need of protection or services to assume the duty and authority of guardianship on the death or incapacity of the child's guardian. The bill also specifies the conditions that a successor guardian must meet to be eligible for monthly subsidized guardianship payments.

Under current law, a county department of human services or social services (county department) or, in a county having a population of 750,000 or more, the Department of Children and Families (DCF) must provide monthly subsidized guardianship payments to the guardian of a child who has been adjudged to be in need of protection or services if certain conditions have been met, including the conditions that: 1) the child, if 14 years of age or over, has been consulted with regarding the guardianship arrangement; 2) the guardian has a strong commitment to caring for the child permanently; 3) the guardian is licensed as the child's foster parent, which licensing includes an inspection of the guardian's home under rules promulgated by DCF; 4) the guardian and all adult residents of the guardian's home have passed a criminal background investigation; and 5) prior to being named as guardian of the child, the guardian entered into a subsidized guardianship agreement with the county department or DCF.

Current law also permits a county department or DCF to provide monthly subsidized guardianship payments for a period of up to 12 months to an interim caretaker on the death, incapacity, resignation, or removal of a subsidized guardian if the interim caretaker meets certain conditions, including passing a home inspection and a criminal background investigation.

This bill permits a subsidized guardianship agreement between a county department or DCF and a proposed subsidized guardian to also name a successor guardian to assume the duty and authority of guardianship on the death or incapacity of the subsidized guardian. A successor guardian is eligible for monthly subsidized guardianship payments if certain conditions are met, including the conditions that:

1. The county department or DCF determines that the child, if 14 years of age or over, has been consulted with regarding the successor guardianship arrangement.

2. The county department or DCF determines that the guardian has a strong commitment to caring for the child permanently.

3. The county department or DCF inspects the home of the successor guardian, interviews the successor guardian, and determines that placement of the child with the successor guardian is in the best interests of the child.

4. Prior to being appointed to assume the duty and authority of guardianship, the successor guardian enters into a subsidized guardianship agreement with the county department or DCF.

5. The successor guardian and all nonclient residents of the successor guardian's home have passed a criminal background investigation conducted prior to the successor guardian entering into the subsidized guardianship agreement.

6. The court assigned to exercise jurisdiction under the Children's Code (juvenile court) confirms that the conditions required of a successor guardian have been met, appoints the successor guardian to assume the duty and authority of guardianship, and either terminates any juvenile court order placing the child outside of the child's home or dismisses any juvenile court proceeding in which the child has been adjudged to be in need of protection or services.

The bill also creates a procedure for the nomination and appointment of a successor guardian for a child in need of protection or services. Under that

named in ~~the~~ a subsidized guardianship agreement

procedure, a person authorized to file a petition for the original appointment of a guardian for a child in need of protection or services may petition for the designation of a successor guardian for the child either as part of the petition for the original appointment of a guardian or at any time after that appointment and the juvenile court, after hearing, may designate a successor guardian for the child. Then, upon the death or incapacity of the initially appointed guardian, ~~the petitioner~~ may file a petition for the appointment of ~~the~~ successor guardian so designated or any other competent and suitable person to assume the duty and authority of guardianship and the juvenile court, after hearing, may appoint that successor guardian or other person to assume that duty and authority.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 48.623 (1) (c) of the statutes is amended to read:

2 48.623 (1) (c) An order under s. 48.345, 48.357, 48.363, 48.365, 938.345,
3 938.357, 938.363, or 938.365 placing the child, or continuing the placement of the
4 child, outside of the child's home has been terminated, or any proceeding in which
5 the child has been adjudged to be in need of protection or services specified in s.
6 48.977 (2) (a) has been dismissed, as provided in s. 48.977 (3r) (a).

7 **SECTION 2.** 48.623 (2) (intro.) of the statutes is amended to read:

8 48.623 (2) **SUBSIDIZED GUARDIANSHIP AGREEMENT.** (intro.) Before a county
9 department or the department may approve the provision of subsidized
10 guardianship payments under sub. (1) to a proposed guardian, the county
11 department or department shall negotiate and enter into a written, binding
12 subsidized guardianship agreement with the proposed guardian and provide the
13 proposed guardian with a copy of the agreement. A subsidized guardianship
14 agreement or an amended subsidized guardianship agreement may also name a
15 successor guardian of the child to assume the duty and authority of guardianship on

1 the death or incapacity of the guardian. A successor guardian is eligible for monthly
2 subsidized guardianship payments under this section if the conditions specified in
3 sub. (6) (bm) are met and the court appoints the successor guardian to assume the
4 duty and authority of guardianship as provided in s. 48.977 (5m) (b). A subsidized
5 guardianship agreement shall specify all of the following:

6 **SECTION 3.** 48.623 (3) (c) 3. of the statutes is amended to read:

7 48.623 (3) (c) 3. A county department or the department may propose to a
8 person receiving monthly subsidized guardianship payments that the agreement
9 under sub. (2) (b) be amended to adjust the amount of those payments. If an
10 adjustment in the amount of those payments is agreed to by the person receiving
11 those payments, the agreement shall be amended in writing to specify the adjusted
12 amount of those payments.

13 **SECTION 4.** 48.623 (6) (title) of the statutes is amended to read:

14 48.623 (6) (title) INTERIM CARETAKER; SUCCESSOR GUARDIAN.

15 **SECTION 5.** 48.623 (6) of the statutes is renumbered 48.623 (6) (am).

16 **SECTION 6.** 48.623 (6) (bm) of the statutes is created to read:

17 48.623 (6) (bm) On the death or incapacity of a guardian receiving payments
18 under sub. (1), the county department or the department providing those payments
19 shall provide monthly subsidized guardianship payments in the amount specified in
20 sub. (3) (b) to a successor guardian if all of the following conditions are met and the
21 court appoints the successor guardian to assume the duty and authority of
22 guardianship as provided in s. 48.977 (5m) (b):

23 1. The county department or department determines that the child, if 14 years
24 of age or over, has been consulted with regarding the successor guardianship
25 arrangement.

1 2. The county department or department determines that the successor
2 guardian has a strong commitment to caring permanently for the child.

3 3. The county department or department inspects the home of the successor
4 guardian, interviews the successor guardian, and determines that placement of the
5 child with the successor guardian is in the best interests of the child. In the case of
6 an Indian child, the best interests of the Indian child shall be determined in
7 accordance with s. 48.01 (2).

8 4. Prior to being appointed to assume the duty and authority of guardianship,
9 the successor guardian enters into a subsidized guardianship agreement under sub.
10 (2) with the county department or department.

11 5. Prior to the successor guardian entering into a subsidized guardianship
12 agreement with the county department or department, the county department or
13 department conducts a background investigation under s. 48.685 of the successor
14 guardian and any nonclient resident, as defined in s. 48.685 (1) (bm), of the home of
15 the successor guardian and determines that those individuals meet the
16 requirements specified in s. 48.685. The county department or department shall
17 provide the department of health services with information about each person who
18 is denied monthly subsidized guardianship payments or permission to reside in the
19 home of a successor guardian for a reason specified in s. 48.685 (4m) (a) 1. to 5. or (b)
20 1. to 5.

21 6. Any order under s. 48.345, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363,
22 or 938.365 placing the child, or continuing the placement of the child, outside of the
23 child's home has been terminated, or any proceeding in which the child has been
24 adjudged to be in need of protection or services specified in s. 48.977 (2) (a) has been
25 dismissed, as provided in s. 48.977 (3r) (b).

1 7. If the county department or department knows or has reason to know that
2 the child is an Indian child, the county department or department provides notice of
3 the Indian child's placement in the home of the successor guardian to the Indian
4 child's parent, Indian custodian, and tribe and determines that the home of the
5 successor guardian complies with the order of placement preference under s. 48.028
6 (7) (b) or, if applicable, s. 48.028 (7) (c), unless the county department or department
7 finds good cause, as described in s. 48.028 (7) (e), for departing from that order.

8 **SECTION 7.** 48.623[↓] (7) (d) of the statutes is created to read:

9 48.623 (7) (d) Rules governing the payment of monthly subsidized
10 guardianship payments to a successor guardian of a child.

11 **SECTION 8.** 48.685[↓] (1) (ag) 1. b. of the statutes is amended to read:

12 48.685 (1) (ag) 1. b. A person who has, or is seeking, a license, certification or
13 contract to operate an entity or, who is receiving, or is seeking, payment under s.
14 48.623 (6) (am) for operating an entity, or who is seeking payment under s. 48.623
15 (6) (bm) for operating an entity.

16 **SECTION 9.** 48.685[↓] (1) (b) of the statutes is amended to read:

17 48.685 (1) (b) "Entity" means a child welfare agency that is licensed under s.
18 48.60 to provide care and maintenance for children, to place children for adoption,
19 or to license foster homes; a foster home that is licensed under s. 48.62; an interim
20 caretaker to whom subsidized guardianship payments are made under s. 48.623 (6);
21 a person who is proposed to be named as a successor guardian in a successor
22 guardianship agreement under s. 48.623 (2); a group home that is licensed under s.
23 48.625; a shelter care facility that is licensed under s. 938.22; a child care center that
24 is licensed under s. 48.65 or established or contracted for under s. 120.13 (14); a child
25 care provider that is certified under s. 48.651; an organization that facilitates

1 delegations of the care and custody of children under s. 48.979; or a temporary
2 employment agency that provides caregivers to another entity.

3 **SECTION 10.** 48.685[✓] (2) (am) 5. of the statutes is amended to read:

4 48.685 (2) (am) 5. Information maintained by the department of health services
5 under this section and under ss. 48.623 (6) ~~(b)~~ (am) 2. and (bm) 4., 48.651 (2m), 48.75
6 (1m), 48.979 (1) (b), and 120.13 (14) regarding any denial to the person of a license,
7 continuation or renewal of a license, certification, or a contract to operate an entity,
8 or of payments under s. 48.623 (6) for operating an entity, for a reason specified in
9 sub. (4m) (a) 1. to 5. and regarding any denial to the person of employment at, a
10 contract with, or permission to reside at an entity or of permission to reside with a
11 caregiver specified in sub. (1) (ag) 1. am. for a reason specified in sub. (4m) (b) 1. to
12 5. If the information obtained under this subdivision indicates that the person has
13 been denied a license, continuation or renewal of a license, certification, a contract,
14 payments, employment, or permission to reside as described in this subdivision, the
15 department, a county department, an agency contracted with under s. 48.651 (2), a
16 child welfare agency, or a school board need not obtain the information specified in
17 subs. 1. to 4.

18 **SECTION 11.** 48.685[✓] (2) (b) 1. e. of the statutes is amended to read:

19 48.685 (2) (b) 1. e. Information maintained by the department of health
20 services under this section and under ss. 48.623 (6) ~~(b)~~ (am) 2. and (bm) 4., 48.651
21 (2m), 48.75 (1m), 48.979 (1) (b), and 120.13 (14) regarding any denial to the person
22 of a license, continuation or renewal of a license, certification, or a contract to operate
23 an entity, or of payments under s. 48.623 (6) for operating an entity, for a reason
24 specified in sub. (4m) (a) 1. to 5. and regarding any denial to the person of
25 employment at, a contract with, or permission to reside at an entity or of permission

1 to reside with a caregiver specified in sub. (1) (ag) 1. am. for a reason specified in sub.
2 (4m) (b) 1. to 5. If the information obtained under this subd. 1. e. indicates that the
3 person has been denied a license, continuation or renewal of a license, certification,
4 a contract, payments, employment, or permission to reside as described in this subd.
5 1. e., the entity need not obtain the information specified in subd. 1. a. to d.

