

Children and Families – Creates Ch. DCF 55 - EmR1212

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**State of Wisconsin
Department of Children and Families**

EMERGENCY RULE

DCF 55

Subsidized Guardianship

The Wisconsin Department of Children and Families orders the creation of ch. DCF 55, relating to subsidized guardianship.

This emergency rule was approved by the Governor on August 28, 2012.

The statement of scope for this rule, SS 040-12, was approved by the Governor on June 8, 2012, published in Register 678, on June 30, 2012, and approved by Secretary Eloise Anderson on July 16, 2012.

Finding of Emergency

The Department of Children and Families finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

Guardians who entered into subsidized guardianship agreements with an agency when the statewide subsidized guardianship program was implemented in August 2011 are now eligible for consideration of an amendment to increase the amount of the subsidized guardianship payments. The rule includes the process for determining eligibility for an amendment.

Analysis Prepared by the Department of Children and Families

Statutory authority: Sections 48.623 (7) and 227.11 (2), Stats.

Statutes interpreted: Sections 48.623, 48.685, and 48.977 (3r), Stats., and s. 48.62 (5), 2009 Stats.

Related statute or rule: Chapters DCF 50 and 56

Explanation of Agency Authority

Section 48.623 (7), Stats., as created by 2011 Wisconsin Act 32, provides that the department shall promulgate rules to implement s. 48.623, Stats. Those rules shall include all of the following:

- A rule defining the substantial change in circumstances under which a person receiving monthly subsidized guardianship payments may request that an agreement be amended to increase the amount of those payments.
- Rules establishing requirements for submitting a request and criteria for determining the amount of the increase in monthly subsidized guardianship payments that a county department or the department shall offer if there has been a substantial change in circumstances and if there has been no substantiated report of abuse or neglect of the child by the person receiving those payments.
- Rules establishing the criteria for determining the amount of the decrease in monthly subsidized guardianship payments that the department shall offer if a substantial change in circumstances no longer exists. The criteria shall provide that the amount of the decrease offered by the department may not result in a monthly subsidized guardianship payment that is less than the initial monthly subsidized guardianship payment provided for the child.

Summary of the Emergency Rule

The rule implements a new statewide subsidized guardianship program under s. 48.623, Stats., as created by 2011 Wisconsin Act 32. In general, the subsidized guardianship program provides assistance for the care of a child who has been removed from his or her home if returning home or being adopted is not in the child's best interests and a relative or like-kin individual who is a foster parent has a strong commitment to permanently caring for the child.

The rule includes a procedure for agencies to use to inform a prospective guardian of eligibility for assistance and expectations involved with various permanency options for the child. If the prospective guardian decides to pursue subsidized guardianship and the prospective guardian and child are eligible, the agency shall enter into a subsidized guardianship agreement with the prospective guardian before guardianship is established. The rule specifies the topics that must be included in the agreement.

The initial subsidized guardianship payment amount that is incorporated into the subsidized guardianship agreement is the same amount that the prospective guardian received as a foster parent in the month before guardianship was established or a lesser amount if agreed to by the prospective guardian. In general, the payment amount may be adjusted based on the circumstances of the guardian and the needs of the child. A payment amount may not be adjusted

if the prospective guardian's foster home was certified at Level 1 on the date that the prospective guardian signed the subsidized guardianship agreement. A foster parent who operates a Level 1 foster home is not eligible for supplemental payments.

For a subsidized guardianship agreement entered into on or after July 1, 2011, under s. 48.623, Stats., a supplemental payment amount based on the needs of the child is determined under s. DCF 56.23 (2) (a) in a manner similar to a supplemental payment for foster care and an adoption assistance agreement entered into on or after July 1, 2011. For a subsidized guardianship agreement entered into as part of the Bureau of Milwaukee Child Welfare demonstration project that was authorized by a federal waiver and s. 48.62 (5), 2009 Stats., before July 1, 2011, a supplemental payment is determined under the section of the previous version of ch. DCF 56 that was used for determining a supplemental payment before the standardized assessment tool in s. DCF 56.22 was implemented in 2011. The previous method of determining a supplemental payment is incorporated into the rule at s. DCF 55.09. The previous method of determining a supplemental payment is also used for an adoption assistance agreement entered into before July 1, 2011.

Adjusting the supplemental payment based on the circumstances of the guardian and the needs of the child requires an amendment to the subsidized guardianship agreement. The rule provides the process for determining whether the agreement should be amended. An amendment may not be effective for more than one year. The rule also provides a process for reviewing an amendment shortly before it will expire to determine whether it is appropriate to enter into a new amendment or to return to the amount in the initial subsidized guardianship agreement.

The rule provides for review of the guardian and child's continued eligibility for subsidized guardianship at an annual review date, upon receipt of notification from the guardian of a change in circumstances, if the agency knows or suspects that a change affecting eligibility has occurred, and beginning 6 months before the child's 18th birthday to determine whether eligibility is expected to continue when the child turns 18 years old.

Eligibility may continue when the child is 18 years old if the child is enrolled full-time in high school or an equivalent educational program and no other changes affecting eligibility have occurred. Eligibility may continue when the child is 19 or 20 years old if the child is enrolled full-time in high school or an equivalent educational program; the child has a physical, emotional, or behavioral need; the Social Security Administration has determined that the child is ineligible for Social Security disability insurance or Supplemental Security Income for not meeting the disability standard; the agency determines that the child's physical, emotional, or behavioral need warrants the continuation of assistance; and no other changes affecting eligibility have occurred.

The rule also includes the process for a person to petition the Division of Hearings and Appeals for review of an agency action or failure to act. In addition, the rule provides the procedures for determining eligibility of an interim caretaker to receive subsidized guardianship payments upon the death or incapacity of the guardian or termination of a guardianship.

Summary of Factual Data and Analytical Methodologies

The procedures for determining whether a subsidized guardianship payment should be adjusted based on a substantial change in circumstances are similar to the procedures used for adoption assistance and foster care. No data was used.

Summary of Related Federal Requirements

The Fostering Connections to Success and Increasing Adoptions Act of 2008 creates an option for states to operate a guardianship assistance program and receive federal reimbursement for a percentage of the expenditures under Title IV-E of the Social Security Act. Once a state adopts the option in the state plan, assistance must be provided to any child who is eligible.

42 USC 671 (a) (28) provides that an agency may enter into kinship guardianship assistance agreements to provide kinship guardianship assistance payments on behalf of children to grandparents and other relatives who have assumed legal guardianship of the children for whom they have cared as foster parents and for whom they have committed to care on a permanent basis.

42 USC 673 (d) provides that a child is eligible for kinship guardianship assistance payments if all of the following apply:

- The child was removed from his or her home pursuant to a voluntary placement agreement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child.
- The child was eligible for foster care maintenance payments while residing for at least 6 consecutive months in the home of the prospective relative guardian.
- Being returned home or adopted are not appropriate permanency options for the child.
- The child demonstrates a strong attachment to the prospective relative guardian and the relative guardian has a strong commitment to caring permanently for the child.
- With respect to a child who has attained 14 years of age, the child has been consulted regarding the kinship guardianship arrangement.

An agency may provide kinship guardianship assistance payments for a sibling of a child determined eligible, regardless of whether the sibling meets the eligibility requirements, if the agency and the relative agree on the appropriateness of placing the sibling in the home of the relative.

If kinship guardianship assistance payments are provided, an agency is required to enter into a written, binding kinship guardianship assistance agreement with the prospective relative guardian that provides the following:

- The amount of each kinship guardianship assistance payment and the manner in which the payment may be adjusted periodically based on the circumstances of the relative guardian and the needs of the child, in consultation with the guardian. A kinship guardianship assistance payment on behalf of a child cannot exceed the foster care maintenance payment that would have been paid on behalf of the child if the child had remained in a foster home.

- Any additional services and assistance that the child and relative guardian will be eligible for under the agreement and the procedure by which the relative guardian may apply for additional services as needed.
- That the agency will pay nonrecurring expenses associated with obtaining legal guardianship of the child up to \$2,000.
- That the agreement shall remain in effect without regard to the state residency of the relative guardian.

42 USC 671 (a) (20) requires a state to provide procedures for fingerprint-based criminal records checks of relative guardians and child abuse and neglect registry checks of relative guardians and adults living in the guardians' home before kinship guardianship assistance payments may be made.

42 USC 673 (b) (3) (C) provides that a child for whom kinship guardianship assistance payments are being made is categorically eligible for Medicaid in the same manner as a child for whom foster care maintenance payments are made.

