

Report From Agency
Department of Children and Families
Agency Report to Legislature
Tribal Subsidized Guardianship
Clearinghouse Rule 24-007
Chapter DCF 55

Basis and Purpose of the Proposed Rules

The primary purpose of the proposed rules is to bring the subsidized guardianship rule into conformance with s. 48.623, Stats., as affected by 2023 Wisconsin Act 19, which allows federally-recognized tribes located in Wisconsin to determine eligibility for and make payments under the subsidized guardianship program.

Public Hearing Summary

The department received one comment. No modifications were made to the rule.

Nicole M. Homer, Legislative Attorney, Ho-Chunk Nation

The Ho-Chunk Nation is extremely pleased that s. 48.623, Stats., was amended by 2023 Wisconsin Act 19 to include tribes within the state's subsidized guardianship program. Since the Ho-Chunk Nation does not have a 161 agreement, we have been excluded from the subsidized guardianship program.

Adoption with adoption assistance has not been an option for tribal court guardians because the Ho-Chunk Nation does not support the termination of a parent's rights, which would permanently sever a child's ties to their parent and thus their Ho-Chunk family and culture. These cultural differences have created an unfair system for the Nation's safe, culturally appropriate permanency options in tribal court matters.

We believe that the proposed rule amendments are appropriate to bring DCF 55 in alignment with the 2023 amendments to s. 48.623, Stats. In particular, the inclusion of background check requirements under 42 USC 671 (a) (20) is necessary for tribes to remain in compliance with the Native American Child Safety Act.

There is nothing more important to a tribe than its children. It is in their best interests to know and have the opportunity to learn about their Indian heritage and be connected with their tribal communities. This can be best accomplished through permanency options such as subsidized guardianships granted in tribal court.

Department response: A 161 agreement is a voluntary agreement between a county and a tribe whereby a tribal court orders the out-of-home care placement for a child and the county agency pays for the out-of-home care costs for that child. In these cases, the tribal child welfare agency maintains the services and the case management for the child. The department is not a party to 161 agreements, and counties and tribes are not required to enter into 161 agreements. A tribal nation that does not have a 161 agreement with a county pays for out-of-home care costs for children under tribal court orders themselves. Receiving reimbursements for subsidized

guardianship cases directly from the department recognizes tribal sovereignty and the government to government relationship between the state of Wisconsin and tribal nations.

Responses to Legislative Council Rules Clearinghouse Comments

All comments were accepted.

Changes to the Analysis or to the Fiscal Estimate

Changes were made to the analysis in response to Rules Clearinghouse comment 2. b. No changes were made to the fiscal estimate.

Final Regulatory Flexibility Analysis

The rule does not affect small business as defined under s. 227.114 (1), Stats.

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