6 **SECTION 12.** 48.685 (3) (a) of the statutes is amended to read:

7 48.685 (3) (a) Subject to par. (am), every 4 years or at any time within that
8 period that the department, a county department, or a child welfare agency considers
9 appropriate, the department, county department, or child welfare agency shall
10 request the information specified in sub. (2) (am) 1. to 5. for all caregivers specified
11 in sub. (1) (ag) 1. b. who are licensed, certified, or contracted to operate an entity, or
12 who are receiving payments under s. 48.623 (6) (am) for operating an entity, and for
13 all persons who are nonclient residents of such a caregiver.

14 **SECTION 13.** 48.685 (4m) (a) (intro.) of the statutes is amended to read:

15 48.685 (4m) (a) (intro.) Notwithstanding s. 111.335, and except as provided in
16 par. (ad) and sub. (5), the department may not license, or continue or renew the
17 license of, a person to operate an entity, the department in a county having a
18 population of ~~500,000~~ 750,000 or more, a county department, or an agency contracted
19 with under s. 48.651 (2) may not certify a child care provider under s. 48.651, a county
20 department or a child welfare agency may not license, or renew the license of, a foster
21 home under s. 48.62, the department in a county having a population of 750,000 or
22 more or a county department may not provide subsidized guardianship payments to
23 an interim caretaker or successor guardian under s. 48.623 (6), and a school board
24 may not contract with a person under s. 120.13 (14), if the department, county

1 department, contracted agency, child welfare agency, or school board knows or
2 should have known any of the following:

3 **SECTION 14.** 48.685 (4m) (ad) of the statutes is amended to read:

4 48.685 (4m) (ad) The department, a county department, or a child welfare
5 agency may license a foster home under s. 48.62; the department may license a child
6 care center under s. 48.65; the department in a county having a population of 500,000
7 750,000 or more, a county department, or an agency contracted with under s. 48.651
8 (2) may certify a child care provider under s. 48.651; the department in a county
9 having a population of 750,000 or more or a county department may provide
10 subsidized guardianship payments to an interim caretaker or successor guardian
11 under s. 48.623 (6); and a school board may contract with a person under s. 120.13
12 (14), conditioned on the receipt of the information specified in sub. (2) (am) and (ar)
13 indicating that the person is not ineligible to be licensed, certified, provided
14 payments, or contracted with for a reason specified in par. (a) 1. to 5.

15 **SECTION 15.** 48.685 (5) (bm) (intro.) of the statutes is amended to read:

16 48.685 (5) (bm) (intro.) For purposes of licensing a foster home for the
17 placement of a child on whose behalf foster care maintenance payments under s.
18 48.62 (4) will be provided or of providing subsidized guardianship payments to an
19 interim caretaker or successor guardian under s. 48.623 (6), no person who has been
20 convicted of any of the following offenses may be permitted to demonstrate that he
21 or she has been rehabilitated:

22 **SECTION 16.** 48.977 (3r) of the statutes is renumbered 48.977 (3r) (a).

23 **SECTION 17.** 48.977 (3r) (a) (title) of the statutes is created to read:

24 48.977 (3r) (a) (title) *Guardian.*

25 **SECTION 18.** 48.977 (3r) (b) of the statutes is created to read:

1 48.977 (3r) (b) *Successor guardian*. Subsidized guardianship payments under
2 s. 48.623 (6) (bm) may not be made to a successor guardian of a child unless the court
3 makes a finding confirming that the conditions specified in s. 48.623 (6) (bm) have
4 been met, appoints the successor guardian to assume the duty and authority of
5 guardianship as provided in sub. (5m) ~~(4)~~, and either terminates any order specified
6 in sub. (2) (a) or dismisses any proceeding in which the child has been adjudicated
7 in need of protection or services as specified in sub. (2) (a). If the court makes that
8 finding and appointment and either terminates such an order or dismisses such a
9 proceeding, the county department or, as provided in s. 48.623 (3) (a), the department
10 shall provide monthly subsidized guardianship payments to the successor guardian
11 under s. 48.623 (6) (bm).

12 SECTION 19. 48.977 (4) (b) 2. of the statutes is amended to read:

13 48.977 (4) (b) 2. The names and addresses of the child's parent or parents,
14 guardian, and legal custodian, the person nominated as the guardian of the child in
15 the petition, and any person nominated as a successor guardian of the child in the
16 petition.

17 SECTION 20. 48.977 (4) (c) 1. gm. of the statutes is created to read:

18 48.977 (4) (c) 1. gm. Any person nominated as a successor guardian of the child
19 in the petition.

20 SECTION 21. 48.977 (5m) of the statutes is created to read:

21 48.977 (5m) SUCCESSOR GUARDIAN. (a) *Designation; original petition or during*
22 *guardianship.* 1. ~~As part of a petition for the original appointment of a guardian for~~
23 ~~a child under sub. (2) or at any time after that appointment, a person authorized to~~
24 ~~file a petition under sub. (4) (a) may petition for the designation of a successor~~
25 ~~guardian for the child to assume the duty and authority of full or limited~~

1 guardianship in the event of the death or incapacity of the initially appointed
 2 guardian. If the petition for the designation of a successor guardian is brought after
 3 the original appointment of a guardian, the petition shall be heard in the same
 4 manner and subject to the same requirements as provided under this section for an
 5 original appointment of a guardian. If the child's permanency plan calls for the
 6 potential placement of the child in the home of a successor guardian and the
 7 provision of monthly subsidized guardianship payments to the successor guardian,
 8 the petitioner shall include in the petition a statement that the conditions specified
 9 in s. 48.623 (6) (bm) have been met and a request for the court to include in the court's
 10 findings a finding confirming that those conditions have been met.

11 2. After hearing, the court may designate a successor guardian whose
 12 appointment shall become effective as provided in par. (b). If the petition under subd.
 13 1. includes a request for the court to include in the court's findings a finding
 14 confirming that the conditions specified in s. 48.623 (6) (bm) have been met, the court
 15 shall include that finding in the court's findings. The successor guardian shall
 16 receive a copy of the initial guardianship order, any court order revising that initial
 17 order, and the order designating the successor guardian. Upon the death or
 18 incapacity of the initially appointed guardian, a person authorized to file a petition
 19 under sub. (4) (a) may file a petition under par. (b) for the appointment of the
 20 successor guardian designated under this subdivision to assume the duty and
 21 authority of guardianship.

(a) ¹ Petition.

22 (b) Appointment. 1. If a guardian dies or becomes incapacitated, any person
 23 authorized to file a petition under sub. (4) (a) may petition for the appointment of a
 24 person designated under par. (a) ² or any other competent and suitable person as
 25 successor guardian to assume the duty and authority of guardian. The petition shall

named under s. 48.623 (2)

If the person nominated as successor guardian is a person named in s. 48.623 (2)

1 be heard in the same manner and subject to the same requirements as provided
2 under this section for an original appointment of a guardian. If the child's
3 permanency plan calls for the potential placement of the child in the home of a
4 successor guardian and the provision of monthly subsidized guardianship payments
5 to the successor guardian, the petitioner shall include in the petition a statement
6 that the conditions specified in s. 48.623 (6) (bm) have been met and a request for the
7 court to include in the court's findings a finding confirming that those conditions
8 have been met. (b) Appointment. (a)

9 After hearing, the court may appoint the person designated under par. (a)
10 or any other competent and suitable person as successor guardian to assume the
11 duty and authority of guardianship. If the petition under subd. 1 includes a request
12 for the court to include in the court's findings a finding confirming that the conditions
13 specified in s. 48.623 (6) (bm) have been met, the court shall include that finding in
14 the court's findings. The powers and duties of the successor guardian shall be the
15 same as those of the initially appointed guardian. The successor guardian shall
16 receive a copy of the initial guardianship order, any court order revising that initial
17 order, and the order appointing the successor guardian.

18 SECTION 22. Nonstatutory provisions.

19 (1) SUBSIDIZED GUARDIANSHIP PAYMENTS TO SUCCESSOR GUARDIANS; RULES. Using
20 the procedure under section 227.24 of the statutes, the department of children and
21 families may promulgate the rules required under section 48.623 (7) (d) of the
22 statutes, as created by this act, for the period before the effective date of the
23 permanent rules promulgated under section 48.623 (7) (d) of the statutes, as created
24 by this act, but not to exceed the period authorized under section 227.24 (1) (c) of the
25 statutes, subject to extension under section 227.24 (2) of the statutes.

1 Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department
2 of children and families is not required to provide evidence that promulgating a rule
3 under this subsection as an emergency rule is necessary for the preservation of the
4 public peace, health, safety, or welfare and is not required to provide a finding of
5 emergency for a rule promulgated under this subsection.

6 **SECTION 23. Effective dates.** This act takes effect on the first day of the 4th
7 month beginning after publication, except as follows:

8 (1) **EMERGENCY RULES GOVERNING SUBSIDIZED GUARDIANSHIP PAYMENTS TO**
9 **SUCCESSOR GUARDIANS.** SECTION 22 of this act takes effect on the day after publication.

10

(END)

Malaise, Gordon

From: Liedl, Kimberly - DCF <Kimberly.Liedl@wisconsin.gov>
Sent: Tuesday, June 09, 2015 3:28 PM
To: Malaise, Gordon
Subject: Ready for /1 and companion bill - LRB -2107/P3 Topic: Designation of successor guardian eligible for subsidized guardianship payments

Gordon,

We are finally ready for a /1 and companion bill on 2107/P3. Whoo hoo! No more edits.

Thanks again for all of your work on our bills related to the federal Preventing Sex Trafficking Act. We appreciate it!
Kimber

Kimberly Liedl

Legislative Liaison

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State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-2107/RB

GMM:emw

RMR

Keep

IN 6/9

Wanted 6/16

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

(convert to 1 - no change)

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Regen

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Under current law, a county department of human services or social services (county department) or, in a county having a population of 750,000 or more, the Department of Children and Families (DCF) must provide monthly subsidized guardianship payments to the guardian of a child who has been adjudged to be in need of protection or services if certain conditions have been met, including the conditions that: 1) the child, if 14 years of age or over, has been consulted with regarding the guardianship arrangement; 2) the guardian has a strong commitment to caring for the child permanently; 3) the guardian is licensed as the child's foster parent, which licensing includes an inspection of the guardian's home under rules promulgated by DCF; 4) the guardian and all adult residents of the guardian's home have passed a criminal background investigation; and 5) prior to being named as guardian of the child, the guardian entered into a subsidized guardianship agreement with the county department or DCF.

Current law also permits a county department or DCF to provide monthly subsidized guardianship payments for a period of up to 12 months to an interim caretaker on the death, incapacity, resignation, or removal of a subsidized guardian if the interim caretaker meets certain conditions, including passing a home inspection and a criminal background investigation.

This bill permits a subsidized guardianship agreement between a county department or DCF and a proposed subsidized guardian to also name a successor guardian to assume the duty and authority of guardianship on the death or incapacity of the subsidized guardian. A successor guardian is eligible for monthly subsidized guardianship payments if certain conditions are met, including the conditions that:

1. The county department or DCF determines that the child, if 14 years of age or over, has been consulted with regarding the successor guardianship arrangement.

2. The county department or DCF determines that the guardian has a strong commitment to caring for the child permanently.

3. The county department or DCF inspects the home of the successor guardian, interviews the successor guardian, and determines that placement of the child with the successor guardian is in the best interests of the child.