Before the Fostering Connections to Success and Increasing Adoptions Act of 2008 was adopted, 11 states operated subsidized guardianship programs as demonstration projects under federal waivers, including a Wisconsin program administered by the Bureau of Milwaukee Child Welfare. The demonstration projects found that the availability of subsidized guardianship increases the number of children who exit foster care to permanent homes, maintains child safety, and saves money through reductions in out-of-home placement days and subsequent decreases in the administrative costs associated with supervising out-of-home care cases. For a synthesis of the findings of the subsidized guardianship demonstration projects, see http://www.acf.hhs.gov/programs/cb/programs_fund/cwwaiver/2011/subsidized.pdf.

Comparison to Rules in Adjacent States

Illinois and Michigan have subsidized guardianship programs. In Illinois, payment amounts are determined in the same manner as adoption assistance. In Michigan, payments amounts are determined in the same manner as foster care.

Effect on Small Business

The rule will not affect small businesses.

Analysis Used to Determine Effect on Small Business

The rule will affect children in out-of-home care, relatives of children in out-of-home care, tribes, and county departments of social or human services.

Agency Contact Person

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SECTION 1. Chapter DCF 55 is created to read:

Chapter DCF 55

SUBSIDIZED GUARDIANSHIP

DCF 55.01 Authority and purpose. This chapter specifies procedures for agencies to provide subsidized guardianship payments under s. 48.623, Stats., or a subsidized guardianship agreement entered into under s. 48.62 (5), 2009 Stats., to support legal permanence for care of children in any of the following:

(1) Guardianships under s. 48.977, Stats.

(2) Guardianships under a Wisconsin tribal law that is substantially similar to s. 48.977, Stats., and as provided for in an agreement that includes the purpose of making subsidized guardianship payments to a guardian of an Indian child and that is made between a tribe and a county or, in a county having a population of 750,000 or more, between a tribe and the department.

Note: Before July 1, 2011, the Bureau of Milwaukee Child Welfare administered a subsidized guardianship demonstration project that was authorized by a federal waiver and s. 48.62 (5), 2009 Stats.

The date in a statutory citation means that was the last edition of the statutes in which that provision appears. In 2011 Wisconsin Act 32, some paragraphs of s. 48.62 (5), 2009 Stats., were repealed and others were renumbered and amended to create s. 48.623, Stats., so s. 48.62 (5), 2009 Stats., last appeared in the 2009 edition of the statutes.

DCF 55.02 Definitions. In this chapter:

(1) “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.

(2) “Background information disclosure” means a form prescribed by the department on which a person completes required information for the caregiver background check under s. 48.685, Stats.

Note: Form F-82064, *Background Information Disclosure*, is available in the forms section of the department website, <http://www.dcf.gov>, or by writing to the Division of Safety and Permanence, P.O. Box 8916, Madison WI 53708-8916.

(3) “Child” means a person less than 18 years of age.

(4) “Department” means the department of children and families.

(5) “Division of hearings and appeals” means a division attached to the department of administration.

(6) “Interim caretaker” a person seeking or receiving payments under s. 48.623 (6), Stats.

(7) “Like-kin” means a person who has a significant emotional relationship with the child or the child’s family and who, prior to the child’s placement in out-of-home care, had an existing relationship with the child or the child’s family that is similar to a familial relationship.

(8) “Nonclient resident” has the same meaning as in s. 48.685 (1) (bm), Stats.

Note: Nonclient resident includes a person who resides, or is expected to reside, in an interim caretaker’s home and who is not a child who receives direct care or treatment from the interim caretaker.

(9) “Out-of-home care” for the purpose of s. DCF 55.02 (7) means physical custody of a child or juvenile under any of the following:

(a) Section 48.205 (1), Stats., and s. 48.207, 48.208, 48.209, 48.32, 48.345, 48.357, 48.363, or 48.365, Stats., or a substantially similar Wisconsin tribal law.

(b) Section 938.205 (1), Stats., and s. 938.207, 938.208, 938.209, 938.32, 938.345, 938.357, 938.363, or 938.365, Stats., or a substantially similar Wisconsin tribal law.

(c) A voluntary placement agreement under s. 48.63 (1), Stats., or a substantially similar Wisconsin tribal law.

(10) “Permanency plan” means a plan designed to ensure that a child is reunified with his or her family whenever appropriate, or that the child quickly attains a placement or home providing long-term stability.

(11) “Relative” means all of the following:

(a) A parent, stepparent, brother, sister, stepbrother, stepsister, half brother, half sister, brother-in-law, sister-in-law, first cousin, 2nd cousin, nephew, niece, uncle, aunt, stepuncle, stepaunt, or any person of a preceding generation as denoted by the prefix of grand, great, or great-great, whether by blood, marriage, or legal adoption, or the spouse of any person named in this subsection, even if the marriage is terminated by death or divorce.

(b) For purposes of the application of s. 48.028, Stats., and the federal Indian Child Welfare Act, 25 USC 1901 to 1963, “relative” includes an extended family member, as defined in s. 48.028 (2) (am), Stats., whether by blood, marriage, or adoption, including adoption under tribal law or custom.

(12) “Subsidized guardianship payment” means a payment pursuant to an agreement between an agency and a guardian entered into under s. 48.623, Stats., or s. 48.62 (5), 2009 Stats.

(13) “Supplemental payment” means the portion of a subsidized guardianship payment that is based on a child’s identified needs.

DCF 55.03 Eligibility. (1) CHILD AND GUARDIAN. An agency shall provide monthly subsidized guardianship payments to a guardian of a child under s. 48.977 (2), Stats., or under a substantially similar Wisconsin tribal law and an agreement specified in s. DCF 55.01 (2), if the agency determines that all of the following apply:

(a) The child meets all of the following conditions:

1. Either of the following:

a. The child has been removed from his or her home under a voluntary agreement under s. 48.63, Stats., or a substantially similar Wisconsin tribal law.

b. A Wisconsin court order or a substantially similar Wisconsin tribal court order containing a finding that continued placement of the child in his or her home would be contrary to the welfare of the child.

2. The child has been residing in the home of the prospective guardian for not less than 6 consecutive months immediately before guardianship is established.

3. Adoption of the child or return of the child to his or her home is not in the child's best interests.

4. The child demonstrates a strong attachment to the guardian.

5. If the child is 14 years of age or over, the child has been consulted regarding the guardianship arrangement.

(b) The guardian meets all of the following conditions:

1. The guardian is a relative of the child or like-kin to the child.

Note: Like-kin is a person with a significant emotional relationship with the child or the child's family and who, prior to the child's placement in out-of-home care, had an existing relationship with the child or the child's family that is similar to a familial relationship.

2. The guardian has a strong commitment to caring permanently for the child.

3. For not less than 6 consecutive months immediately before being named as the guardian of the child, the prospective guardian has been licensed as a foster parent and the prospective guardian and all adults residing in the guardian's home have met the background check requirements specified in s. 48.685, Stats., and s. DCF 56.05 (1) (f).

4. Before being named as the guardian of the child, the prospective guardian entered into a subsidized guardianship agreement with the agency under s. DCF 55.06.

(c) An order under s. 48.32, 48.345, 48.357, 48.363, 48.365, 938.32, 938.345, 938.357, 938.363, or 938.365, Stats., or a substantially similar Wisconsin tribal court order 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), Stats., has been dismissed as provided in s. 48.977 (3r), Stats., or a substantially similar proceeding under Wisconsin tribal law has been dismissed.

(d) If the agency knows or has reason to know that the child is an Indian child, the Indian child's parent, Indian custodian, and tribe have been provided with notice of the child's placement in the home of the guardian under s. 48.977 (4) (c) 2m., Stats., and the court has found under s. 48.977 (4) (g) 4., Stats., that the home of the guardian is in compliance with the order of placement preference under s. 48.028 (7) (b), Stats., or, if applicable, s. 48.028 (7) (c), Stats., unless the court found good cause, as described in s. 48.028 (7) (e), Stats., for departing from that order.

(2) **SIBLINGS.** An agency shall also provide subsidized guardianship payments for the care of a sibling of a child who meets the conditions under sub. (1) (a), regardless of whether the sibling meets these conditions if the agency and the guardian agree on the appropriateness of placing the sibling in the home of the guardian.

