

Clearinghouse Rule 25-009

State of Wisconsin Department of Children and Families

Extension of Kinship Care and Long-Term Kinship Care Payments to Like-Kin and the Definition of Out-Of-Home Care in Child Welfare Rules

DCF 21, 37, 50, 55, and 58

The statement of scope for this rule, SS 079-24, was approved by the governor on July 18, 2024, published in Register 823A4 on July 22, 2024, and approved by Secretary Emilie Amundson on August 9, 2024.

The Wisconsin Department of Children and Families proposes an order to **amend** ss. DCF 21.02 (2), 50.02 (28), 55.02 (11), 58.01, 58.02 (23), 58.03, and 58.08 (10) (a) 3. and (14) and 58.10 (4) (c) 1. (intro.) and 2.; to **repeal and recreate** ss. DCF 21.02 (5), (6), (9), and (10), 37.02 (6), 50.02 (12), (18), and 58.02 (22), 58.04 (4) (a); and to **create** ss. DCF 21.02 (8m), (9m), (10m), 37.02 (3m), 50.02 (12m), (16m), 58.02 (18m), and 58.04 (4) (am), relating to the extension of kinship care and long-term kinship care payments to like-kin and the definition of out-of-home care in child welfare rules.

Analysis Prepared by the Department of Children and Families

Statutory authority: Sections 48.366 (4), 48.57 (3m) (i) and (3n) (i), 48.623 (7), 48.67 (intro.), 895.485 (4), 938.366 (4), and 227.11 (2) (a), Stats.

Statutes interpreted: Sections 48.366, 48.57 (3m) and (3n), Stats., as affected by 2023 Wis. Act 119, 48.623, 48.67 (intro.), 48.88, 895.485, and 938.366, Stats.

Explanation of Agency Authority

Sections 48.366 (4) and 938.366 (4), Stats., provide that the department shall promulgate rules to implement extended out-of-home care.

Section 48.57 (3m) (i) and (3n) (i) provide that the department shall promulgate rules to implement kinship care and long-term kinship care.

Section 48.623 (7), Stats., provides that the department shall promulgate rules to implement subsidized guardianships.

Section 48.67 (intro.), Stats., provides that the department shall promulgate rules establishing minimum requirements for the issuance of licenses to, and establishing standards for the operation of, child welfare agencies, foster homes, group homes, and shelter care facilities.

The department administers s. 48.88, Stats., relating to an investigation to determine whether the petitioner's home is suitable for a child for adoption.

Section 895.485 (4), Stats., provides that the department shall promulgate rules specifying the kind of information that an agency shall disclose to a foster parent that relates to a medical, physical, mental, or emotional condition of the child.

Section 227.11 (2) (a), Stats., expressly confers rule-making authority on each agency to promulgate rules interpreting the provisions of any statute enforced or administered by the agency.

Summary of the Rule

Like-kin as a placement option. 2023 Wis. Act 119 creates a new out-of-home care placement option of “like-kin” with whom a court may place a child or juvenile under ch. 48 or 938, Stats. “Like-kin” is defined as an individual who: (1) has a significant emotional relationship with a child or the child’s family that is similar to a familial relationship; and (2) is not and has not been the child’s licensed foster parent. For an Indian child, an individual who is identified by the child’s tribe as kin or like-kin according to tribal tradition, custom or resolution, code, or law.

Like-kin are eligible for kinship care and long-term kinship care. Act 119 extends eligibility for kinship care payments under s. 48.57 (3m), Stats., to like-kin providing care and maintenance for a child or juvenile in a court-ordered out-of-home care placement and like-kin caring for a child in a voluntary arrangement, if other conditions are met. Eligibility for long-term kinship care payments under s. 48.57 (3n), Stats., is extended to like-kin who has guardianship of the child under s. 48.977, Stats., or a tribal court order that is substantially similar to an order under s. 48.977, Stats., if other conditions are met. For the caregiver of an Indian child, eligibility for kinship care payments and long-term kinship care payments is also expanded to include an “extended family member,” as defined in s. 48.028 (2) (am), Stats.