4. Prior to being appointed to assume the duty and authority of guardianship, the successor guardian enters into a subsidized guardianship agreement with the county department or DCF.

5. The successor guardian and all nonclient residents of the successor guardian's home have passed a criminal background investigation conducted prior to the successor guardian entering into the subsidized guardianship agreement.

6. The court assigned to exercise jurisdiction under the Children's Code (juvenile court) confirms that the conditions required of a successor guardian have been met, appoints the successor guardian to assume the duty and authority of guardianship, and either terminates any juvenile court order placing the child outside of the child's home or dismisses any juvenile court proceeding in which the child has been adjudged to be in need of protection or services.

The bill also creates a procedure for the nomination and appointment of a successor guardian for a child in need of protection or services. Under that

procedure, a person authorized to file a petition for the original appointment of a guardian for a child in need of protection or services, upon the death or incapacity of the initially appointed guardian, may file a petition for the appointment of a successor guardian named in a subsidized guardianship agreement or any other competent and suitable person to assume the duty and authority of guardianship and the juvenile court, after hearing, may appoint that successor guardian or other person to assume that duty and authority.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 48.623 (1) (c) of the statutes is amended to read:

2 48.623 (1) (c) An order under s. 48.345, 48.357, 48.363, 48.365, 938.345,
3 938.357, 938.363, or 938.365 placing the child, or continuing the placement of the
4 child, outside of the child's home has been terminated, or any proceeding in which
5 the child has been adjudged to be in need of protection or services specified in s.
6 48.977 (2) (a) has been dismissed, as provided in s. 48.977 (3r) (a).

7 **SECTION 2.** 48.623 (2) (intro.) of the statutes is amended to read:

8 48.623 (2) SUBSIDIZED GUARDIANSHIP AGREEMENT. (intro.) Before a county
9 department or the department may approve the provision of subsidized
10 guardianship payments under sub. (1) to a proposed guardian, the county
11 department or department shall negotiate and enter into a written, binding
12 subsidized guardianship agreement with the proposed guardian and provide the
13 proposed guardian with a copy of the agreement. A subsidized guardianship
14 agreement or an amended subsidized guardianship agreement may also name a
15 successor guardian of the child to assume the duty and authority of guardianship on
16 the death or incapacity of the guardian. A successor guardian is eligible for monthly
17 subsidized guardianship payments under this section if the conditions specified in

1 sub. (6) (bm) are met and the court appoints the successor guardian to assume the
2 duty and authority of guardianship as provided in s. 48.977 (5m). A subsidized
3 guardianship agreement shall specify all of the following:

4 **SECTION 3.** 48.623 (3) (c) 3. of the statutes is amended to read:

5 48.623 (3) (c) 3. A county department or the department may propose to a
6 person receiving monthly subsidized guardianship payments that the agreement
7 under sub. (2) (b) be amended to adjust the amount of those payments. If an
8 adjustment in the amount of those payments is agreed to by the person receiving
9 those payments, the agreement shall be amended in writing to specify the adjusted
10 amount of those payments.

11 **SECTION 4.** 48.623 (6) (title) of the statutes is amended to read:

12 48.623 (6) (title) INTERIM CARETAKER, SUCCESSOR GUARDIAN.

13 **SECTION 5.** 48.623 (6) of the statutes is renumbered 48.623 (6) (am).

14 **SECTION 6.** 48.623 (6) (bm) of the statutes is created to read:

15 48.623 (6) (bm) On the death or incapacity of a guardian receiving payments
16 under sub. (1), the county department or the department providing those payments
17 shall provide monthly subsidized guardianship payments in the amount specified in
18 sub. (3) (b) to a successor guardian if all of the following conditions are met and the
19 court appoints the successor guardian to assume the duty and authority of
20 guardianship as provided in s. 48.977 (5m):

21 1. The county department or department determines that the child, if 14 years
22 of age or over, has been consulted with regarding the successor guardianship
23 arrangement.

24 2. The county department or department determines that the successor
25 guardian has a strong commitment to caring permanently for the child.

1 3. The county department or department inspects the home of the successor
2 guardian, interviews the successor guardian, and determines that placement of the
3 child with the successor guardian is in the best interests of the child. In the case of
4 an Indian child, the best interests of the Indian child shall be determined in
5 accordance with s. 48.01 (2).

6 4. Prior to being appointed to assume the duty and authority of guardianship,
7 the successor guardian enters into a subsidized guardianship agreement under sub.
8 (2) with the county department or department.

9 5. Prior to the successor guardian entering into a subsidized guardianship
10 agreement with the county department or department, the county department or
11 department conducts a background investigation under s. 48.685 of the successor
12 guardian and any nonclient resident, as defined in s. 48.685 (1) (bm), of the home of
13 the successor guardian and determines that those individuals meet the
14 requirements specified in s. 48.685. The county department or department shall
15 provide the department of health services with information about each person who
16 is denied monthly subsidized guardianship payments or permission to reside in the
17 home of a successor guardian for a reason specified in s. 48.685 (4m) (a) 1. to 5. or (b)
18 1. to 5.

19 6. Any order under s. 48.345, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363,
20 or 938.365 placing the child, or continuing the placement of the child, outside of the
21 child's home has been terminated, or any proceeding in which the child has been
22 adjudged to be in need of protection or services specified in s. 48.977 (2) (a) has been
23 dismissed, as provided in s. 48.977 (3r) (b).

24 7. If the county department or department knows or has reason to know that
25 the child is an Indian child, the county department or department provides notice of

1 the Indian child's placement in the home of the successor guardian to the Indian
2 child's parent, Indian custodian, and tribe and determines that the home of the
3 successor guardian complies with the order of placement preference under s. 48.028
4 (7) (b) or, if applicable, s. 48.028 (7) (c), unless the county department or department
5 finds good cause, as described in s. 48.028 (7) (e), for departing from that order.

6 **SECTION 7.** 48.623 (7) (d) of the statutes is created to read:

7 48.623 (7) (d) Rules governing the payment of monthly subsidized
8 guardianship payments to a successor guardian of a child.

9 **SECTION 8.** 48.685 (1) (ag) 1. b. of the statutes is amended to read:

10 48.685 (1) (ag) 1. b. A person who has, or is seeking, a license, certification or
11 contract to operate an entity or, who is receiving, or is seeking, payment under s.
12 48.623 (6) (am) for operating an entity, or who is seeking payment under s. 48.623
13 (6) (bm) for operating an entity.

14 **SECTION 9.** 48.685 (1) (b) of the statutes is amended to read:

15 48.685 (1) (b) "Entity" means a child welfare agency that is licensed under s.
16 48.60 to provide care and maintenance for children, to place children for adoption,
17 or to license foster homes; a foster home that is licensed under s. 48.62; an interim
18 caretaker to whom subsidized guardianship payments are made under s. 48.623 (6);
19 a person who is proposed to be named as a successor guardian in a successor
20 guardianship agreement under s. 48.623 (2); a group home that is licensed under s.
21 48.625; a shelter care facility that is licensed under s. 938.22; a child care center that
22 is licensed under s. 48.65 or established or contracted for under s. 120.13 (14); a child
23 care provider that is certified under s. 48.651; an organization that facilitates
24 delegations of the care and custody of children under s. 48.979; or a temporary
25 employment agency that provides caregivers to another entity.

1 **SECTION 10.** 48.685 (2) (am) 5. of the statutes is amended to read:

2 48.685 (2) (am) 5. Information maintained by the department of health services
3 under this section and under ss. 48.623 (6) ~~(b)~~ (am) 2. and (bm) 5., 48.651 (2m), 48.75
4 (1m), 48.979 (1) (b), and 120.13 (14) regarding any denial to the person of a license,
5 continuation or renewal of a license, certification, or a contract to operate an entity,
6 or of payments under s. 48.623 (6) for operating an entity, for a reason specified in
7 sub. (4m) (a) 1. to 5. and regarding any denial to the person of employment at, a
8 contract with, or permission to reside at an entity or of permission to reside with a
9 caregiver specified in sub. (1) (ag) 1. am. for a reason specified in sub. (4m) (b) 1. to
10 5. If the information obtained under this subdivision indicates that the person has
11 been denied a license, continuation or renewal of a license, certification, a contract,
12 payments, employment, or permission to reside as described in this subdivision, the
13 department, a county department, an agency contracted with under s. 48.651 (2), a
14 child welfare agency, or a school board need not obtain the information specified in
15 subds. 1. to 4.

16 **SECTION 11.** 48.685 (2) (b) 1. e. of the statutes is amended to read:

17 48.685 (2) (b) 1. e. Information maintained by the department of health
18 services under this section and under ss. 48.623 (6) ~~(b)~~ (am) 2. and (bm) 5., 48.651
19 (2m), 48.75 (1m), 48.979 (1) (b), and 120.13 (14) regarding any denial to the person
20 of a license, continuation or renewal of a license, certification, or a contract to operate
21 an entity, or of payments under s. 48.623 (6) for operating an entity, for a reason
22 specified in sub. (4m) (a) 1. to 5. and regarding any denial to the person of
23 employment at, a contract with, or permission to reside at an entity or of permission
24 to reside with a caregiver specified in sub. (1) (ag) 1. am. for a reason specified in sub.
25 (4m) (b) 1. to 5. If the information obtained under this subd. 1. e. indicates that the

1 person has been denied a license, continuation or renewal of a license, certification,
2 a contract, payments, employment, or permission to reside as described in this subd.

3 1. e., the entity need not obtain the information specified in subd. 1. a. to d.

4 **SECTION 12.** 48.685 (3) (a) of the statutes is amended to read:

5 48.685 (3) (a) Subject to par. (am), every 4 years or at any time within that
6 period that the department, a county department, or a child welfare agency considers
7 appropriate, the department, county department, or child welfare agency shall
8 request the information specified in sub. (2) (am) 1. to 5. for all caregivers specified
9 in sub. (1) (ag) 1. b. who are licensed, certified, or contracted to operate an entity, or
10 who are receiving payments under s. 48.623 (6) (am) for operating an entity, and for
11 all persons who are nonclient residents of such a caregiver.

12 **SECTION 13.** 48.685 (4m) (a) (intro.) of the statutes is amended to read:

13 48.685 (4m) (a) (intro.) Notwithstanding s. 111.335, and except as provided in
14 par. (ad) and sub. (5), the department may not license, or continue or renew the
15 license of, a person to operate an entity, the department in a county having a
16 population of ~~500,000~~ 750,000 or more, a county department, or an agency contracted
17 with under s. 48.651 (2) may not certify a child care provider under s. 48.651, a county
18 department or a child welfare agency may not license, or renew the license of, a foster
19 home under s. 48.62, the department in a county having a population of 750,000 or
20 more or a county department may not provide subsidized guardianship payments to
21 an interim caretaker or successor guardian under s. 48.623 (6), and a school board
22 may not contract with a person under s. 120.13 (14), if the department, county
23 department, contracted agency, child welfare agency, or school board knows or
24 should have known any of the following:

25 **SECTION 14.** 48.685 (4m) (ad) of the statutes is amended to read:

1 48.685 (4m) (ad) The department, a county department, or a child welfare
2 agency may license a foster home under s. 48.62; the department may license a child
3 care center under s. 48.65; the department in a county having a population of 500,000
4 750,000 or more, a county department, or an agency contracted with under s. 48.651
5 (2) may certify a child care provider under s. 48.651; the department in a county
6 having a population of 750,000 or more or a county department may provide
7 subsidized guardianship payments to an interim caretaker or successor guardian
8 under s. 48.623 (6); and a school board may contract with a person under s. 120.13
9 (14), conditioned on the receipt of the information specified in sub. (2) (am) and (ar)
10 indicating that the person is not ineligible to be licensed, certified, provided
11 payments, or contracted with for a reason specified in par. (a) 1. to 5.