DCF 55.04 Procedure to inform prospective guardians. (1) With each foster parent who is a relative of or like-kin to a foster child for whom he or she is providing care and maintenance, an agency shall explain the foster parent's eligibility for services and the expectations involved with the following permanency options for the child:

(a) Adoption with adoption assistance under s. 48.975, Stats., and ch. DCF 50.

(b) Guardianship under s. 48.977, Stats., with subsidized guardianship payments under s. 48.623, Stats., and this chapter.

(c) Guardianship under s. 48.977, Stats., with long-term kinship care payments under s. 48.57 (3n), Stats., and ch. DCF 58.

(d) Guardianship under ch. 54, Stats.

(2) An agency shall use a form prescribed by the department to explain the permanency options under sub. (1), and the relative or like-kin foster parent shall sign the form following the explanation. The agency shall retain a signed copy of the form and attach the signed form to the subsidized guardianship agreement under s. DCF 55.06 if the relative or like-kin foster parent decides to pursue subsidized guardianship for the child.

Note: Form DCF-F-CFS2797, *Permanency Options in Brief*, is available in the forms section of the department website, <http://dcf.wisconsin.gov>, or by writing to the Division of Safety and Permanence, P.O. Box 8916, Madison WI 53708-8916.

DCF 55.05 Eligibility determination and documentation in child's permanency plan.

(1) For a child whose permanency plan will include placement with a guardian and the receipt of subsidized guardianship payments, an agency shall provide a description of all of the following on a form prescribed by the department:

(a) The efforts that the agency has made to return the child to his or her home and the reasons the agency has determined that return to the home is not in the child's best interests.

(b) The steps the agency has taken to determine that adoption is not in the child's best interests and the reasons why adoption is not being pursued, including the efforts the agency has made to discuss adoption by the prospective guardian as a more permanent alternative to guardianship and documentation of the reasons the prospective guardian has chosen not to pursue adoption.

(c) Reasons a permanent placement with a subsidized guardianship arrangement is in the child's best interests, including the ability of the prospective guardian to manage the child's relationship with his or her parents.

(d) If the child is an Indian child, a description of how the guardianship meets the requirements for placement preferences under s. 48.028 (7) (b), Stats., or if applicable, s. 48.028

(7) (c), Stats., unless good cause is determined under s. 48.028 (7) (e), Stats.

(e) The ways in which the eligibility requirements for subsidized guardianship payments under s. DCF 55.03 are met.

(f) Reasons for any separation of siblings during placement.

(g) The efforts made by the agency to discuss the subsidized guardianship arrangement with the child's parents or reasons why efforts were not made.

Note: Form DCF-F-2691, *Subsidized Guardianship Eligibility Determination and Permanency Plan Addendum*, is available in the forms section of the department website, <http://www.dcf.gov>, or by writing to the Division of Safety and Permanence, P.O. Box 8916, Madison WI 53708-8916.

(2) The agency shall enter the completed form under sub. (1) in the child's permanency plan and submit the form to the court with the court report under s. 48.977 (4) (e), Stats.

(3) If a person submits to the agency a written request for a determination of eligibility for subsidized guardianship payments, the agency shall provide a written determination of eligibility to the person no later than 30 days after receiving the request. The determination shall include a notice of the person's right to appeal the agency determination under s. DCF 55.11.

DCF 55.06 Subsidized guardianship agreement. (1) An agency shall enter into a written, signed subsidized guardianship agreement with a prospective guardian before guardianship is established under s. 48.977, Stats., or under a substantially similar Wisconsin tribal law and an agreement specified in s. DCF 55.01 (2), and before providing subsidized guardianship payments to the guardian. The agency shall provide the prospective guardian with a copy of the signed agreement.

(2) The subsidized guardianship agreement shall be on a form prescribed by the department and specify all of the following:

(a) The amount of the monthly subsidized guardianship payments that will be provided under the agreement.

(b) The manner in which subsidized guardianship payments may be adjusted periodically based on the circumstances of the guardian and needs of the child, in consultation with the guardian.

(c) A description of any additional services and assistance that the child or guardian will be eligible for under the agreement and the procedures by which the guardian may apply for the additional services and assistance as needed.

(d) That the agency will pay or reimburse the total cost of nonrecurring expenses directly related to obtaining guardianship of the child, not to exceed \$2,000, including court costs, attorney fees, and other reasonable and necessary expenses.

(e) That the agreement will remain in effect without regard to the state of residence of the guardian.

(f) That medical assistance provided under Title XIX of the Social Security Act of 1935, as amended, is available to the child as follows:

1. Medical assistance will be provided in accordance with the procedures of the state in which the child resides, except if a child receiving subsidized guardianship payments from an agency in Wisconsin is not eligible for medical assistance in the child's state of residence, the child is eligible under ss. 49.43 to 49.497, Stats.

2. Medical assistance may not be used as primary insurance coverage for care of a child that is covered by a guardian's private health insurance. A prospective guardian shall complete a form prescribed by the department of health services to provide information on any private

health insurance coverage before guardianship is established under s. 48.977, Stats., or a substantially similar Wisconsin tribal law.

Note: Form HCF-10115, *BadgerCare Plus/Medicaid Health Insurance Information*, is available in the forms section of the Department of Health Services website, <http://www.dhs.wisconsin.gov>, or from the Division of Health Care Access and Accountability, P.O. Box 309 Madison, WI 53701-0309.

(g) The guardian's responsibility to monitor the child's relationship with his or her parents, including arranging, limiting, or prohibiting contact without agency intervention.

(h) The agency's responsibility to release medical, educational, and other historical information the agency has about the child to the prospective guardian, in accordance with applicable law.

(i) That if any of the following occur, the guardian shall notify the agency within 10 calendar days of the effective date:

1. The guardian's address changes.
2. There is a change in the child's guardian.
3. The child enters the military.
4. The child gets married.
5. The child is no longer living in the home of the guardian.
6. The child is deceased.
7. The child completes high school or an equivalent educational program after reaching 18 years of age.
8. If the child is covered by the guardian's health insurance and the guardian's health insurance benefits change or if the child was not covered by the guardian's health insurance and becomes covered.
9. The guardian is no longer supporting the child or is no longer legally responsible for

supporting the child.

10. The child is placed outside the guardian's home at public expense.

(j) The guardian's responsibility to complete and return to the agency the annual review questionnaire under s. DCF 55.10 (3) in a timely manner to allow the agency to determine whether the child and guardian remain eligible for subsidized guardianship payments.

(k) A description of the terms upon which the subsidized guardianship agreement may terminate under s. DCF 55.10 (5) (d).

(L) That an agency may recover any overpayment of subsidized guardianship payments from a current or former guardian by any legal means as determined by the department. An overpayment to a guardian who continues to receive subsidized guardianship payments may be recovered by reducing the amount of the person's monthly payment.

(m) That the guardian may be eligible for adoption assistance under s. 48.975, Stats., and 42 USC 673 for care of the child if the guardian later decides to adopt the child. In determining eligibility for adoption assistance, the placement of the child in the home of the guardian and any subsidized guardianship payments will be considered to have never been made.

Note: Form DCF-F-CFS2365, *Subsidized Guardianship Agreement*, is available in the forms section of the department website, <http://dcf.wisconsin.gov>, or by writing to the Division of Safety and Permanence, P.O. Box 8916, Madison WI 53708-8916.

DCF 55.07 Amount of monthly payment. (1) AMOUNT IN AGREEMENT. The amount of a subsidized guardianship payment shall be the amount in the initial subsidized guardianship agreement under s. DCF 55.06 or as adjusted by an amendment to the subsidized guardianship agreement signed by both the guardian and the agency under s. DCF 55.08.

(2) INITIAL AMOUNT. (a) 1. The monthly subsidized guardianship payment amount in an initial subsidized guardianship agreement entered into on or after July 1, 2011, shall equal the

amount of the monthly foster care payment received by the prospective guardian for the care of the child under s. DCF 56.23 in the month immediately preceding the month in which the guardianship is ordered.

2. Notwithstanding subd. 1., the monthly subsidized guardianship payment amount may be less than the amount under subd. 1. if agreed to by the prospective guardian and specified in the subsidized guardianship agreement under s. DCF 55.06.

(b) The supplemental payment amount based on the child's identified needs and included in the initial subsidized guardianship agreement shall be determined under s. DCF 56.23 (2) (a) if the child has needs that have been identified as moderate or intensive in the areas listed in s. DCF 56.23 (2) (a) 1. a. to e.

Note: Under s. 48.62 (4), Stats., and s. DCF 56.23 (1) (c), no supplemental payment may be paid to a foster parent who operates a Level 1 foster home.