Rule changes. This rule updates the kinship care and long-term kinship care rule to conform to the eligibility changes under Act 119 and the funding requirements of the federal Temporary Assistance for Needy Families program. The current rule defines “relative caregiver” as a relative that is providing care and maintenance for a child and is applying for, or receiving, kinship care payments or long-term kinship care payments. This rule amends the definition of “relative caregiver” to include an extended family member, as defined in s. 48.028 (2) (am), Stats., and like-kin.

This rule also updates the definition of “out-of-home care” in various child welfare rules, creates definitions for terms used in this definition, and amends related provisions.

Summary of Related Federal Law

Kinship care payments are fully funded by the state using federal Temporary Assistance to Needy Families funding (TANF). States can use their federal TANF dollars funds to support a broad range of activities related to promoting the four purposes of TANF specified in federal law. Under 42 USC 601 (a) (1), one of the purposes of TANF is to provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives. As there is no federal definition of “relative” under TANF law, states are able to codify their own definition.

Summary of Data and Analytical Methodologies

Like-kin and extended family member is included in the definition of relative caregiver in DCF 58 to allow for federal TANF funding of kinship care and long-term kinship care.

Comparison to Adjacent States

Payments to a relative caregiver of a child other than the child’s parent are available in all

adjacent states with no employment and work activity requirements and no time limits. The payment is considered to be a “child-only” grant with financial eligibility based only on the child’s income and assets.

In Illinois and Iowa, the child-only payments are only available to a relative. In Minnesota, child-only payments are also available to a nonrelative caregiver who is the legal custodian or guardian of the child. In Michigan, child-only payments are also available to a nonrelative caregiver who is the child’s legal guardian or is age 21 years or over and has a pending petition for legal guardianship of the child.

Effect on Small Businesses

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

Analysis Used to Determine Effect on Small Businesses

The kinship care program is administered by county and tribal agencies, except in Milwaukee where the department’s Milwaukee Division of Child Protective Services contracts with the Professional Services Group, Children’s Hospital, and Wellpoint Care Network. None of these entities is a small business. The updates to other child welfare rules are technical corrections.

Agency Contact

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Place Where Comments are to be Submitted and Deadline for Submission

Comments may be submitted to Elaine Pridgen, Department of Children and Families, 201 W. Washington Ave, P.O. Box 8916, Madison, WI, 53708-8916 or dcfpublichearing@wisconsin.gov. The comment deadline is March 24, 2025.

Rule Text

SECTION 1. DCF 21.02 (2) is amended to read:

DCF 21.02 (2) “Agency” means a county department of social services under s. 46.22, Stats.; a county department of human services under s. 46.23, Stats.; or, in a county having a population of 750,000 or more, the department; ~~or the department of corrections.~~

SECTION 2. DCF 21.02 (5) and (6) are repealed and recreated to read:

DCF 21.02 (5) “Foster home” has the meaning given in s. 48.02 (6), Stats.

(6) “Group home” has the meaning given in s. 48.02 (7), Stats.

SECTION 3. DCF 21.02 (8m) is created to read:

DCF 21.02 (8m) “Like-kin” has the meaning given in s. 48.02 (12c), Stats.

SECTION 4. DCF 21.02 (9) and (10) are repealed and recreated to read:

DCF 21.02 (9) “Out-of-home care” means when a youth is under the placement and care responsibility of an agency in a foster home, group home, residential care center for children and youth, or shelter care facility, in the home of a relative other than a parent, in the home of like-kin, in the home of a person not a relative or like-kin, or in a court-ordered supervised independent living arrangement.

(10) “Residential care center for children and youth” has the meaning given in s. 48.02 (15d), Stats.