12 **SECTION 15.** 48.685 (5) (bm) (intro.) of the statutes is amended to read:

13 48.685 (5) (bm) (intro.) For purposes of licensing a foster home for the
14 placement of a child on whose behalf foster care maintenance payments under s.
15 48.62 (4) will be provided or of providing subsidized guardianship payments to an
16 interim caretaker or successor guardian under s. 48.623 (6), no person who has been
17 convicted of any of the following offenses may be permitted to demonstrate that he
18 or she has been rehabilitated:

19 **SECTION 16.** 48.977 (3r) of the statutes is renumbered 48.977 (3r) (a).

20 **SECTION 17.** 48.977 (3r) (a) (title) of the statutes is created to read:

21 48.977 (3r) (a) (title) *Guardian.*

22 **SECTION 18.** 48.977 (3r) (b) of the statutes is created to read:

23 48.977 (3r) (b) *Successor guardian.* Subsidized guardianship payments under
24 s. 48.623 (6) (bm) may not be made to a successor guardian of a child unless the court
25 makes a finding confirming that the conditions specified in s. 48.623 (6) (bm) have

1 been met, appoints the successor guardian to assume the duty and authority of
2 guardianship as provided in sub. (5m), and either terminates any order specified in
3 sub. (2) (a) or dismisses any proceeding in which the child has been adjudicated in
4 need of protection or services as specified in sub. (2) (a). If the court makes that
5 finding and appointment and either terminates such an order or dismisses such a
6 proceeding, the county department or, as provided in s. 48.623 (3) (a), the department
7 shall provide monthly subsidized guardianship payments to the successor guardian
8 under s. 48.623 (6) (bm).

9 **SECTION 19.** 48.977 (4) (b) 2. of the statutes is amended to read:

10 48.977 (4) (b) 2. The names and addresses of the child's parent or parents,
11 guardian, and legal custodian, the person nominated as the guardian of the child in
12 the petition, and any person nominated as a successor guardian of the child in the
13 petition.

14 **SECTION 20.** 48.977 (4) (c) 1. gm. of the statutes is created to read:

15 48.977 (4) (c) 1. gm. Any person nominated as a successor guardian of the child
16 in the petition.

17 **SECTION 21.** 48.977 (5m) of the statutes is created to read:

18 48.977 (5m) SUCCESSOR GUARDIAN. (a) *Petition.* If a guardian dies or becomes
19 incapacitated, any person authorized to file a petition under sub. (4) (a) may petition
20 for the appointment of a person named under s. 48.623 (2) or any other competent
21 and suitable person as successor guardian to assume the duty and authority of
22 guardian. The petition shall be heard in the same manner and subject to the same
23 requirements as provided under this section for an original appointment of a
24 guardian. If the person nominated as successor guardian is a person named in s.
25 48.623 (2), the petitioner shall include in the petition a statement that the conditions

1 specified in s. 48.623 (6) (bm) have been met and a request for the court to include
2 in the court's findings a finding confirming that those conditions have been met.

3 (b) *Appointment.* After hearing, the court may appoint a person named under
4 s. 48.623 (2) or any other competent and suitable person as successor guardian to
5 assume the duty and authority of guardianship. If the petition under par. (a)
6 includes a request for the court to include in the court's findings a finding confirming
7 that the conditions specified in s. 48.623 (6) (bm) have been met, the court shall
8 include that finding in the court's findings. The successor guardian shall receive a
9 copy of the initial guardianship order, any court order revising that initial order, and
10 the order appointing the successor guardian.

11 **SECTION 22. Nonstatutory provisions.**

12 (1) SUBSIDIZED GUARDIANSHIP PAYMENTS TO SUCCESSOR GUARDIANS; RULES. Using
13 the procedure under section 227.24 of the statutes, the department of children and
14 families may promulgate the rules required under section 48.623 (7) (d) of the
15 statutes, as created by this act, for the period before the effective date of the
16 permanent rules promulgated under section 48.623 (7) (d) of the statutes, as created
17 by this act, but not to exceed the period authorized under section 227.24 (1) (c) of the
18 statutes, subject to extension under section 227.24 (2) of the statutes.
19 Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department
20 of children and families is not required to provide evidence that promulgating a rule
21 under this subsection as an emergency rule is necessary for the preservation of the
22 public peace, health, safety, or welfare and is not required to provide a finding of
23 emergency for a rule promulgated under this subsection.

24 **SECTION 23. Effective dates.** This act takes effect on the first day of the 4th
25 month beginning after publication, except as follows:

1 (1) EMERGENCY RULES GOVERNING SUBSIDIZED GUARDIANSHIP PAYMENTS TO
2 SUCCESSOR GUARDIANS. SECTION 22 of this act takes effect on the day after publication.

3 (END)

Barman, Mike

From: Liedl, Kimberly - DCF <Kimberly.Liedl@wisconsin.gov>
Sent: Wednesday, June 10, 2015 8:59 AM
To: LRB.Legal
Subject: Draft Review: LRB -2107/1 Topic: Designation of successor guardian eligible for subsidized guardianship payments

Please Jacket LRB -2107/1 for the ASSEMBLY.

Barman, Mike

From: Barman, Mike
Sent: Wednesday, June 10, 2015 9:16 AM
To: Liedl, Kimberly - DCF
Subject: Attached ready for pick-up at LRB anytime after 10:00 AM today (06/10/2015)



Draft Review: LRB
-2572/1 Topi...



Draft Review: LRB
-2107/1 Topi...

Mike Barman (Lead Program Assistant)
State of Wisconsin - Legislative Reference Bureau - Legal Section - Front Office
1 East Main Street, Suite 200, Madison, WI 53703
(608) 266-3561 / mike.barman@legis.wisconsin.gov

Malaise, Gordon

From: Liedl, Kimberly - DCF <Kimberly.Liedl@wisconsin.gov>
Sent: Wednesday, June 24, 2015 5:05 PM
To: Malaise, Gordon
Subject: Edits to LRB -2107 Topic: Designation of successor guardian eligible for subsidized guardianship payments

Hi, Gordon, based on recent advice from ACF, DCF has some additional changes to LRB 2107. My apologies for yet another round of changes. Hopefully these will be our last ones! I will drop off the bill jackets at LRB tomorrow.

✓ p. 3 section 2 line 15 add "prospective" before "successor guardian".

✓ p. 3, S. 2, line 16, Before "A" add "only" & after "A successor guardian" insert "named in a subsidized guardianship agreement or amended agreement as a successor guardian before the death or incapacity of the subsidized guardian"

✓ p. 4, S.6, line 18, after "a successor guardian" insert "named in a subsidized guardianship agreement or amended agreement as a successor guardian before the death or incapacity of the subsidized guardian"

p. 5 line 11 after "the" insert "prospective"

p. 5 line 13 after "the" insert "prospective"

p.5 line 17 after "a" insert "prospective"

= "person"

p. 6 line 1 after "the" insert "prospective"

P. 6 line 3 before "successor" insert "prospective"

✓ p. 10, S. 18, line 1, after "the successor guardian" insert "named in a subsidized guardianship agreement or amended agreement as a successor guardian before the death or incapacity of the subsidized guardian"

✓ p. 10, S. 21, line 20, after "the appointment of a person named" insert "named in a subsidized guardianship agreement or amended agreement as a successor guardian before the death or incapacity of the subsidized guardian"

✓ p. 10, s. 21, line 20 delete "or any other competent and suitable person as a successor guardian"

Thanks,
Kimber

Kimberly Liedl

Legislative Liaison

Department of Children and Families

201 East Washington Avenue

Madison, WI 53703

T: 608.261.8678

E: kimberly.liedl@wisconsin.gov



State of Wisconsin
2015 - 2016 LEGISLATURE

IN 6/25/12
Wanted 7/9

LRB-2107/1
GMM:emw

2
RMR

2015 BILL

S.A. ✓
Xref ✓

1 **AN ACT** to renumber 48.623 (6) and 48.977 (3r); to amend 48.623 (1) (c), 48.623
2 (2) (intro.), 48.623 (3) (c) 3., 48.623 (6) (title), 48.685 (1) (ag) 1. b., 48.685 (1) (b),
3 48.685 (2) (am) 5., 48.685 (2) (b) 1. e., 48.685 (3) (a), 48.685 (4m) (a) (intro.),
4 48.685 (4m) (ad), 48.685 (5) (bm) (intro.) and 48.977 (4) (b) 2.; and to create
5 48.623 (6) (bm), 48.623 (7) (d), 48.977 (3r) (a) (title), 48.977 (3r) (b), 48.977 (4)
6 (c) 1. gm. and 48.977 (5m) of the statutes; relating to: appointment of a
7 successor guardian for a child in need of protection or services and eligibility
8 of a successor guardian for subsidized guardianship payments, providing an
9 exemption from emergency rule procedures, and granting rule-making
10 authority.

Analysis by the Legislative Reference Bureau

This bill permits the appointment of a successor guardian for a child in need of protection or services to assume the duty and authority of guardianship on the death or incapacity of the child's guardian. The bill also specifies the conditions that a successor guardian must meet to be eligible for monthly subsidized guardianship payments.

BILL

~~only if the successor guardian is named as a prospective successor~~
subsidized guardianship agreement or amended subsidized
guardianship agreement that was entered into before the death or
incapacity of the subsidized guardian and if

Under current law, a county department of human services or social services (county department) or, in a county having a population of 750,000 or more, the Department of Children and Families (DCF) must provide monthly subsidized guardianship payments to the guardian of a child who has been adjudged to be in need of protection or services if certain conditions have been met, including the conditions that: 1) the child, if 14 years of age or over, has been consulted with regarding the guardianship arrangement; 2) the guardian has a strong commitment to caring for the child permanently; 3) the guardian is licensed as the child's foster parent, which licensing includes an inspection of the guardian's home under rules promulgated by DCF; 4) the guardian and all adult residents of the guardian's home have passed a criminal background investigation; and 5) prior to being named as guardian of the child, the guardian entered into a subsidized guardianship agreement with the county department or DCF.

Current law also permits a county department or DCF to provide monthly subsidized guardianship payments for a period of up to 12 months to an interim caretaker on the death, incapacity, resignation, or removal of a subsidized guardian if the interim caretaker meets certain conditions, including passing a home inspection and a criminal background investigation.

This bill permits a subsidized guardianship agreement between a county department or DCF and a proposed subsidized guardian to also name a successor guardian to assume the duty and authority of guardianship on the death or incapacity of the subsidized guardian. A successor guardian is eligible for monthly subsidized guardianship payments if certain conditions are met, including the conditions that:

1. The county department or DCF determines that the child, if 14 years of age or over, has been consulted with regarding the successor guardianship arrangement.
2. The county department or DCF determines that the guardian has a strong commitment to caring for the child permanently.
3. The county department or DCF inspects the home of the successor guardian, interviews the successor guardian, and determines that placement of the child with the successor guardian is in the best interests of the child.
4. Prior to being appointed to assume the duty and authority of guardianship, the successor guardian enters into a subsidized guardianship agreement with the county department or DCF.
5. The successor guardian and all nonclient residents of the successor guardian's home have passed a criminal background investigation conducted prior to the successor guardian entering into the subsidized guardianship agreement.
6. The court assigned to exercise jurisdiction under the Children's Code (juvenile court) confirms that the conditions required of a successor guardian have been met, appoints the successor guardian to assume the duty and authority of guardianship, and either terminates any juvenile court order placing the child outside of the child's home or dismisses any juvenile court proceeding in which the child has been adjudged to be in need of protection or services.

