

Department of Children and Families
Public Hearing Summary
Kinship Care and Long-Term Kinship Care
Chapter DCF 58
CR 19-159

A public hearing was held in Madison on January 21, 2020. Comments were received from the following:

1. Beth Lauck, Staff Attorney
Kids Matter, Inc.
Milwaukee

2. Martha Stacker, Administrator
Sarah Kasel, Social Worker
Division of Children, Youth & Families
Dane County Department of Human Services
Madison

3. Abbey Lukowski, Administrator
Family Services Division
Forest County Potawatomi
Crandon

4. Cindy Young, Kinship and Foster Care Coordinator
Winnebago County Human Services
Oshkosh

Registered in support of the proposed rule

Andrea Leaman, Licensing and Placement Supervisor
Children's Hospital of Wisconsin
Milwaukee

Observed for information only

Ken Taylor, Executive Director
Kids Forward
Madison

Summary of Public Hearing Comments and Department Responses

Comment number designates commenter specified on page one.

General

Comment (1): Overall, the proposed changes are very strong. They provide more consistency among counties, clarify program requirements, and incorporate statutory updates.

Payment amount

Comment (1, 2, and 3): The kinship care and long-term kinship care payment amount is too low, especially when the children are teenagers.

Department response: The department agrees and will explore the possibility of another biennial budget request to increase the payment amounts. The payment amounts are determined under s. 48.57 (3m) (am) and (3n) (am), Stats. Effective 1/1/20, the payment amounts were increased from \$244 to \$254 per month.

DCF 58.02 (22) Definition of relative; parent of a sibling; like-kin; traditional tribal definition

Comment (1): The definition of “relative” in the proposed rule should be revised to include “the parent of a sibling of the child who has legal custody of that sibling” as provided in the definition of “relative” under s. 48.02 (15), Stats., for purposes of placement of a child.

Two of the biggest challenges facing our child welfare system are finding enough placements and keeping sibling groups together. Promoting more safe relative placement options outside of the child welfare system would benefit families and agencies.

Comment (2): The definition of “relative” in the proposed rule should include “like-kin.”

Comment (3): The definition of “relative” in the proposed rule should include a person recognized by a tribe as a traditional relative. We should be glad that tribal members are stepping up to care for tribal children and support them.

Department response: The department recognizes the importance of supporting relative caregivers and increasing resources for the maintenance of children’s kinship connections.

The department believes that each of the recommended changes would cause a substantial increase in the kinship care caseload that would necessitate a sizable increase in funding. The department will explore the recommended expansions of kinship care eligibility as a potential biennial budget request.

The recommendations in comments (1) and (3) are already included in the definition of “relative” under s. 48.02 (15), Stats., for purposes of placement of a child but not for programs.

DCF 58.05 and 58.11 Background checks and appeals

Comment (3): I appreciate that the proposed rule clarifies the background check process and makes it easier for agencies to know what they need to do.

Comment (1)

- The department's supplementary information on the background check should be crystal clear and should inform relative caregivers of all of the following:
 - The grounds for a background denial.
 - The bars that are permanent and the bars that are time-limited.
 - The correct appeal process for each type of bar, including the criteria taken into consideration when reviewing a kinship care applicant's background check.
- Our experience has been that applicants are denied kinship care due to a background check that includes a misdemeanor rather than a felony or a charge rather than a conviction.