(3) ADJUSTMENT OF MONTHLY PAYMENT. (a) The amount of a monthly payment to a guardian may be adjusted periodically based on the circumstances of the guardian and the needs of the child under s. DCF 55.08, in consultation with the guardian.

(b) Notwithstanding par. (a), the amount of a monthly subsidized guardianship payment to a guardian may not be adjusted under s. DCF 55.08 if the prospective guardian's foster home was certified at Level 1 under s. DCF 56.13 (3) on the date that the prospective guardian signed the subsidized guardianship agreement under s. DCF 55.06.

Note: The adjustment of a monthly payment is an adjustment to the supplemental payment, which a guardian is not eligible to receive if his or her foster home was certified at Level 1.

DCF 55.08 Amendment to adjust payment amount. (1) SUBSTANTIAL CHANGE IN CIRCUMSTANCES. In this section, "substantial change in circumstances" means that a documented change has occurred to the child in one or more areas of identified needs, including

physical, behavioral, or emotional needs, that would result in a change in a supplemental payment determined under one of the following:

(a) For a subsidized guardianship agreement entered into before July 1, 2011, under s. 48.62 (5), 2009 Stats., the amount determined under s. DCF 55.09.

(b) For a subsidized guardianship agreement entered into on or after July 1, 2011, under s. 48.623, Stats., the amount determined under s. DCF 56.23 (2) (a) if the child has needs that have been identified as moderate or intensive in the areas listed in s. DCF 56.23 (2) (a) 1. a. to e.

Note: Under s. DCF 55.07 (3) (b), a guardian who was a foster parent who operated a Level 1 foster home on the date that the subsidized guardianship agreement was signed is not eligible for an amendment to adjust the subsidized guardianship payment amount.

(2) TIMING OF REQUEST. A guardian who is receiving monthly subsidized guardianship payments pursuant to an initial or amended subsidized guardianship agreement may request that the agreement be amended to increase the amount of those payments if the guardian believes that there has been a substantial change in circumstances and the timing of the request is any of the following:

(a) Not less than 12 months after any of the following occurred:

1. The guardianship was established under s. 48.977, Stats., or under a substantially similar Wisconsin tribal law and an agreement specified in s. DCF 55.01 (2).

2. A previous request for an amendment to the subsidized guardianship agreement was denied.

(b) Within 120 days before the expiration date of an amendment to the subsidized guardianship agreement.

(3) GUARDIAN REQUEST. To request an amendment to the subsidized guardianship agreement, the guardian shall do all of the following:

(a) The guardian shall complete and return the request for subsidized guardianship amendment form prescribed by the department to document the guardian's observations of the child's physical, behavioral, and emotional needs.

Note: When a guardian contacts the agency about a possible amendment, the agency sends the guardian at least 2 sets of the applicable forms. The forms are available in the forms section of the department website, <http://dcf.wisconsin.gov>, or by writing to the Division of Safety and Permanence, P.O. Box 8916, Madison WI 53708-8916.

For a subsidized guardianship agreement entered into before July 1, 2011, the agency sends all of the following forms:

- DCF-F-2813-E, *Subsidized Guardianship Amendment Request – Established Before July 1, 2011.*
- DCF-F-2783-E, *Subsidized Guardianship Amendment Request – Confirmation of Needs Behavioral Characteristics.*
- DCF-F-2784-E, *Subsidized Guardianship Amendment Request – Confirmation of Needs Physical/Personal Care Characteristics.*
- DCF-F-2785-E, *Subsidized Guardianship Amendment Request – Confirmation of Needs Emotional Characteristics.*

For a subsidized guardianship agreement entered into on or after July 1, 2011, the agency sends all of the following forms that apply to the child's age:

- DCF-F-2781-E, *Subsidized Guardianship Amendment Request – Complete Documentation Request.*
- DCF-F-2867-E, *Subsidized Guardianship Amendment Request – Age Birth to 5 Child and Adolescent Needs and Strengths (CANS) Version.*
- DCF-F-2868-E, *Subsidized Guardianship Amendment Request – Age 5 to 17 Child and Adolescent Needs and Strengths (CANS) Version.*
- DCF-F-2869-E, *Subsidized Guardianship Amendment Request – Confirmation of Needs Emotional Characteristics (Age Birth to 5).*
- DCF-F-2870-E, *Subsidized Guardianship Amendment Request – Confirmation of Needs Emotional Characteristics (Age 5 to 17).*
- DCF-F-2871-E, *Subsidized Guardianship Amendment Request – Confirmation of Needs Behavioral Characteristics (Age Birth to 5).*
- DCF-F-2872-E, *Subsidized Guardianship Amendment Request – Confirmation of Needs Behavioral Characteristics (Age 5 to 17).*
- DCF-F-2873-E, *Subsidized Guardianship Amendment Request – Confirmation of Needs Physical/Personal Care Characteristics (Age Birth to 5).*
- DCF-F-2874-E, *Subsidized Guardianship Amendment Request – Confirmation of Needs Physical/Personal Care Characteristics (Age 5 to 17).*

The guardian completes and returns to the agency the forms that apply to the child's needs.

(b) The guardian shall submit documentation by appropriate professionals regarding the child's current needs to the agency with the amendment request. The documentation shall be on a form prescribed by the department and dated not more than 6 months before the request.

Note: The professionals complete the same forms as the guardian under par. (a).

(c) If requested by the agency, the guardian shall provide additional information about the child's current functioning no later than 90 days following the agency request.

(d) If requested by the agency, the guardian shall have the child evaluated by a specialist of the agency's choice and at the agency's expense and submit documentation requested by the agency no later than 90 days following the agency request, or by a date agreed to by the agency.

(e) If the guardian accepts the adjusted payment amount offered by the agency, the guardian shall sign and return the amendment to the agency.

(4) AGENCY RESPONSE. If an agency receives a guardian's request to amend a subsidized guardianship agreement under sub. (3), the agency shall do all of the following:

(a) No later than 45 days following receipt of a guardian's request, the agency shall make a decision on the request from the information submitted by the guardian under sub. (3) (a) and (b) or determine that additional information is needed to make a decision. If the agency determines that additional information is needed, the agency may do any of the following:

1. Obtain technical assistance from a specialist.

2. Request that the guardian have the child evaluated by a specialist of the agency's choice and at the agency's expense.

3. Request more information about the child's current functioning from the guardian.

(b) If the agency requests more information under par. (a), the agency shall make a decision on the guardian's request no later than 30 days following receipt of the additional information.

(c) The agency shall determine whether there has been a substantiated report of abuse or neglect of the child by the guardian.

(d) If the agency determines that there has been a substantial change in circumstances that establishes that the child has an increase in needs in one or more categories of the supplemental payment schedule and there is no substantiated report of abuse or neglect of the child by the guardian, the agency shall offer to increase the amount of the subsidized guardianship payment.

(e) The agency shall determine the new monthly subsidized guardianship payment amount based on all of the following:

1. The foster care basic maintenance and exceptional payment amounts that were included in the initial subsidized guardianship agreement.

Note: The basic maintenance payment was the amount provided under s. 48.62 (4), Stats., when the subsidized guardianship agreement was signed. The exceptional payment amount was determined under s. DCF 56.23 (3) for a subsidized guardianship agreement entered into on or after July 1, 2011, and the version of s. DCF 56.11 (4) that was repealed in 2011 for a subsidized guardianship agreement entered into before July 1, 2011.

2. An adjusted supplemental payment calculated under one of the following:

a. For a subsidized guardianship agreement entered into before July 1, 2011, under s. 48.62 (5), 2009 Stats., the rate determined under s. DCF 55.09.

b. For a subsidized guardianship agreement entered into on or after July 1, 2011, under s. 48.623, Stats., the rate determined under s. DCF 56.23 (2) (a) if the child has needs that have been identified as moderate or intensive in the areas listed in s. DCF 56.23 (2) (a) 1. a. to e.

3. If the level of points in an established supplemental payment category in s. DCF 55.09 or 56.23 (2) (a) 1. a. to e. is at the highest number of points in an intensive level of need category, no increase in payment may be offered in that category.

(f) The agency shall provide the guardian with written notice of the agency decision on the guardian's request by the deadline in par. (a) or (b). The notice shall be on a form prescribed by the department and shall include information on the guardian's right to appeal the agency decision under s. DCF 55.11. A guardian may appeal the agency's denial of a request for an increase of the monthly subsidized guardianship payment amount or the amount that the agency offers to increase the payment amount.