The bill also creates a procedure for the nomination and appointment of a successor guardian for a child in need of protection or services. Under that

person so named as a prospective successor guardian

or an amended subsidized guardianship agreement

either

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as successor guardian

or an amended subsidized guardianship agreement

of the child

that was entered into before the death or incapacity of the guardian as successor guardian

person named as a prospective

person as successor guardian

procedure, a person authorized to file a petition for the original appointment of a guardian for a child in need of protection or services, upon the death or incapacity of the initially appointed guardian, may file a petition for the appointment of a successor guardian named in a subsidized guardianship agreement or any other competent and suitable person to assume the duty and authority of guardianship and the juvenile court, after hearing, may appoint that successor guardian or other person to assume that duty and authority.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 48.623 (1) (c) of the statutes is amended to read:

2 48.623 (1) (c) An order under s. 48.345, 48.357, 48.363, 48.365, 938.345,
3 938.357, 938.363, or 938.365 placing the child, or continuing the placement of the
4 child, outside of the child's home has been terminated, or any proceeding in which
5 the child has been adjudged to be in need of protection or services specified in s.
6 48.977 (2) (a) has been dismissed, as provided in s. 48.977 (3r) (a).

7 SECTION 2. 48.623 (2) (intro.) of the statutes is amended to read:

8 48.623 (2) SUBSIDIZED GUARDIANSHIP AGREEMENT. (intro.) Before a county
9 department or the department may approve the provision of subsidized
10 guardianship payments under sub. (1) to a proposed guardian, the county
11 department or department shall negotiate and enter into a written, binding
12 subsidized guardianship agreement with the proposed guardian and provide the
13 proposed guardian with a copy of the agreement. A subsidized guardianship
14 agreement or an amended subsidized guardianship agreement may also name a
15 successor guardian of the child to assume the duty and authority of guardianship on
16 the death or incapacity of the guardian. A successor guardian is eligible for monthly
17 subsidized guardianship payments under this section if the conditions specified in

prospective

that was

prospective

only

if the successor guardian is named as a successor guardian of the child in a subsidized guardianship agreement or amended subsidized guardianship agreement entered into before the death or incapacity of the guardian

BILL

1

1 sub. (6) (bm) are met and the court appoints the successor guardian to assume the
2 duty and authority of guardianship as provided in s. 48.977 (5m). A subsidized
3 guardianship agreement shall specify all of the following:

4 **SECTION 3.** 48.623[✓] (3) (c) 3. of the statutes is amended to read:

5 48.623 (3) (c) 3. A county department or the department may propose to a
6 person receiving monthly subsidized guardianship payments that the agreement
7 under sub. (2) (b) be amended to adjust the amount of those payments. If an
8 adjustment in the amount of those payments is agreed to by the person receiving
9 those payments, the agreement shall be amended in writing to specify the adjusted
10 amount of those payments.

11 **SECTION 4.** 48.623[✓] (6) (title) of the statutes is amended to read:

12 48.623 (6) (title) INTERIM CARETAKER; SUCCESSOR GUARDIAN.

13 **SECTION 5.** 48.623[✓] (6) of the statutes is renumbered 48.623 (6) (am).

14 **SECTION 6.** 48.623 (6) (bm) of the statutes is created to read:

15 48.623 (6) (bm) On the death or incapacity of a guardian receiving payments
16 under sub. (1), the county department or the department providing those payments
17 shall provide monthly subsidized guardianship payments in the amount specified in

18 sub. (3) (b) to a ~~successor guardian~~ ^{person as} if all of the following conditions are met ~~and the~~
19 court appoints the ~~successor guardian~~ ^{person as} to assume the duty and authority of
20 guardianship as provided in s. 48.977 (5m):

21 1. The county department or department determines that the child, if 14 years
22 of age or over, has been consulted with regarding the successor guardianship
23 arrangement.

24 2. The county department or department determines that the ~~successor~~
25 ~~guardian~~ ^{person} has a strong commitment to caring permanently for the child.

that was
~~The successor guardian to be named as a prospective successor guardian of the child~~
in a subsidized guardianship agreement or amended subsidized guardianship agreement
entered into before the death or incapacity of the guardian.

BILL

person

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3. The county department or department inspects the home of the ~~successor~~ guardian, interviews the ~~successor~~ guardian, and determines that placement of the child with the ~~successor~~ guardian is in the best interests of the child. In the case of an Indian child, the best interests of the Indian child shall be determined in accordance with s. 48.01 (2).

the successor guardian

4. Prior to being appointed to assume the duty and authority of guardianship, the ~~successor~~ guardian enters into a subsidized guardianship agreement under sub. (2) with the county department or department.

5. Prior to the ~~successor~~ guardian entering into a subsidized guardianship agreement with ~~the county department or department~~, the county department or department conducts a background investigation under s. 48.685 of the ~~successor~~ guardian and any nonclient resident, as defined in s. 48.685 (1) (bm), of the home of the ~~successor~~ guardian and determines that those individuals meet the requirements specified in s. 48.685. The county department or department shall provide the department of health services with information about each person who is denied monthly subsidized guardianship payments or permission to reside in the home of a ~~successor~~ guardian for a reason specified in s. 48.685 (4m) (a) 1. to 5. or (b) 1. to 5.

person receiving those payments

6. Any order under s. 48.345, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363, or 938.365 placing the child, or continuing the placement of the child, outside of the child's home has been terminated, or any proceeding in which the child has been adjudged to be in need of protection or services specified in s. 48.977 (2) (a) has been dismissed, as provided in s. 48.977 (3r) (b).

7. If the county department or department knows or has reason to know that the child is an Indian child, the county department or department provides notice of

BILL

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the Indian child's placement in the home of the ^{person} ~~successor guardian~~ to the Indian

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child's parent, Indian custodian, and tribe and determines that the home of the

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~~successor guardian~~ complies with the order of placement preference under s. 48.028

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(7) (b) or, if applicable, s. 48.028 (7) (c), unless the county department or department

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finds good cause, as described in s. 48.028 (7) (e), for departing from that order.

6

SECTION 7. 48.623 (7) (d) of the statutes is created to read:

7

48.623 (7) (d) Rules governing the payment of monthly subsidized guardianship payments to a successor guardian of a child.

9

SECTION 8. 48.685 (1) (ag) 1. b. of the statutes is amended to read:

10

48.685 (1) (ag) 1. b. A person who has, or is seeking, a license, certification or

11

contract to operate an entity ~~or~~, who is receiving, or is seeking, payment under s.

12

48.623 (6) (am) for operating an entity, or who is seeking payment under s. 48.623

13

(6) (bm) for operating an entity.

14

SECTION 9. 48.685 (1) (b) of the statutes is amended to read:

15

48.685 (1) (b) "Entity" means a child welfare agency that is licensed under s.

16

48.60 to provide care and maintenance for children, to place children for adoption,

17

or to license foster homes; a foster home that is licensed under s. 48.62; an interim

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caretaker to whom subsidized guardianship payments are made under s. 48.623 (6);

19

a person who is proposed to be named as a successor guardian in a successor

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guardianship agreement under s. 48.623 (2); a group home that is licensed under s.

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48.625; a shelter care facility that is licensed under s. 938.22; a child care center that

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is licensed under s. 48.65 or established or contracted for under s. 120.13 (14); a child

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care provider that is certified under s. 48.651; an organization that facilitates

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delegations of the care and custody of children under s. 48.979; or a temporary

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employment agency that provides caregivers to another entity.

BILL

1 **SECTION 10.** 48.685 (2) (am) 5. of the statutes is amended to read:

2 48.685 (2) (am) 5. Information maintained by the department of health services
3 under this section and under ss. 48.623 (6) ~~(b)~~ (am) 2. and (bm) 5., 48.651 (2m), 48.75
4 (1m), 48.979 (1) (b), and 120.13 (14) regarding any denial to the person of a license,
5 continuation or renewal of a license, certification, or a contract to operate an entity,
6 or of payments under s. 48.623 (6) for operating an entity, for a reason specified in
7 sub. (4m) (a) 1. to 5. and regarding any denial to the person of employment at, a
8 contract with, or permission to reside at an entity or of permission to reside with a
9 caregiver specified in sub. (1) (ag) 1. am. for a reason specified in sub. (4m) (b) 1. to
10 5. If the information obtained under this subdivision indicates that the person has
11 been denied a license, continuation or renewal of a license, certification, a contract,
12 payments, employment, or permission to reside as described in this subdivision, the
13 department, a county department, an agency contracted with under s. 48.651 (2), a
14 child welfare agency, or a school board need not obtain the information specified in
15 subds. 1. to 4.

16 **SECTION 11.** 48.685 (2) (b) 1. e. of the statutes is amended to read:

17 48.685 (2) (b) 1. e. Information maintained by the department of health
18 services under this section and under ss. 48.623 (6) ~~(b)~~ (am) 2. and (bm) 5., 48.651
19 (2m), 48.75 (1m), 48.979 (1) (b), and 120.13 (14) regarding any denial to the person
20 of a license, continuation or renewal of a license, certification, or a contract to operate
21 an entity, or of payments under s. 48.623 (6) for operating an entity, for a reason
22 specified in sub. (4m) (a) 1. to 5. and regarding any denial to the person of
23 employment at, a contract with, or permission to reside at an entity or of permission
24 to reside with a caregiver specified in sub. (1) (ag) 1. am. for a reason specified in sub.
25 (4m) (b) 1. to 5. If the information obtained under this subd. 1. e. indicates that the

BILL**SECTION 11**

1 person has been denied a license, continuation or renewal of a license, certification,
2 a contract, payments, employment, or permission to reside as described in this subd.
3 1. e., the entity need not obtain the information specified in subd. 1. a. to d.

4 **SECTION 12.** 48.685 (3) (a) of the statutes is amended to read:

5 48.685 (3) (a) Subject to par. (am), every 4 years or at any time within that
6 period that the department, a county department, or a child welfare agency considers
7 appropriate, the department, county department, or child welfare agency shall
8 request the information specified in sub. (2) (am) 1. to 5. for all caregivers specified
9 in sub. (1) (ag) 1. b. who are licensed, certified, or contracted to operate an entity, or
10 who are receiving payments under s. 48.623 (6) (am) for operating an entity, and for
11 all persons who are nonclient residents of such a caregiver.