SECTION 5. DCF 21.02 (9m) and (10m) are created to read:

DCF 21.02 (9m) “Relative” has the meaning given in s. 48.02 (15), Stats.

(10m) “Shelter care facility” has the meaning given in s. 48.02 (17), Stats.

SECTION 6. DCF 37.02 (3m) is created to read:

DCF 37.02 (3m) “County department” means a county department of social services under s. 46.22, Stats., or a county department of human services under s. 46.23, Stats.

SECTION 7. DCF 37.02 (6) is repealed and recreated to read:

DCF 37.02 (6) “Out-of-home care” means when a child is under the placement and care responsibility of the department or a county department in the care of an out-of-home care provider.

SECTION 8. DCF 50.02 (12) is repealed and recreated to read:

DCF 50.02 (12) “Foster home” has the meaning given in s. 48.02 (6), Stats.

SECTION 9. DCF 50.02 (12m) and (16m) are created to read:

DCF 50.02 (12m) “Group home” has the meaning given in s. 48.02 (7), Stats.

(16m) “Like-kin” has the meaning given in s. 48.02 (12c), Stats.

SECTION 10. DCF 50.02 (18) is repealed and recreated to read:

DCF 50.02 (18) “Out-of-home care” means when a child is under the placement and care responsibility of the department or a county department in a foster home, group home, residential care center for children and youth, shelter care facility, in the home of a relative other than a parent, in the home of like-kin, in the home of a person not a relative or like-kin, or in a court-ordered supervised independent living arrangement.

SECTION 11. DCF 50.02 (28) is amended to read:

DCF 50.02 (28)“Relative has the ~~same~~ meaning as ~~in~~ given in s. 48.02 (15), Stats., except that it does not include a parent.

SECTION 12. DCF 50.02 (28g) and (28r) are created to read:

DCF 50.02 (28g) “Residential care center for children and youth” has the meaning given in s. 48.02 (15d), Stats.

(28r) “Shelter care facility” has the meaning given in s. 48.02 (17), Stats.

SECTION 13. DCF 55.02 (11) is amended to read:

DCF 55.02 (11) “Relative” has the ~~same~~ meaning as given in s. 48.02 (15), Stats., except that it does not include a parent.

SECTION 14. DCF 58.01 is amended to read:

DCF 58.01 Purpose. This chapter is promulgated under the authority of ss. 48.57 (3m) (h) and (i) and (3n) (h) and (i) and 227.11 (2), Stats., to establish criteria and procedures for determining the initial and continuing eligibility of a relative ~~providing care and maintenance for a child~~ caregiver for a monthly payment to assist with the expenses involved in providing ~~that care and maintenance~~ for the child and for recovering overpayments.

SECTION 14. DCF 58.02 (18m) is created to read:

DCF 58.02 (18m) “Like-kin” has the meaning given in s. 48.02 (12c), Stats.

SECTION 15. DCF 58.02 (22) is repealed and recreated to read:

DCF 58.02 (22) “Relative” has the meaning given s. 48.02 (15), Stats., except that it does not include a parent.

SECTION 16. DCF 58.02 (23) is amended to read:

DCF 58.02 (23) “Relative caregiver” means a relative; an extended family member, as defined in s. 48.028 (2) (am), Stats.; or like-kin that is providing care and maintenance for a child and is applying for, or receiving, kinship care payments or long-term kinship care payments.

SECTION 17. DCF 58.03 is amended to read:

DCF 58.03 Types of care by a relative caregiving caregiver. This chapter applies to the following types of care by a relative caregiving caregiver of a child:

(1) COURT-ORDERED OUT-OF-HOME CARE PLACEMENT. A relative caregiver applying for or receiving kinship care payments on behalf of a child that was placed in the ~~relative’s~~ relative caregiver’s home under a court order or a voluntary transition-to-independent-living agreement and is under the placement and care responsibility of a child welfare agency. A relative caregiver under this subsection shall also apply for or ~~has~~ have applied for a license to operate a foster home under ch. DCF 56, unless the child was placed in the relative caregiver’s home by a court order of a tribal court.