Department response

- The background check information in the proposed rule is considerably more detailed and specific than the current rule. This will assist both agencies and relative caregivers.
- The background check provisions in the proposed rule are written to conform to the background check provisions in s. 48.57 (3p), Stats.
 - For both kinship care and long-term kinship care, the background check provision in the current rule directs agencies to consider whether the individual has any history, arrests or convictions that might adversely affect the child or the relative's ability to care for the child.
 - Under the proposed rule, a background check denial for kinship care may only be for a conviction or a penalty specified in s. 48.57 (3p) (g), Stats. A list of these convictions and penalties is available at the link in the note following s. DCF 58.05 (6). For long-term kinship care, the standard for a background check denial in the proposed rule is the same as the current rule.
 - With limited exceptions, the kinship care bars include nearly all convictions under chs. 940, 944, 948, Stats., and all felonies under ch. 961, Stats.
 - Violations of ch. 961, Stats., relating to controlled substances, are the only convictions that are limited to felonies.
 - The kinship care bars also include specified penalty enhancers under ch. 939, Stats., that are imposed with a conviction, including penalty enhancers for certain domestic abuse crimes, use of a dangerous weapon, habitual criminality, and hate crimes.
 - The only time-limited bars are convictions for prostitution, patronizing prostitutes, or soliciting prostitutes, which are limited to convictions within the previous 20 years.
 - In foster care, the term "permanent bar" is used to mean that no review is available. There are no permanent bars for kinship care.
 - A review by the director under s. DCF 58.11 (1) is available for all background check denials based on a conviction or a penalty specified in s. 48.57 (3p) (g),

Stats. The criteria considered in the review are specified in s. 48.57 (3p) (h), Stats., and s. DCF 58.11 (1) (b).

- Many applicants that have a barred conviction or penalty under s. 48.57 (3p) (g), Stats., are approved by the director in the review process. Often the applicant is the child's grandparent, and the conviction or penalty was many years ago. The review process allows the agency director to consider the effect of the violation on the child and the relative's ability to care for the child on a case-by-case basis and determine whether it would be in the best interests of the child to grant an exception.
- The proposed rule includes a related provision in the criteria for determining the best interests of the child. Under s. DCF 58.06 (3), the kinship care agency is required to determine if the relative caregiver, adult residents, and employees have any of the following:
 - Final substantiated findings of child abuse or neglect that are likely to adversely affect the child or the relative caregiver's ability to care for the child.
 - Patterns of criminal behavior, pending charges, or convictions that are likely to adversely affect the child or the relative caregiver's ability to care for the child.
- A denial based on the best interests of the child is appealable directly to the Division of Hearings and Appeals.
- After the proposed rule is effective, the department will work with agencies and the Relative Caregiver Stakeholder Group, including Kids Matter, to develop appropriate supplemental information and guidance materials for agencies and relative caregivers about background checks.

DCF 58.06 Best interests determination; home visit; voluntary kinship care

Comment (2)

- The proposed revisions mirror foster care licensing code, are investigatory in nature, and would allow for governmental overstep in determining financial benefits in ways very different from other financial assistance programs, such as Foodshare, Badgercare, and Wisconsin Shares.
- Relative caregivers that apply for voluntary kinship care tend to be low to moderate income. This means that low-income relative caregivers, particularly people of color, are getting scrutinized in ways that other relative caregivers are not.
- An application for voluntary kinship care is not the equivalent of a child protective services report, and agencies should not be required to use CPS protocol to assess the safety of the children in the home of an applicant.
- I am not suggesting that we ignore safety when concerns are apparent. As a social worker, I am mandated to properly investigate safety needs of children if I have maltreatment concerns. I also provide education and referrals to resources.

- Much of the language on the physical environment of the relative caregiver’s home is subjective, such as “living areas large enough for the child and other household members” and “property on which the caregiver’s home is situated is safe, sanitary, and in good repair.”
 - In Dane County, most of the families receiving voluntary kinship care are low-income renters that do not have much control over the property on which they live and often have an unreceptive landlord.
 - Consistent with cultural norms, some families live in multi-generational households.
- Relative caregivers should not be required to subject the child to an interview in exchange for eligibility for voluntary kinship care. The child may not know that the relative has applied for a financial grant to assist in meeting their needs. In some cases, children come into relative care at a young age and know no other caregiver. Many of the children are in care due to traumatic circumstances surrounding the parent. Most children attend child care or school and have regular contact with helping professionals. Direct investigatory questions could be confusing for many of these children and may be a trauma trigger for some.
- Please consider whether the proposed rules will make it more difficult for children living with relative caregivers to get the resources they need and whether the investigative criteria are insensitive to race, culture, or economic status.