12 **SECTION 13.** 48.685 (4m) (a) (intro.) of the statutes is amended to read:

13 48.685 (4m) (a) (intro.) Notwithstanding s. 111.335, and except as provided in
14 par. (ad) and sub. (5), the department may not license, or continue or renew the
15 license of, a person to operate an entity, the department in a county having a
16 population of ~~500,000~~ 750,000 or more, a county department, or an agency contracted
17 with under s. 48.651 (2) may not certify a child care provider under s. 48.651, a county
18 department or a child welfare agency may not license, or renew the license of, a foster
19 home under s. 48.62, the department in a county having a population of 750,000 or
20 more or a county department may not provide subsidized guardianship payments to
21 an interim caretaker or successor guardian under s. 48.623 (6), and a school board
22 may not contract with a person under s. 120.13 (14), if the department, county
23 department, contracted agency, child welfare agency, or school board knows or
24 should have known any of the following:

25 **SECTION 14.** 48.685 (4m) (ad) of the statutes is amended to read:

BILL

1 48.685 (4m) (ad) The department, a county department, or a child welfare
2 agency may license a foster home under s. 48.62; the department may license a child
3 care center under s. 48.65; the department in a county having a population of 500,000
4 750,000 or more, a county department, or an agency contracted with under s. 48.651
5 (2) may certify a child care provider under s. 48.651; the department in a county
6 having a population of 750,000 or more or a county department may provide
7 subsidized guardianship payments to an interim caretaker or successor guardian
8 under s. 48.623 (6); and a school board may contract with a person under s. 120.13
9 (14), conditioned on the receipt of the information specified in sub. (2) (am) and (ar)
10 indicating that the person is not ineligible to be licensed, certified, provided
11 payments, or contracted with for a reason specified in par. (a) 1. to 5.

12 **SECTION 15.** 48.685 (5) (bm) (intro.) of the statutes is amended to read:

13 48.685 (5) (bm) (intro.) For purposes of licensing a foster home for the
14 placement of a child on whose behalf foster care maintenance payments under s.
15 48.62 (4) will be provided or of providing subsidized guardianship payments to an
16 interim caretaker or successor guardian under s. 48.623 (6), no person who has been
17 convicted of any of the following offenses may be permitted to demonstrate that he
18 or she has been rehabilitated:

19 **SECTION 16.** 48.977 (3r) of the statutes is renumbered 48.977 (3r) (a).

20 **SECTION 17.** 48.977 (3r) (a) (title) of the statutes is created to read:

21 48.977 (3r) (a) (title) *Guardian.*

22 **SECTION 18.** 48.977 (3r) (b) of the statutes is created to read:

23 48.977 (3r) (b) *Successor guardian.* Subsidized guardianship payments under
24 s. 48.623 (6) (bm) may not be made to a successor guardian of a child unless the court
25 makes a finding confirming that the conditions specified in s. 48.623 (6) (bm) have

the successor guardian ^{is} named as a prospective successor guardian of the child in a subsidized guardianship agreement or amended subsidized guardianship agreement under s. 48.623 (2) entered into before the death or incapacity of the

BILL

the person was so named as a prospective successor guardian of the child and that

STET

1 been met, appoints the successor guardian to assume the duty and authority of
2 guardianship as provided in sub. (5m), and either terminates any order specified in
3 sub. (2) (a) or dismisses any proceeding in which the child has been adjudicated in
4 need of protection or services as specified in sub. (2) (a). If the court makes that
5 finding and appointment and either terminates such an order or dismisses such a
6 proceeding, the county department or, as provided in s. 48.623 (3) (a), the department
7 shall provide monthly subsidized guardianship payments to the successor guardian
8 under s. 48.623 (6) (bm).

9 **SECTION 19.** 48.977 (4) (b) 2. of the statutes is amended to read:

10 48.977 (4) (b) 2. The names and addresses of the child's parent or parents,
11 guardian, and legal custodian, the person nominated as the guardian of the child in
12 the petition, and any person nominated as a successor guardian of the child in the
13 petition.

14 **SECTION 20.** 48.977 (4) (c) 1. gm. of the statutes is created to read:

15 48.977 (4) (c) 1. gm. Any person nominated as a successor guardian of the child
16 in the petition.

as a prospective successor guardian of the child in a subsidized guardianship agreement or amended subsidized guardianship agreement

17 **SECTION 21.** 48.977 (5m) of the statutes is created to read:

18 48.977 (5m) SUCCESSOR GUARDIAN. (a) *Petition.* If a guardian dies or becomes
19 incapacitated, any person authorized to file a petition under sub. (4) (a) may petition
20 for the appointment of a person named under s. 48.623 (2) ~~or any other competent~~

21 ~~and suitable person~~ as successor guardian to assume the duty and authority of
22 guardian. The petition shall be heard in the same manner and subject to the same
23 requirements as provided under this section for an original appointment of a
24 guardian. ~~If the person nominated as successor guardian is a person named in s.~~

25 48.623 (2), ~~the~~ petitioner shall include in the petition a statement that the conditions

That was

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entered into before the death or incapacity of the guardian

BILL

as a prospective successor guardian of the child
~~that the successor guardian was so named and~~
person
~~and the~~

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specified in s. 48.623 (6) (bm) have been met, and a request for the court to include in the court's findings a finding confirming that those conditions have been met.

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(b) *Appointment.* After hearing, the court may appoint a person named under

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s. 48.623 (2) or any other competent and suitable *person* as successor guardian to

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assume the duty and authority of guardianship. If the petition under par. (a)

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includes a request for the court *The* to include in the court's findings a finding confirming

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that the conditions specified in s. 48.623 (6) (bm) have been met, *shall* the court shall

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~~include that finding in the court's findings.~~ *person appointed as* The successor guardian shall receive a

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copy of the initial guardianship order, any court order revising that initial order, and

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the order appointing the *person as* successor guardian.

that the person was named as a prospective successor guardian as stated in the petition and

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SECTION 22. Nonstatutory provisions.

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(1) SUBSIDIZED GUARDIANSHIP PAYMENTS TO SUCCESSOR GUARDIANS; RULES. Using

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the procedure under section 227.24 of the statutes, the department of children and

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families may promulgate the rules required under section 48.623 (7) (d) of the

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statutes, as created by this act, for the period before the effective date of the

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permanent rules promulgated under section 48.623 (7) (d) of the statutes, as created

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by this act, but not to exceed the period authorized under section 227.24 (1) (c) of the

18

statutes, subject to extension under section 227.24 (2) of the statutes.

19

Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department

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of children and families is not required to provide evidence that promulgating a rule

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under this subsection as an emergency rule is necessary for the preservation of the

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public peace, health, safety, or welfare and is not required to provide a finding of

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emergency for a rule promulgated under this subsection.

24

SECTION 23. Effective dates. This act takes effect on the first day of the 4th

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month beginning after publication, except as follows:

BILL

SECTION 23

1 (1) EMERGENCY RULES GOVERNING SUBSIDIZED GUARDIANSHIP PAYMENTS TO
2 SUCCESSOR GUARDIANS. SECTION 22 of this act takes effect on the day after publication.

3 **(END)**

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2107/P2dn

GMM. j:...

emw

— Date —

✓
Kimber:

It does not work grammatically to change the term “successor guardian” to “prospective successor guardian” in s. 48.623 (6) (bm) 5. and 7. because the subject of the sentence, as stated in the (intro.) paragraph, is a successor guardian, not a prospective successor guardian. (In drafting, an (intro.) paragraph and the list following read like one big sentence.)

✓
Accordingly, this redraft uses the term “person” throughout s. 48.623 (6) (bm), which is flexible enough to mean either a successor guardian or a prospective successor guardian, whichever is applicable according to the context.

Gordon M. Malaise
Senior Legislative Attorney
(608) 266-9738
gordon.malaise@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2107/2dn
GMM:emw

July 3, 2015

Kimber:

It does not work grammatically to change the term "successor guardian" to "prospective successor guardian" in s. 48.623 (6) (bm) 5. and 7. because the subject of the sentence, as stated in the (intro.) paragraph, is a successor guardian, not a prospective successor guardian. (In drafting, an (intro.) paragraph and the list following read like one big sentence.)

Accordingly, this redraft uses the term "person" throughout s. 48.623 (6) (bm), which is flexible enough to mean either a successor guardian or a prospective successor guardian, whichever is applicable according to the context.

Gordon M. Malaise
Senior Legislative Attorney
(608) 266-9738
gordon.malaise@legis.wisconsin.gov

Malaise, Gordon

From: Liedl, Kimberly - DCF <Kimberly.Liedl@wisconsin.gov>
Sent: Friday, July 17, 2015 2:52 PM
To: Malaise, Gordon
Subject: Edit to LRB -2107/2 Topic: Designation of successor guardian eligible for subsidized guardianship payments

Gordon,

We have one more edit to LRB 2107/2:

On Page 9, line 3, please remove "or successor guardian" and replace with words to the effect of one of the following:

"or a prospective successor guardian"

"or a person seeking payment as a successor guardian"

"or a person seeking payment under 48.623(6)(bm)"

(The last 2 are similar to the successor guardian language the bill adds in section 8 to the caregiver definition in s. 48.685). You had some concerns about using "prospective successor guardian" in some parts of the bill, so as the drafter, you should choose.

Thanks,

Kimber

Kimberly Liedl

Legislative Liaison

Department of Children and Families

201 East Washington Avenue

Madison, WI 53703

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State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-2107/2
GMM:emw

3
RMR

IN 7/21
Wanted 7/31

2015 BILL

DN-511

to be
typed

S.A. ✓
Xref ✓

Regen

1 AN ACT to renumber 48.623 (6) and 48.977 (3r); to amend 48.623 (1) (c), 48.623
2 (2) (intro.), 48.623 (3) (c) 3., 48.623 (6) (title), 48.685 (1) (ag) 1. b., 48.685 (1) (b),
3 48.685 (2) (am) 5., 48.685 (2) (b) 1. e., 48.685 (3) (a), 48.685 (4m) (a) (intro.),
4 48.685 (4m) (ad), 48.685 (5) (bm) (intro.) and 48.977 (4) (b) 2.; and to create
5 48.623 (6) (bm), 48.623 (7) (d), 48.977 (3r) (a) (title), 48.977 (3r) (b), 48.977 (4)
6 (c) 1. gm. and 48.977 (5m) of the statutes; relating to: appointment of a
7 successor guardian for a child in need of protection or services and eligibility
8 of a successor guardian for subsidized guardianship payments, providing an
9 exemption from emergency rule procedures, and granting rule-making
10 authority.

Analysis by the Legislative Reference Bureau

This bill permits the appointment of a successor guardian for a child in need of protection or services to assume the duty and authority of guardianship on the death or incapacity of the child's guardian. The bill also specifies the conditions that a successor guardian must meet to be eligible for monthly subsidized guardianship payments.

BILL

Under current law, a county department of human services or social services (county department) or, in a county having a population of 750,000 or more, the Department of Children and Families (DCF) must provide monthly subsidized guardianship payments to the guardian of a child who has been adjudged to be in need of protection or services if certain conditions have been met, including the conditions that: 1) the child, if 14 years of age or over, has been consulted with regarding the guardianship arrangement; 2) the guardian has a strong commitment to caring for the child permanently; 3) the guardian is licensed as the child's foster parent, which licensing includes an inspection of the guardian's home under rules promulgated by DCF; 4) the guardian and all adult residents of the guardian's home have passed a criminal background investigation; and 5) prior to being named as guardian of the child, the guardian entered into a subsidized guardianship agreement with the county department or DCF.

Current law also permits a county department or DCF to provide monthly subsidized guardianship payments for a period of up to 12 months to an interim caretaker on the death, incapacity, resignation, or removal of a subsidized guardian if the interim caretaker meets certain conditions, including passing a home inspection and a criminal background investigation.

This bill permits a subsidized guardianship agreement or an amended subsidized guardianship agreement to also name a prospective successor guardian to assume the duty and authority of guardianship on the death or incapacity of the subsidized guardian. A person so named as a prospective successor guardian is eligible for monthly subsidized guardianship payments only if the subsidized guardianship agreement or amended subsidized guardianship agreement was entered into before the death or incapacity of the subsidized guardian and if certain other conditions are met, including the conditions that:

1. The county department or DCF determines that the child, if 14 years of age or over, has been consulted with regarding the successor guardianship arrangement.