Note: Form DCF-F-2756-E, *Notice of Approval for Amendment for Subsidized Guardianship*, and form DCF-F-2765-E, *Notice of Denial for Amendment for Subsidized Guardianship*, are available in the forms section of the department website, <http://dcf.wisconsin.gov>, or by writing to the Division of Safety and Permanence, P.O. Box 8916, Madison WI 53708-8916.

(g) If an agency offers to increase the monthly subsidized guardianship payment amount and the guardian accepts the amount that the agency offers, the agency and the guardian shall sign an amendment to the subsidized guardianship agreement that specifies the new monthly payment amount and the time period that the amendment will be effective. An amendment to a subsidized guardianship agreement may not be effective for more than one year. The amendment shall be on a form prescribed by the department.

Note: Form DCF-F-26757-E, *Subsidized Guardianship Agreement Amendment Time Limited*, is available in the forms section of the department website, <http://dcf.wisconsin.gov>, or by writing to the Division of Safety and Permanence, P.O. Box 8916, Madison WI 53708-8916.

(h) An amendment to a subsidized guardianship agreement shall be effective as follows:

1. The first amendment to a subsidized guardianship agreement is effective the first day of the month following the date that the agency receives the amendment signed by the guardian and the agency.

2. An amendment after the first amendment is effective the first day of the month following the date that both of the following have occurred:

- a. The date that the agency receives the amendment signed by the guardian and the agency.
- b. The date that a previous amendment has expired.

(5) REVIEW OF AMENDMENT. (a) At least 120 days before the expiration of an amendment to a subsidized guardianship agreement, the agency shall send written notice to the guardian on a form prescribed by the department. The notice shall include the expiration date of the amendment and information on requesting continuation of the payment amount in the amendment.

Note: The agency determines which form to send based on the type of documentation that the guardian must submit under par. (c). See the notes in par. (c) for information on the required notices. In years that complete documentation is required under par. (c) 2., the agency sends to the guardian at least 2 sets of applicable forms for the guardian and appropriate professionals to complete.

(b) 1. If a guardian's request for continuation of the payment amount in an amendment is received by the agency 30 days or more before the expiration date of the amendment, the agency shall make a determination on the request under par. (f) before the current amendment expires.

2. If the agency does not receive a guardian's request for continuation of the payment amount in an amendment 30 days or more before the expiration date of the amendment, the agency shall return the amount of the monthly subsidized guardianship payment to the amount in the initial subsidized guardianship agreement under s. DCF 55.06 when the amendment expires.

(c) To request continuation of the monthly subsidized guardianship payment amount in an amendment, the guardian shall submit appropriate documentation to the agency as follows:

1. Beginning with the first request for continuation of the payment amount in an amendment and for all subsequent odd-numbered requests for continuation, the guardian shall complete and return a form prescribed by the department to document that the substantial change in circumstances that was the basis for the amendment continues to exist.

Note: Form DCF-F-2767-E, *Notice of Amendment Expiration – Option to Continue Current Rate*, is available in the forms section of the department website, <http://dcf.wisconsin.gov>, or by writing to the Division of Safety and Permanence, P.O. Box 8916, Madison WI 53708-8916.

2. Beginning with the second request for continuation of the payment amount in an amendment and for all subsequent even-numbered requests for continuation, the guardian shall do all of the following:

a. Complete and return the request for subsidized guardianship amendment form prescribed by the department to document the guardian's observations of the child's physical, behavioral, and emotional needs.

Note: The agency sends the guardian at least 2 sets of the same forms that are required for an initial amendment under sub. (3) (a). The forms are available in the forms section of the department website, <http://dcf.wisconsin.gov>, or by writing to the Division of Safety and Permanence, P.O. Box 8916, Madison WI 53708-8916.

For a subsidized guardianship agreement entered into before July 1, 2011, the agency sends all of the following forms:

- DCF-F-2813-E, *Subsidized Guardianship Amendment Request – Established Before July 1, 2011*.

- DCF-F-2783-E, *Subsidized Guardianship Amendment Request – Confirmation of Needs Behavioral Characteristics.*
- DCF-F-2784-E, *Subsidized Guardianship Amendment Request – Confirmation of Needs Physical/Personal Care Characteristics.*
- DCF-F-2785-E, *Subsidized Guardianship Amendment Request – Confirmation of Needs Emotional Characteristics.*

For a subsidized guardianship agreement entered into on or after July 1, 2011, the agency sends all of the following forms that apply to the child's age:

- DCF-F-2781-E, *Subsidized Guardianship Amendment Request – Complete Documentation Request.*
- DCF-F-2867-E, *Subsidized Guardianship Amendment Request – Age Birth to 5 Child and Adolescent Needs and Strengths (CANS) Version.*
- DCF-F-2868-E, *Subsidized Guardianship Amendment Request – Age 5 to 17 Child and Adolescent Needs and Strengths (CANS) Version.*
- DCF-F-2869-E, *Subsidized Guardianship Amendment Request – Confirmation of Needs Emotional Characteristics (Age Birth to 5).*
- DCF-F-2870-E, *Subsidized Guardianship Amendment Request – Confirmation of Needs Emotional Characteristics (Age 5 to 17).*
- DCF-F-2871-E, *Subsidized Guardianship Amendment Request – Confirmation of Needs Behavioral Characteristics (Age Birth to 5).*
- DCF-F-2872-E, *Subsidized Guardianship Amendment Request – Confirmation of Needs Behavioral Characteristics (Age 5 to 17).*
- DCF-F-2873-E, *Subsidized Guardianship Amendment Request – Confirmation of Needs Physical/Personal Care Characteristics (Age Birth to 5).*
- DCF-F-2874-E, *Subsidized Guardianship Amendment Request – Confirmation of Needs Physical/Personal Care Characteristics (Age 5 to 17).*

The guardian completes and returns to the agency the forms that apply to the child's needs.

b. Submit documentation by appropriate professionals regarding the child's current needs on a form prescribed by the department and dated not more than 6 months before the request for continuation.

Note: The professionals complete the same forms as the guardian under subd. 2. a.

(d) The agency may require the guardian to provide additional information regarding the child's needs, including an evaluation by a specialist.

(e) The agency shall review the guardian's request and supporting documentation to determine whether the substantial change in circumstances that was the basis for amending the agreement continues to exist under the following criteria:

1. For a subsidized guardianship agreement entered into before July 1, 2011, under s. 48.62 (5), 2009 Stats., the rate determined under s. DCF 55.09.

2. For a subsidized guardianship agreement entered into on or after July 1, 2011, under s. 48.623, Stats., the rate determined under s. DCF 56.23 (2) (a) if the child has needs that have been identified as moderate or intensive in the areas listed in s. DCF 56.23 (2) (a) 1. a. to e.

(f) 1. Following the review under par. (e), the agency may determine any of the following:

a. The substantial change in circumstances that was the basis for the amendment continues to exist.

b. A substantial change in circumstances exists as a basis for a monthly subsidized guardianship payment that is more than the amount in the initial subsidized guardianship agreement but less than the current amendment.

c. A substantial change in circumstances no longer exists as a basis for a monthly subsidized guardianship payment that is more than the amount in the initial subsidized guardianship agreement under s. DCF 55.06.

2. The agency may not determine a monthly subsidized guardianship payment amount that is less than the amount in the initial subsidized guardianship agreement under s. DCF 55.06.

(g) The agency shall provide the guardian with written notice of the agency determination under par. (f) on a form prescribed by the department that includes information on the guardian's right to appeal the agency decision under s. DCF 55.11.

Note: Form DCF-F-2756-E, *Notice of Approval for Amendment for Subsidized Guardianship*, and form DCF-F-2765-E, *Notice of Denial for Amendment for Subsidized Guardianship*, are available in the forms section of the department website, <http://dcf.wisconsin.gov>, or by writing to the Division of Safety and Permanence, P.O. Box 8916, Madison WI 53708-8916.

(h) If an agency offers a monthly subsidized guardianship payment amount that is more than the amount in the initial subsidized guardianship agreement under s. DCF 55.06 and the guardian accepts the amount that the agency offers, the agency and the guardian shall sign an amendment to the subsidized guardianship agreement that specifies the monthly payment amount and the

time period that the amendment will be effective. An amendment to a subsidized guardianship agreement may not be effective for more than one year. The amendment shall be on a form prescribed by the department.