Department response:

- Under s. 48.57 (3m) (am), Stats., a kinship care agency is required to determine if living with the relative caregiver is in the best interests of the child. The department believes that an agency cannot make this determination without assessing the relative caregiver’s ability to care for the child, evaluating the safety of the relative caregiver’s home, seeing the child, and talking to the child if it is age and developmentally appropriate.
- Although a home visit is not required under the current rule, most kinship care agencies have considered the visits necessary to make the best interests determination required for kinship care eligibility. The proposed rule ensures that the home visit assessment criteria used by agencies are the same throughout the state.
- The department agrees to revise the criteria on the physical environment of the relative caregiver’s home by removing the language on the size of the living areas, the safety of the property on which the home is situated, and the correction of any hazard on the premises. A new note provides that “reasonable effort to correct any hazard in the home” may include asking the landlord to address safety concerns.
- The department agrees to revise the provision on talking to the child.
- Kinship care is a child abuse and neglect prevention program that is focused on the safety and needs of the child.
- Not all kinship care workers are social workers, so relying on a professional orientation is not possible.

Rule changes

DCF 58.06 (5) (b) 1. and (c) are removed from the proposed rule:

~~(b) 1. Living areas that are large enough for the child and other household members.~~

~~(c) The property on which the relative caregiver's home is situated and all buildings and structures on that property are safe.~~

DCF 58.06 (5) (e) is amended to read:

(e) The relative caregiver makes every reasonable effort to correct any hazard to the safety of the child in the home ~~or on the premises.~~

DCF 58.06 (5) (e) (Note) is created to read:

Note: If a relative caregiver does not own the home, the relative caregiver's "reasonable effort to correct any hazard" includes asking the landlord to address safety concerns in the home.

DCF 58.08 (4) (a) 2. is rewritten to read:

~~2. Ask each child for whom the relative caregiver is applying for or receiving kinship care payments or long term kinship care payments how the child feels about living with the relative caregiver, unless the question is not age or developmentally appropriate for the child.~~

2. With an approach that is trauma-informed and age and developmentally appropriate, talk to each child for whom a relative caregiver is applying for or receiving kinship care payments or long-term kinship care payments and discuss the child's needs.

DCF 58.08 (5) Agency procedures; child safety; guardianship of child under s. 48.977, Stats.; long-term kinship care

Comment (4): A kinship care agency should not be required to report to the court that appointed the relative caregiver as the child's guardian under s. 48.977, Stats., if the birth parent is residing in the relative caregiver's home. The relative caregiver can ensure the child's safety. Families should be allowed to support each other in this way.

Department response

- The purpose of kinship care and long-term kinship care program is to assist relatives with the basic expenses of providing care and maintenance for children who are unable to live with their parents. To be eligible for long-term kinship care, a relative caregiver must be the child's guardian under s. 48.977, Stats. This type of guardianship is based on a determination by the court that the child cannot safely live with either parent. It is imperative that the kinship care agency responds accordingly when the agency becomes aware of a situation that circumvents the guardianship.
- In Wisconsin, a parent in the home of a family receiving TANF-funded payments is generally required to meet the eligibility requirements of the Wisconsin Works program under ss. 49.141 to 49.161, Stats., or the Payments for the Support of Children of SSI Recipients program under s. 49.775, Stats.

- The proposed rule provides that a kinship care agency may allow the child's parent to reside with the relative caregiver and the child for up to 30 calendar days. This allows the relative caregiver to support the parent on a limited basis while still maintaining the basic integrity of the kinship care and long-term kinship care program.
- The proposed rule also allows the child's parent to reside with the relative caregiver if the relative caregiver is providing care for the child's parent and the parent is a child, as defined in the rule, or the parent is subject to an order for adult protective services or protective placement under s. 55.12, Stats.

DCF 58.08 (7) and (10) Agency procedures; application for additional child; waiting list

Comment (1): The following changes are particularly helpful to caregivers and agencies:

- Requiring that a relative caregiver complete only the child-specific portion of an application that is submitted within 6 months after a determination of eligibility for a different child in the relative caregiver's home.
- Ensuring that relative caregivers that receive kinship care payments are not placed on a waiting list if they move to a new county or tribal area.