2. The county department or DCF determines that the person has a strong commitment to caring for the child permanently.

3. The county department or DCF inspects the home of the person, interviews the person, and determines that placement of the child with the person is in the best interests of the child.

4. Prior to being appointed as successor guardian to assume the duty and authority of guardianship, the person enters into a subsidized guardianship agreement with the county department or DCF.

5. The person and all nonclient residents of the person's home have passed a criminal background investigation conducted prior to the person entering into the subsidized guardianship agreement.

6. The court assigned to exercise jurisdiction under the Children's Code (juvenile court) confirms that the conditions required of a successor guardian have been met, appoints the person as successor guardian to assume the duty and authority of guardianship, and either terminates any juvenile court order placing the child outside of the child's home or dismisses any juvenile court proceeding in which the child has been adjudged to be in need of protection or services.

BILL

The bill also creates a procedure for the nomination and appointment of a successor guardian for a child in need of protection or services. Under that procedure, a person authorized to file a petition for the original appointment of a guardian for a child in need of protection or services, upon the death or incapacity of the initially appointed guardian, may file a petition for the appointment of a person named as a prospective successor guardian of the child in a subsidized guardianship agreement or amended subsidized guardianship agreement that was entered into before the death or incapacity of the guardian as successor guardian to assume the duty and authority of guardianship, and the juvenile court, after hearing, may appoint that person as successor guardian to assume that duty and authority.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 48.623 (1) (c) of the statutes is amended to read:

2 48.623 (1) (c) An order under s. 48.345, 48.357, 48.363, 48.365, 938.345,
3 938.357, 938.363, or 938.365 placing the child, or continuing the placement of the
4 child, outside of the child's home has been terminated, or any proceeding in which
5 the child has been adjudged to be in need of protection or services specified in s.
6 48.977 (2) (a) has been dismissed, as provided in s. 48.977 (3r) (a).

7 **SECTION 2.** 48.623 (2) (intro.) of the statutes is amended to read:

8 48.623 (2) SUBSIDIZED GUARDIANSHIP AGREEMENT. (intro.) Before a county
9 department or the department may approve the provision of subsidized
10 guardianship payments under sub. (1) to a proposed guardian, the county
11 department or department shall negotiate and enter into a written, binding
12 subsidized guardianship agreement with the proposed guardian and provide the
13 proposed guardian with a copy of the agreement. A subsidized guardianship
14 agreement or an amended subsidized guardianship agreement may also name a
15 prospective successor guardian of the child to assume the duty and authority of

BILL**SECTION 2**

1 guardianship on the death or incapacity of the guardian. A successor guardian is
2 eligible for monthly subsidized guardianship payments under this section only if the
3 successor guardian is named as a prospective successor guardian of the child in a
4 subsidized guardianship agreement or amended subsidized guardianship
5 agreement that was entered into before the death or incapacity of the guardian, the
6 conditions specified in sub. (6) (bm) are met, and the court appoints the successor
7 guardian to assume the duty and authority of guardianship as provided in s. 48.977
8 (5m). A subsidized guardianship agreement shall specify all of the following:

9 **SECTION 3.** 48.623 (3) (c) 3. of the statutes is amended to read:

10 48.623 (3) (c) 3. A county department or the department may propose to a
11 person receiving monthly subsidized guardianship payments that the agreement
12 under sub. (2) (b) be amended to adjust the amount of those payments. If an
13 adjustment in the amount of those payments is agreed to by the person receiving
14 those payments, the agreement shall be amended in writing to specify the adjusted
15 amount of those payments.

16 **SECTION 4.** 48.623 (6) (title) of the statutes is amended to read:

17 48.623 (6) (title) INTERIM CARETAKER; SUCCESSOR GUARDIAN.

18 **SECTION 5.** 48.623 (6) of the statutes is renumbered 48.623 (6) (am).

19 **SECTION 6.** 48.623 (6) (bm) of the statutes is created to read:

20 48.623 (6) (bm) On the death or incapacity of a guardian receiving payments
21 under sub. (1), the county department or the department providing those payments
22 shall provide monthly subsidized guardianship payments in the amount specified in
23 sub. (3) (b) to a person named as a prospective successor guardian of the child in a
24 subsidized guardianship agreement or amended subsidized guardianship
25 agreement that was entered into before the death or incapacity of the guardian if all

BILL

1 of the following conditions are met and the court appoints the person as successor
2 guardian to assume the duty and authority of guardianship as provided in s. 48.977
3 (5m):

4 1. The county department or department determines that the child, if 14 years
5 of age or over, has been consulted with regarding the successor guardianship
6 arrangement.

7 2. The county department or department determines that the person has a
8 strong commitment to caring permanently for the child.

9 3. The county department or department inspects the home of the person,
10 interviews the person, and determines that placement of the child with the person
11 is in the best interests of the child. In the case of an Indian child, the best interests
12 of the Indian child shall be determined in accordance with s. 48.01 (2).

13 4. Prior to being appointed as successor guardian to assume the duty and
14 authority of guardianship, the person enters into a subsidized guardianship
15 agreement under sub. (2) with the county department or department.

16 5. Prior to the person entering into the subsidized guardianship agreement, the
17 county department or department conducts a background investigation under s.
18 48.685 of the person and any nonclient resident, as defined in s. 48.685 (1) (bm), of
19 the home of the person and determines that those individuals meet the requirements
20 specified in s. 48.685. The county department or department shall provide the
21 department of health services with information about each person who is denied
22 monthly subsidized guardianship payments or permission to reside in the home of
23 a person receiving those payments for a reason specified in s. 48.685 (4m) (a) 1. to 5.
24 or (b) 1. to 5.

BILL

1 6. Any order under s. 48.345, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363,
2 or 938.365 placing the child, or continuing the placement of the child, outside of the
3 child's home has been terminated, or any proceeding in which the child has been
4 adjudged to be in need of protection or services specified in s. 48.977 (2) (a) has been
5 dismissed, as provided in s. 48.977 (3r) (b).

6 7. If the county department or department knows or has reason to know that
7 the child is an Indian child, the county department or department provides notice of
8 the Indian child's placement in the home of the person to the Indian child's parent,
9 Indian custodian, and tribe and determines that the home of the person complies
10 with the order of placement preference under s. 48.028 (7) (b) or, if applicable, s.
11 48.028 (7) (c), unless the county department or department finds good cause, as
12 described in s. 48.028 (7) (e), for departing from that order.

13 **SECTION 7.** 48.623 (7) (d) ^{see} of the statutes is created to read:

14 48.623 (7) (d) ^{see} Rules governing the payment of monthly subsidized
15 guardianship payments to a successor guardian of a child.

16 **SECTION 8.** 48.685 (1) (ag) 1. b. of the statutes [✓] is amended to read:

17 48.685 (1) (ag) 1. b. A person who has, or is seeking, a license, certification or
18 contract to operate an entity ~~or~~, who is receiving, or is seeking, payment under s.
19 48.623 (6) (am) for operating an entity, or who is seeking payment under s. 48.623
20 (6) (bm) for operating an entity.

21 **SECTION 9.** 48.685 (1) (b) of the statutes [✓] is amended to read:

22 48.685 (1) (b) "Entity" means a child welfare agency that is licensed under s.
23 48.60 to provide care and maintenance for children, to place children for adoption,
24 or to license foster homes; a foster home that is licensed under s. 48.62; an interim
25 caretaker to whom subsidized guardianship payments are made under s. 48.623 (6);

BILL

1 a person who is proposed to be named as a successor guardian in a successor
2 guardianship agreement under s. 48.623 (2); a group home that is licensed under s.
3 48.625; a shelter care facility that is licensed under s. 938.22; a child care center that
4 is licensed under s. 48.65 or established or contracted for under s. 120.13 (14); a child
5 care provider that is certified under s. 48.651; an organization that facilitates
6 delegations of the care and custody of children under s. 48.979; or a temporary
7 employment agency that provides caregivers to another entity.

8 **SECTION 10.** 48.685 (2) (am) 5. of the statutes is amended to read:

9 48.685 (2) (am) 5. Information maintained by the department of health services
10 under this section and under ss. 48.623 (6) ~~(b)~~ (am) 2. and (bm) 5., 48.651 (2m), 48.75
11 (1m), 48.979 (1) (b), and 120.13 (14) regarding any denial to the person of a license,
12 continuation or renewal of a license, certification, or a contract to operate an entity,
13 or of payments under s. 48.623 (6) for operating an entity, for a reason specified in
14 sub. (4m) (a) 1. to 5. and regarding any denial to the person of employment at, a
15 contract with, or permission to reside at an entity or of permission to reside with a
16 caregiver specified in sub. (1) (ag) 1. am. for a reason specified in sub. (4m) (b) 1. to
17 5. If the information obtained under this subdivision indicates that the person has
18 been denied a license, continuation or renewal of a license, certification, a contract,
19 payments, employment, or permission to reside as described in this subdivision, the
20 department, a county department, an agency contracted with under s. 48.651 (2), a
21 child welfare agency, or a school board need not obtain the information specified in
22 subs. 1. to 4.

23 **SECTION 11.** 48.685 (2) (b) 1. e. of the statutes is amended to read:

24 48.685 (2) (b) 1. e. Information maintained by the department of health
25 services under this section and under ss. 48.623 (6) ~~(b)~~ (am) 2. and (bm) 5., 48.651

BILL**SECTION 11**

1 (2m), 48.75 (1m), 48.979 (1) (b), and 120.13 (14) regarding any denial to the person
2 of a license, continuation or renewal of a license, certification, or a contract to operate
3 an entity, or of payments under s. 48.623 (6) for operating an entity, for a reason
4 specified in sub. (4m) (a) 1. to 5. and regarding any denial to the person of
5 employment at, a contract with, or permission to reside at an entity or of permission
6 to reside with a caregiver specified in sub. (1) (ag) 1. am. for a reason specified in sub.
7 (4m) (b) 1. to 5. If the information obtained under this subd. 1. e. indicates that the
8 person has been denied a license, continuation or renewal of a license, certification,
9 a contract, payments, employment, or permission to reside as described in this subd.
10 1. e., the entity need not obtain the information specified in subd. 1. a. to d.

11 **SECTION 12.** 48.685 (3) (a) of the statutes is amended to read:

12 48.685 (3) (a) Subject to par. (am), every 4 years or at any time within that
13 period that the department, a county department, or a child welfare agency considers
14 appropriate, the department, county department, or child welfare agency shall
15 request the information specified in sub. (2) (am) 1. to 5. for all caregivers specified
16 in sub. (1) (ag) 1. b. who are licensed, certified, or contracted to operate an entity, or
17 who are receiving payments under s. 48.623 (6) (am) for operating an entity, and for
18 all persons who are nonclient residents of such a caregiver.