Note: Form DCF-F-26757-E, *Subsidized Guardianship Agreement Amendment Time Limited*, is available in the forms section the department website, <http://dcf.wisconsin.gov>, or by writing to the Division of Safety and Permanence, P.O. Box 8916, Madison WI 53708-8916.

(i) The amendment shall be effective the first day of the month following the date that both of the following have occurred:

- a. The date that the agency receives the amendment signed by the guardian and the agency.
- b. The date that a previous amendment has expired.

(6) AGENCY PROPOSAL. An agency may propose to a person receiving monthly subsidized guardianship payments that the agreement under s. DCF 55.06 be amended to adjust the amount of those payments. If an adjustment in the amount of those payments is agreed to by the person receiving those payments, the agreement shall be amended in writing to specify the adjusted amount of those payments.

DCF 55.09 Supplemental payments under subsidized guardianship agreements entered into before July 1, 2011. (1) COVERAGE. This section applies to supplemental payments provided under subsidized guardianship agreements entered into before July 1, 2011, under s. 48.62 (5), 2009 Stats.

Note: Subsidized guardianship agreements entered into before July 1, 2011, were part of a subsidized guardianship demonstration project that was administered by the Bureau of Milwaukee Child Welfare and authorized by a federal waiver and s. 48.62 (5), 2009 Stats.

(2) SUPPLEMENTAL PAYMENTS. (a) The agency may make supplemental payments to the guardian of a child in an amount to be determined by the agency if the child requires more

than the usual amount of care and supervision for the child's age because of special emotional, behavioral or physical and personal needs.

(b) If a child does not exhibit characteristics commensurate with a moderate or intensive level of emotional, behavioral, or physical and personal special needs categories described in sub. (3), no supplemental payment may be made. If the child exhibits characteristics commensurate with in a moderate or intensive level of one or more of the emotional, behavioral, or physical and personal special need categories under sub. (3), a supplemental payment in an amount to be determined by the agency shall be paid.

(c) The agency shall document in the child's case record the characteristics of any selected level of care.

(3) SCHEDULE OF DIFFICULTY-OF-CARE LEVELS. (a) *Emotional.* 1. "Level A, not applicable" children do not exhibit unusual emotional characteristics for foster children in their age group.

2. "Level B, minimal" children exhibit behavior that includes or corresponds in extent or degree with at least 2 of the following characteristics:

a. Demanding excessive attention from others.

b. Nervous, high-strung, impulsive and displaying temper tantrums.

c. Restless and hyperactive, having a short attention span and occasionally wetting during the night.

d. Exhibiting low self-esteem and lacking confidence in their ability to deal with the world.

e. Periodically withdrawn and unresponsive.

3. "Level C, moderate" children exhibit behavior that includes or corresponds in extent or degree with at least 2 of the following characteristics:

a. Habitually resistive and having difficulty communicating with others, often failing to do what is expected of them.

b. Typically respond to situations with apathy, showing a lack of any interest.

c. Have difficulty in establishing relationships and set up others for rejection.

d. Display cultural and social conflicts.

e. Frequent night bed-wetters or occasionally defecate in bed clothes or both.

f. Display over-activity and over-excitedness, necessitating close supervision.

4. “Level D, intensive” children exhibit behavior that includes or corresponds in extent or degree with one or more of the following characteristics, and the characteristics are severe:

a. Infantile personalities.

b. Wet or defecate in clothing during daytime hours several times a week.

c. Severe hyperactivity to the point of frequent destructiveness or sleeplessness.

d. Chronically withdrawn, depressed or anxious.

e. Self-injurious, require constant and intensive supervision and may be involved in behavioral management programs or show bizarre or severely disturbed behavior.

f. Display anorexia nervosa.

(b) *Behavioral*. 1. “Level A, not applicable” children do not exhibit unusual behavioral characteristics for foster children in their age group.

2. “Level B, minimal” children exhibit behavior that includes or corresponds in extent or degree with at least 2 of the following characteristics:

a. Run away infrequently for up to 2 days with the intention of returning.

b. Occasionally skip classes or an entire day of school, affecting class achievement and requiring make-up school work and parent contact with the school.

c. Use sexual acting-out or language as an attention-getting mechanism and occasionally experiment with alcohol, drugs or both.

d. Infrequent conflicts with parents or community authorities, including displays of hostility and occasional petty theft, vandalism or both.

e. Exhibit occasional aggressive behavior such as biting, scratching or throwing objects at another person.

3. "Level C, moderate" children exhibit behavior that includes or corresponds in extent or degree with at least 2 of the following characteristics:

a. Run away 4 to 7 times a year for 3 or 4 days at a time and requires encouragement to return.

b. Truant from school one to 2 times a month for more than one day, resulting in delayed academic progress including performance below their ability that may lead to class failure, possible suspension and frequent parent contact with the school.

c. Exhibit sexual activity harmful to themselves and disruptive to their family and community relationships.

d. Occasionally have been involved in non-violent crimes such as burglary, which caused conflict with authority.

e. Exhibit frequent aggressive behavior such as biting, scratching or throwing objects at another person.

f. Exhibit occasional self-abusive behavior such as banging their heads, poking their eyes, kicking themselves or biting themselves.

4. "Level D, intensive" children exhibit behavior that includes or corresponds in extent or degree with one or more of the following characteristics, and the characteristics are severe:

- a. Runs away 8 or more times a year for 5 or more days at a time, returning only on the initiative of others.
- b. Habitually create a disturbance in the classroom or be habitually truant from school resulting in class failure, frequent suspension or expulsion, and requiring frequent parent contact with the school.
- c. Exhibit sexual deviancy, including that of a violent nature or nonconsenting involvement of others.
- d. Habitually use alcohol, drugs or both.
- e. Exhibit uncontrollable behavior, be involved in property offenses repeatedly with adjudication on more than one property offense that is as serious as burglary, and have committed acts such as arson, physical assault or armed robbery.
- f. Exhibit aggressive behavior on a daily basis, such as biting, scratching or throwing objects at another person.
- g. Exhibit frequent self-abusive behavior such as banging their heads, poking their eyes, kicking themselves or biting themselves.

These children may eat inappropriate items such as rubber or metal.

(c) *Physical and personal care.* 1. “Level A, not applicable” children do not exhibit unusual physical or personal characteristics for foster children in their age group.

2. “Level B, minimal” children exhibit physical or personal characteristics that include or correspond in extent or degree with one or more of the following:

- a. Needs some help with putting on braces or prosthetic devices and help with buttons or laces but basically care for themselves and are able to maintain their own physical assisting devices.

b. Seizures or motor dysfunctions that are controlled by medication. Therapy for gross or fine motor skills can be done with supervision for children to achieve normal conditions. These children may require special diet preparation.

3. “Level C, moderate” children exhibit physical or personal characteristics that include or correspond in extent or degree with one or more of the following:

a. Needs help with dressing, bathing as diapering and applying catheters, and requires the help of a person or a device to walk or get around.

b. Needs assistance to care for and maintain physical assisting devices.

c. Has feeding problems such as excessive intake, extreme messiness or extremely slow eating requiring help, supervision or both.

d. Needs tube or gavage feeding.

e. Requires special care to prevent or remedy skin conditions such as decubiti and severe eczema.

Note: The administration of medications and preparation of special diets are demanding, and prescribed physical therapies such as those for vision, hearing, speech or gross or fine motor skills require one to 2 hours a day.

4. “Level D, intensive” children exhibit physical or personal characteristics that include or correspond in extent or degree with one or more of the following:

a. Non-ambulatory, may have uncontrollable seizures and need appliances for drainage, colostomy, aspiration or suctioning.

b. Even with proper medical attention, vision, speech or hearing functions are impaired and may require foster parent training.

c. Need daily prescribed exercise routines to improve or maintain gross or fine motor skills that require home administration.

d. Require prevention procedures such as daily irrigation.

e. Require extra cleaning and laundry to maintain hygiene and control of the child's body waste.

f. Orthotics care.

g. Prescribed physical therapies taking 2 to 3 hours a day.

DCF 55.10 Review of eligibility for subsidized guardianship payments. (1) CHANGES THAT MAY AFFECT ELIGIBILITY. To review a guardian and child's continued eligibility for monthly subsidized guardianship payments, an agency shall determine whether any of the following changes have occurred:

(a) There has been a change in the child's guardian.

(b) The child has entered the military.

(c) The child is married.

(d) The child is no longer living with the guardian.

(e) The child is deceased.