(2) VOLUNTARY. A relative caregiver applying for or receiving kinship care payments on behalf of a child residing with the relative caregiver for a child that was not placed in the relative caregiver’s home under a court order or a voluntary transition-to-independent-living agreement and is not under the placement and care responsibility of a child welfare agency. The child’s living arrangement with the relative caregiver may be informal or the relative caregiver may be the child’s guardian under s. 48.9795, Stats., or a tribal private guardianship order.

(3) GUARDIAN APPOINTED FOR CHILD IN NEED OF PROTECTION OR SERVICES. A relative caregiver that is applying for or receiving long-term kinship care payments and is a child’s

guardian under s. 48.977, Stats., or a tribal court order that is substantially similar to an order under s. 48.977, Stats.

SECTION 18. DCF 58.04 (4) (a) is repealed and recreated to read:

DCF 58.04 (4) (a) A relative caregiver shall attest to the relative caregiver's relationship to the child on the application under sub. (1).

SECTION 19. DCF 58.04 (4) (am) is created to read:

DCF 58.04 (4) (am) A relative caregiver shall provide documentation to the kinship care agency that verifies that the child is residing with the relative caregiver, such as the child's medical assistance card or a written statement from a school representative. If no formal documentation is available, the relative caregiver may attest to the living arrangement on the application under sub. (1).

SECTION 20. DCF 58.08 (10) (a) 3. and (14) are amended to read:

DCF 58.08 (10) (a) 3. 'Type of care by a relative caregiving caregiver changes to voluntary.' A relative caregiver whose type of ~~relative caregiving~~ care under s. DCF 58.03 changes to voluntary under s. DCF 58.03 (2) while the relative caregiver is receiving kinship care payments or long-term kinship care payments.

(14) CHANGE IN TYPE OF CARE BY A RELATIVE CAREGIVING CAREGIVER. (a) Following a change in a relative caregiver's type of ~~relative caregiving as specified~~ care under s. DCF 58.03, the kinship care agency shall determine if the relative caregiver's eligibility for kinship care or long-term kinship care has changed.

(b) If the relative caregiver's eligibility for kinship care or long-term kinship care changes due to a change in the type of ~~relative caregiving~~ care under s. DCF 58.03, the kinship care

agency shall use information about the relative caregiver and child previously obtained to the extent appropriate to document the relative caregiver's eligibility following the change in the type of ~~relative caregiving~~ care. The kinship care agency may require additional information and actions only as necessary for the eligibility determination and may not require a relative caregiver to complete a new application under s. DCF 58.04 (1).

Note: For other provisions affecting a change in the type of care by a relative caregiving caregiver, see s. DCF 58.06 (1) (c) 2. and sub. (10) (a) 3.

SECTION 21. DCF 58.10 (4) (c) 1. (intro.) and 2. are amended to read:

DCF 58.10 (4) (c) 1. (intro.) To determine if a relative caregiver's eligibility for kinship care is expected to continue when a child turns 18 years old if the child was placed in the ~~relative's~~ relative caregiver's home under a court order or a voluntary transition-to-independent-living agreement and is under the placement and care responsibility of a child welfare agency, a kinship care agency that has access to the department's child welfare automation system shall do all of the following:

2. A kinship care agency that does not have access to the department's child welfare automation system shall use the procedures in par. (b) to determine if eligibility is expected to continue when the child turns 18 years old and the relative caregiver is receiving kinship care payments on behalf of a child that was placed in the ~~relative's~~ relative caregiver's home under a court order or a voluntary transition-to-independent-living agreement.

SECTION 22. EFFECTIVE DATE. These rules shall take effect the first day of the month following publication in the Administrative Register, as provided in s. 227.22 (2) (intro.), Stats.