19 **SECTION 13.** 48.685 (4m) (a) (intro.) of the statutes is amended to read:

20 48.685 (4m) (a) (intro.) Notwithstanding s. 111.335, and except as provided in
21 par. (ad) and sub. (5), the department may not license, or continue or renew the
22 license of, a person to operate an entity, the department in a county having a
23 population of ~~500,000~~ 750,000 or more, a county department, or an agency contracted
24 with under s. 48.651 (2) may not certify a child care provider under s. 48.651, a county
25 department or a child welfare agency may not license, or renew the license of, a foster

BILL(am) or to a person seeking those paymentsas a successor guardian under s. 48.623 (6) (bm)

1 home under s. 48.62, the department in a county having a population of 750,000 or
 2 more or a county department may not provide subsidized guardianship payments to
 3 an interim caretaker ~~or successor guardian~~ under s. 48.623 (6), and a school board
 4 may not contract with a person under s. 120.13 (14), if the department, county
 5 department, contracted agency, child welfare agency, or school board knows or
 6 should have known any of the following:

7 **SECTION 14.** 48.685 (4m) (ad) of the statutes is amended to read:

8 48.685 (4m) (ad) The department, a county department, or a child welfare
 9 agency may license a foster home under s. 48.62; the department may license a child
 10 care center under s. 48.65; the department in a county having a population of 500,000
 11 750,000 or more, a county department, or an agency contracted with under s. 48.651

12 (2) may certify a child care provider under s. 48.651^Δ; the department in a county
 13 having a population of 750,000 or more or a county department may provide
 14 subsidized guardianship payments to an interim caretaker ~~or successor guardian~~
 15 under s. 48.623 (6); and a school board may contract with a person under s. 120.13
 16 (14), conditioned on the receipt of the information specified in sub. (2) (am) and (ar)
 17 indicating that the person is not ineligible to be licensed, certified, provided
 18 payments, or contracted with for a reason specified in par. (a) 1. to 5.

19 **SECTION 15.** 48.685 (5) (bm) (intro.) of the statutes is amended to read:

20 48.685 (5) (bm) (intro.) For purposes of licensing a foster home for the
 21 placement of a child on whose behalf foster care maintenance payments under s.
 22 48.62 (4) will be provided or of providing subsidized guardianship payments to an
 23 interim caretaker ~~or successor guardian~~ under s. 48.623 (6), no person who has been
 24 convicted of any of the following offenses may be permitted to demonstrate that he
 25 or she has been rehabilitated:

BILL**SECTION 16**

1 **SECTION 16.** 48.977 (3r) of the statutes is renumbered 48.977 (3r) (a). ✓

2 **SECTION 17.** 48.977 (3r) (a) (title) of the statutes is created to read: ✓

3 48.977 (3r) (a) (title) *Guardian*.

4 **SECTION 18.** 48.977 (3r) (b) of the statutes is created to read:

5 48.977 (3r) (b) *Successor guardian*. Subsidized guardianship payments under
6 s. 48.623 (6) (bm) may not be made to a successor guardian of a child unless the court
7 makes a finding confirming that the successor guardian is named as a prospective
8 successor guardian of the child in a subsidized guardianship agreement or amended
9 subsidized guardianship agreement under s. 48.623 (2) that was entered into before
10 the death or incapacity of the guardian and that the conditions specified in s. 48.623
11 (6) (bm) have been met, appoints the successor guardian to assume the duty and
12 authority of guardianship as provided in sub. (5m), and either terminates any order
13 specified in sub. (2) (a) or dismisses any proceeding in which the child has been
14 adjudicated in need of protection or services as specified in sub. (2) (a). If the court
15 makes that finding and appointment and either terminates such an order or
16 dismisses such a proceeding, the county department or, as provided in s. 48.623 (3)
17 (a), the department shall provide monthly subsidized guardianship payments to the
18 successor guardian under s. 48.623 (6) (bm).

19 **SECTION 19.** 48.977 (4) (b) 2. of the statutes is amended to read: ✓

20 48.977 (4) (b) 2. The names and addresses of the child's parent or parents,
21 guardian, and legal custodian, the person nominated as the guardian of the child in
22 the petition, and any person nominated as a successor guardian of the child in the
23 petition.

24 **SECTION 20.** 48.977 (4) (c) 1. gm. of the statutes is created to read: ✓

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1 48.977 (4) (c) 1. gm. Any person nominated as a successor guardian of the child
2 in the petition.

3 **SECTION 21.** 48.977 (5m) of the statutes is created to read:

4 48.977 (5m) SUCCESSOR GUARDIAN. (a) *Petition.* If a guardian dies or becomes
5 incapacitated, any person authorized to file a petition under sub. (4) (a) may petition
6 for the appointment of a person named as a prospective successor guardian of the
7 child in a subsidized guardianship agreement or amended subsidized guardianship
8 agreement under s. 48.623 (2) entered into before the death or incapacity of the
9 guardian as successor guardian to assume the duty and authority of guardian. The
10 petition shall be heard in the same manner and subject to the same requirements as
11 provided under this section for an original appointment of a guardian. The petitioner
12 shall include in the petition a statement that the person was so named as a
13 prospective successor guardian of the child and that the conditions specified in s.
14 48.623 (6) (bm) have been met and a request for the court to include in the court's
15 findings a finding confirming that the person was so named and that those conditions
16 have been met.

17 (b) *Appointment.* After hearing, the court may appoint a person named in a
18 petition under par. (a) as successor guardian to assume the duty and authority of
19 guardianship. The court shall include in the court's findings a finding confirming
20 that the person was named as a prospective successor guardian as stated in the
21 petition and that the conditions specified in s. 48.623 (6) (bm) have been met. The
22 person appointed as successor guardian shall receive a copy of the initial
23 guardianship order, any court order revising that initial order, and the order
24 appointing the person as successor guardian.

25 **SECTION 22. Nonstatutory provisions.**

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1 (1) SUBSIDIZED GUARDIANSHIP PAYMENTS TO SUCCESSOR GUARDIANS; RULES. Using
 2 the procedure under section 227.24 of the statutes, the department of children and
 3 families may promulgate the rules required under section 48.623 (7) ^{ee} (d) of the
 4 statutes, as created by this act, for the period before the effective date of the
 5 permanent rules promulgated under section 48.623 (7) ^{ee} (d) of the statutes, as created
 6 by this act, but not to exceed the period authorized under section 227.24 (1) (c) of the
 7 statutes, subject to extension under section 227.24 (2) of the statutes.
 8 Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department
 9 of children and families is not required to provide evidence that promulgating a rule
 10 under this subsection as an emergency rule is necessary for the preservation of the
 11 public peace, health, safety, or welfare and is not required to provide a finding of
 12 emergency for a rule promulgated under this subsection.

13 **SECTION 23. Effective dates.** This act takes effect on the first day of the 4th
 14 month beginning after publication, except as follows:

15 (1) EMERGENCY RULES GOVERNING SUBSIDIZED GUARDIANSHIP PAYMENTS TO
 16 SUCCESSOR GUARDIANS. SECTION 22 of this act takes effect on the day after publication.

(END)

D-Note

Date

LRB-2107/3dn
GMM:kyj

Number:

Section 48.685 (4m) (a) (intro.) and (2) (c) and (5) (bm) (intro.)

are all parallel provisions, so this redraft makes the same changes in
all of those provisions.

GMM

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2107/3dn
GMM:kjf/emw/an

July 29, 2015

Kimber:

Section 48.685 (4m) (a) (intro.) and (ad) and (5) (bm) (intro.) are all parallel provisions, so this redraft makes the same changes in all of those provisions.

Gordon M. Malaise
Senior Legislative Attorney
(608) 266-9738
gordon.malaise@legis.wisconsin.gov

Barman, Mike

From: Bong, Sasha E - DOA <SashaE.Bong@wisconsin.gov>
Sent: Monday, October 19, 2015 4:22 PM
To: Malaise, Gordon; Barman, Mike
Cc: Williamson, Tracy L - DOA
Subject: RE: Fiscal Estimates - AB 407 and SB 308

Excellent. Thank you!

From: Malaise, Gordon [mailto:Gordon.Malaise@legis.wisconsin.gov]
Sent: Monday, October 19, 2015 4:22 PM
To: Bong, Sasha E - DOA; Barman, Mike A - LEGIS
Cc: Williamson, Tracy L - DOA
Subject: RE: Fiscal Estimates - AB 407 and SB 308

We'll put a copy of this e-mail in the drafting file and that will cover it at LRB's end.

From: Bong, Sasha E - DOA [mailto:SashaE.Bong@wisconsin.gov]
Sent: Monday, October 19, 2015 4:20 PM
To: Barman, Mike <Mike.Barman@legis.wisconsin.gov>
Cc: Malaise, Gordon <Gordon.Malaise@legis.wisconsin.gov>; Williamson, Tracy L - DOA <Tracy.Williamson@wisconsin.gov>
Subject: RE: Fiscal Estimates - AB 407 and SB 308

Thank you both for responding!

Admittedly, I'm not very familiar with the intricacies of this process. Is this email string sufficient for Tracy to change the fiscal estimate in the system for AB 407 and SB 308 to state and local (which generates state and local fields for DCF to fill out) or does there need to be a change on LRB's end?

Sasha Bong
Executive Policy and Budget Analyst
Department of Administration, State Budget Office
(608) 266-5468
SashaE.Bong@wisconsin.gov

From: Malaise, Gordon [mailto:Gordon.Malaise@legis.wisconsin.gov]
Sent: Monday, October 19, 2015 4:14 PM
To: Barman, Mike A - LEGIS; Bong, Sasha E - DOA
Subject: RE: Fiscal Estimates - AB 407 and SB 308

Sasha:

Yes, it is possible to make a local fiscal estimate as well as a state for AB 407 and SB 308. Initially I had thought that subsidized guardianship payments were state funds that merely passed through the counties, but on

further review I see that subsidized guardianship payments are made from Children and Family Aids, for which a county match is required. As such, there will be a local fiscal effect too.

Gordon

From: Barman, Mike
Sent: Monday, October 19, 2015 4:01 PM
To: Bong, Sasha E - DOA <SashaE.Bong@wisconsin.gov>
Cc: Malaise, Gordon <Gordon.Malaise@legis.wisconsin.gov>
Subject: RE: Fiscal Estimates - AB 407 and SB 308

Sasha I forwarded your concerns on to the drafting attorney ... the drafting attorney is the one who tags the bill as needing a state, local, or state/local fiscal estimate (or no fiscal). I will talk to Gordon ... either he or I will get back to you.

Thanks,

Mike Barman (Lead Program Assistant)

State of Wisconsin - Legislative Reference Bureau - Legal Section - Front Office
1 East Main Street, Suite 200, Madison, WI 53703
(608) 266-3561 / mike.barman@legis.wisconsin.gov

From: Bong, Sasha E - DOA [<mailto:SashaE.Bong@wisconsin.gov>]
Sent: Monday, October 19, 2015 3:42 PM
To: Barman, Mike <Mike.Barman@legis.wisconsin.gov>
Subject: Fiscal Estimates - AB 407 and SB 308

Hi Mike,

I'm the SBO analyst for DCF. I received a question from the department concerning requested fiscal estimates for AB 407 and SB 308 (companion bills), in particular why the fiscal estimates requested for both bills are not designated as state and local fiscal estimates. Especially for out-of-home care, DCF would expect to indicate a local fiscal effect on the counties, but currently, with both bills designated as state-only, DCF is only able to indicate a state fiscal effect.

I think there are ways for DCF to still indicate a fiscal effect on the counties for these two bills, but given that there are other bills in the fiscal estimate system with the same subject ("Children – out-of-home placement") that were marked for state and local fiscal estimates, I wanted to check with you to see if it would be possible to make this adjustment in the fiscal estimate system for AB 407 and SB 308.

Thanks,

Sasha Bong
Executive Policy and Budget Analyst
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(608) 266-5468
SashaE.Bong@wisconsin.gov