(f) The child has graduated, completed, or dropped out from a full-time, kindergarten to 12th grade educational program or its equivalent.

(g) The guardian is no longer supporting the child.

(h) The guardian's legal responsibility for the child has ended.

(i) The child has been placed outside the guardian's home at public expense.

(2) WHEN TO REVIEW. An agency shall review whether a child and guardian continue to be eligible for subsidized guardianship payments at the following times:

(a) An annual review date that begins one year after the date the guardianship under s. 48.977, Stats., or under a substantially similar Wisconsin tribal law and an agreement specified in s. DCF 55.01 (2), was ordered.

(b) Upon receipt of notification from the guardian of a change in circumstances under s. DCF 55.06 (2) (i).

(c) If the agency knows or suspects that a change listed in sub. (1) has occurred.

(d) Beginning 6 months before the child's 18th birthday, to determine whether eligibility is expected to continue under sub. (4) when the child turns 18 years old.

(3) ANNUAL REVIEW. (a) Not less than 60 days before a guardian's annual review date under sub. (2) (a), the agency shall send an annual review questionnaire and notice on a department-prescribed form requesting that the guardian return the completed questionnaire within 30 days of receipt and informing the guardian that payments will be suspended if the agency does not receive the completed questionnaire by the guardian's annual review date. If the guardian has not returned the completed questionnaire 30 days after the agency sent the questionnaire, the agency shall send a second copy of the questionnaire and notice.

Note: Form DCF-F-2736-E, *Subsidized Guardianship Request for Information to Determine Continued Eligibility*, is available in the forms section of the department website, <http://dcf.wisconsin.gov>, or by writing to the Division of Safety and Permanence, P.O. Box 8916, Madison WI 53708-8916.

(b) If the guardian returns the annual review questionnaire during the 60-day period before the annual review date, the agency shall immediately document in the child's electronic case record the receipt of the form and whether the child and guardian continue to be eligible for monthly subsidized guardianship payments.

(4) ELIGIBILITY AFTER AGE 17. (a) A guardian and a child who is 18 years of age or older may be eligible to receive monthly subsidized guardianship payments if no change affecting eligibility under sub. (1) has occurred and any of the following apply:

1. The child is 18 years old and is enrolled full-time in high school or an equivalent educational program.

2. The child is 19 or 20 years old and all of the following apply:

- a. The child is enrolled full-time in high school or an equivalent educational program.
- b. The child has a physical, emotional, or behavioral need.
- c. The social security administration has determined that the child is ineligible for Social Security disability insurance or Supplemental Security Income for not meeting the disability standard in 42 USC 423 (d) or 42 USC 1382c (a).

Note: 42 USC 423 (d) is the definition of “disability” that is used in determining eligibility for Social Security disability insurance. 42 USC 1382c (a) is the definition of “aged, blind, or disabled individual” that is used in determining eligibility for SSI benefits.

- d. The agency determines that the child’s physical, emotional, or behavioral need warrants the continuation of assistance under s. 48.623, Stats.

(b) To determine whether a guardian and child will continue to be eligible to receive monthly subsidized guardianship payments when the child is 18 years old, the agency shall do all of the following:

1. Six months before the child’s 18th birthday, the agency shall send the guardian a form prescribed by the department that notifies the guardian that subsidized guardianship payments will terminate when the child turns 18 years old unless the guardian provides information regarding potential eligibility for the payments to continue.

Note: Form DCF-F-CFS2421, *Advance Notice of Termination of Subsidized Guardianship at Age 18*, is available in the forms section of the department website, <http://www.dcf.gov>, or by writing to the Division of Safety and Permanence, P.O. Box 8916, Madison WI 53708-8916.

2. If the agency has not received the completed form under subd. 1. and any necessary documentation from the guardian by 60 days before the child’s 18th birthday, the agency shall send a second copy of the form to the guardian.

3. If the agency has not received the completed form under subd. 1. or 2. with any necessary documentation from the guardian by 30 days before the child’s 18th birthday, the payment for the

month of the child's 18th birthday shall be the last payment under the subsidized guardianship agreement.

4. If the agency receives the completed form under subd. 1. or 2. and any necessary documentation from the guardian 30 days or more before the child's 18th birthday, the agency shall determine whether eligibility will continue when the child turns 18 years old and send the notice of decision on a form prescribed by the department within 15 days after receiving the guardian's completed form and any necessary documentation.

Note: Form DCF-F-CFS2420, *Notice of Decision on Subsidized Guardianship Eligibility*, is available in the forms section of the department's website, <http://www.dcf.gov>, or by writing to the Division of Safety and Permanence, P.O. Box 8916, Madison WI 53708-8916.

(5) DETERMINATION. Following a review of eligibility of a guardian and child for monthly subsidized guardianship payments under sub. (2), an agency shall do one of the following:

(a) Continue the payments.

(b) Make the last payment the month that the child turns 18 years old based on the review under sub. (4).

(c) Suspend payments for any of the following reasons:

1. The agency did not receive the completed annual review questionnaire from the guardian under sub. (3) on or before the annual review date under sub. (2) (a). If the agency receives the completed annual review questionnaire from the guardian after the review date and none of the changes affecting eligibility under sub. (1) have occurred, the agency shall reinstate payments effective the date that the agency receives the completed questionnaire.

2. The child is temporarily placed outside the guardian's home at public expense.

3. The child is temporarily not being supported by the guardian.

(d) Terminate payments and other provisions in the subsidized guardianship agreement based on any of the following:

1. A change of circumstances under sub. (1) (a) to (g) has occurred.
2. The guardian requests in writing that the subsidized guardianship agreement be terminated.

DCF 55.11 Appeals. (1) (a) A person may petition the division of hearings and appeals under sub. (2) for a review of any of the following agency actions or failures to act:

1. The agency did not act promptly on a person's request for a determination of eligibility for subsidized guardianship payments under s. DCF 55.05 (3).

2. The agency denied a person's request for a determination of eligibility for subsidized guardianship payments under s. DCF 55.05 (3) on the grounds that a condition specified in s. DCF 55.03 has not been met.

3. Regarding an amendment under s. DCF 55.08, the agency did any of the following:

a. Denied a guardian's request for an amendment under s. DCF 55.08 (4) (f) or 55.08 (5) (f)

1. c. and (g).

b. Approved a guardian's request for an amendment at an amount that is less than the amount that the guardian considers appropriate under s. DCF 55.08 (4) (f) or (5) (f) 1. b.

(b) Review of an agency action or failure to act is unavailable if the action or failure to act arose more than 45 days before the guardian submits the petition for review to the division of hearings and appeals.

(2) (a) Upon receipt of a timely petition as described in sub. (1) (b), the division of hearings and appeals shall give the applicant or recipient reasonable notice and an opportunity for a fair hearing.

(b) The division of hearings and appeals may make such additional investigation as it considers necessary.

(c) The division of hearings and appeals shall provide the applicant or recipient and the agency whose action or failure to act is the subject of the petition with a notice of hearing. That agency may be represented at the hearing.

(d) The division of hearings and appeals shall render its decision as soon as possible after the hearing and shall send a certified copy of its decision to the applicant or recipient and to the agency whose action or failure to act is the subject of the petition.

(e) The decision of the division of hearings and appeals shall have the same effect as an order of the agency whose action or failure to act is the subject of the petition. The decision shall be final, but may be revoked or modified as altered conditions may require.

(f) The division of hearings and appeals shall deny a petition for review or shall refuse to grant relief if any of the following applies:

1. The petitioner withdraws the petition in writing.
2. The sole issue in the petition concerns an automatic payment adjustment or change that affects an entire class of recipients and is the result of a change in state law.
3. The petitioner abandons the petition. Abandonment occurs if the petitioner fails to appear in person or by a representative at a scheduled hearing without good cause, as determined by the division of hearings and appeals.

(3) (a) 1. If a recipient requests a hearing within 10 days after the date of the notice that his or her subsidized guardianship payments are being decreased or discontinued, those payments may not be decreased or discontinued until a decision is rendered after the hearing.

2. Payments made pending the hearing decision under subd. 1. may be recovered by the agency if the contested action or failure to act is upheld or the recipient withdraws or abandons the petition.

(b) The division of hearings and appeals shall promptly notify the agency whose action is the subject of the hearing that the recipient has requested a hearing.

(c) Payments shall be decreased or discontinued if the recipient is contesting a state law or a change in state law and not the determination of the payment made on the recipient's behalf.

DCF 55.12 Interim caretaker. (1) ELIGIBILITY. On the death or incapacity of a guardian or the termination of a guardianship under s. 48.977 (7), Stats., or under a substantially similar Wisconsin tribal law and an agreement specified in s. DCF 55.01 (2), the agency that has been providing subsidized guardianship payments to the guardian shall provide the subsidized guardianship payments to the interim caretaker if all of the following conditions are met:

(a) Pursuant to s. 48.685, Stats., and s. DCF 55.13, the agency conducts a background investigation of the interim caretaker and any nonclient resident in the interim caretaker's home and determines that those individuals meet the requirements in s. 48.685, Stats., and s. DCF 55.13.

(b) The agency inspects the home of the interim caretaker, interviews the interim caretaker, and determines that placement of the child with the interim caretaker 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), Stats.

(c) The interim caretaker cooperates with the agency in finding a permanent placement for the child by either seeking to become the child's guardian or adoptive parent or assisting in finding other permanent resources for the child.

(d) If the agency knows or has reason to know that the child is an Indian child, the agency provides notice of the Indian child's placement in the home of the interim caretaker to the Indian child's parent, Indian custodian, and tribe and determines that the home of the interim caretaker complies with the order of placement preference under s. 48.028 (7) (b), Stats., or, if applicable, s. 48.028 (7) (c), Stats., unless agency finds good cause, as described in s. 48.028 (7) (e), Stats., for departing from that order.

(2) TIME-LIMITED. The agency shall provide the subsidized guardianship payments to an interim caretaker who is eligible under sub. (1) until he or she is licensed as a foster parent under ch. DCF 56, except the agency may not provide subsidized guardianship payments to an interim caretaker for more than 12 months.

(3) PAYMENT AMOUNT. The amount of the subsidized guardianship payments to the interim caretaker shall be the most recent amount that the agency had agreed to pay the guardian under s. DCF 55.07 (2) or 55.08.

(4) OVERPAYMENTS. An agency may recover any overpayment made to a current or former interim caretaker by any legal means as determined by the department. An overpayment to an interim caretaker who continues to receive subsidized guardianship payments may be recovered by reducing the amount of the person's monthly payment.

DCF 55.13 Background check of interim caretaker and nonclient residents.

(1) PROVIDE INFORMATION. (a) Before an agency provides subsidized guardianship payments to an interim caretaker seeking payments under s. DCF 55.12, the interim caretaker and any nonclient resident in the interim caretaker's home shall do all of the following:

1. Complete and submit to the agency the department's background information disclosure form and written authorization for the agency to make follow-up contact with the Wisconsin

department of justice and any other person or organization to determine if there is any reason under sub. (4) why the interim caretaker is not eligible to receive subsidized guardianship payments under s. DCF 55.12.

Note: Form F-82064, *Background Information Disclosure*, is available in the forms section of the department website, <http://www.dcf.gov>, or by writing to the Division of Safety and Permanence, P.O. Box 8916, Madison WI 53708-8916.

2. Provide the agency with information on their places of residence during the 5-year period before the interim caretaker is seeking subsidized guardianship payments under s. DCF 55.12.

(b) Before an agency provides subsidized guardianship payments to an interim caretaker seeking payments under s. DCF 55.12, the interim caretaker shall provide the agency or its designated agent with a set of fingerprints sufficiently clear to submit to the Wisconsin department of justice or other law enforcement agency for submission to the national crime information database as provided in s. 48.685 (2) (c) 1., Stats.

(2) CONDUCT BACKGROUND CHECK. After the agency receives the information under sub. (1) and before the agency provides subsidized guardianship payments to an interim caretaker, the agency shall do all of the following:

(a) The agency shall obtain the information required under s. 48.685 (2) (am), Stats., regarding the interim caretaker and any nonclient resident in the interim caretaker's home.

Note: Information on how to conduct an initial search of some of the required Wisconsin records is at <http://wi-recordcheck.org/>. Following the search, the agency will receive a report from the Department of Justice regarding results of the criminal records search and a report from the Department of Health Services regarding results of the search of other integrated databases. Further investigation may be required.

(b) The agency shall submit the fingerprints of the interim caretaker under sub. (1) (b) to the Wisconsin department of justice or other law enforcement agency for submission to the national crime information database as provided in s. 48.685 (2) (c) 1., Stats.

(c) The agency shall conduct a reverse search of the Wisconsin sex offender registry using the interim caretaker's address.

Note: A reverse search by address can be done by entering the interim caretaker's address at <http://wisconsindoc.familywatchdog.us/>. The Registry and Family Watchdog information does not contain information on all convicted sex offenders.

The information is limited by the effective date of the applicable law and to those offenders who have been arrested and convicted, adjudicated, or committed for a crime specified under the law and who meet registration and publication requirements.

For example, certain sex offenses by juveniles or other persons may not meet registration or publication requirements. Please consider these limitations when obtaining information from the Registry or Family Watchdog.

(d) If the agency is informed that a nonclient resident in the interim caretaker's home resided outside the state of Wisconsin at any time during the 3-year period before the search, the agency shall obtain a criminal history records search from any state in which the person is or was a resident.

(e) The agency shall obtain information on any child abuse and neglect findings during the 5-year period before the search, as follows:

1. If the agency is informed that the interim caretaker or an adult who is residing, or expects to reside, in the interim caretaker's home resided in the state of Wisconsin at any time during the 5-year period before the search, the agency shall contact each county in Wisconsin in which the person is a resident or was a resident during those 5 years for information on any child abuse and neglect substantiation or similar finding.

2. If the agency is informed that the interim caretaker or an adult who is residing, or expects to reside, in the interim caretaker's home resided outside the state of Wisconsin at any time during the 5-year period before the search, the agency shall check any child abuse or neglect registry maintained by any state or other U.S. jurisdiction in which the person is a resident or was a resident during those 5 years for information on any child abuse or neglect substantiation or similar finding.

(f) If the agency is informed that the interim caretaker or a nonclient resident in the interim caretaker's home served in a branch of the U.S. armed forces, including any reserve component, the agency shall make every reasonable effort to obtain information on the discharge status of the

person. This information may be obtained from the discharge papers or from the armed forces branch in which the person served. If the discharge status is other than honorable, the agency shall obtain information on the nature and circumstances of the discharge.

(3) FOLLOW-UP. Follow-up investigation may be required and may include the following:

(a) If the results of the criminal history records search under sub. (2) (a), (b), or (d) indicate a charge of a crime specified in s. 48.685 (1) (c) or (5) (bm) Stats., or comparable law in another state, but do not completely and clearly indicate the final disposition of the charge, the agency shall make every reasonable effort to contact the clerk of courts to determine the final disposition of the charge.

(b) If the background information disclosure indicates a charge or conviction of a crime specified in s. 48.685 (1) (c) or (5) (bm), Stats., or comparable law in another state, but the results of the criminal history records search under sub. (2) (a), (b), or (d) do not include the charge or conviction, the agency shall make every reasonable effort to contact the clerk of courts to obtain a copy of the criminal complaint and the final disposition of the complaint.

(c) If the results of the criminal history records search under sub. (2) (a), (b), or (d); the background information disclosure; or any other information indicate that the person was convicted of a violation of s. 940.19 (1), 940.195, 940.20, 941.30, 942.08, 947.01 (1), or 947.013, Stats., or comparable law in another state, not more than 5 years before the agency obtained the information, the agency shall make every reasonable effort to contact the clerk of courts to obtain a copy of the criminal complaint and judgment of conviction relating to that violation.

A list of Wisconsin county clerks of court is available at <http://www.wicourts.gov/contact/docs/clerks.pdf>.

An investigation and determination regarding whether the circumstances of the convictions for the crimes specified in par. (c) are substantially related to the care of children under sub. (4) (b) and s. 48.685 (5m), Stats., is required. The specified crimes are misdemeanor battery, battery to an unborn child, battery-special circumstances, reckless endangerment, invasion of privacy, disorderly conduct, and harassment.

(4) OFFENSES THAT ARE A BAR. Unless the person has demonstrated that he or she has been rehabilitated under s. 48.685 (5) or (5c), Stats., and ch. DHS 12, an agency may not provide subsidized guardianship payments to an interim caretaker if any of the following apply regarding the interim caretaker or a nonclient resident in the interim caretaker's home:

(a) The person has been convicted of a crime specified in s. 48.685 (1) (c) or (5) (bm), Stats.

Note: A table that lists applicable crimes is available on the department website, <http://dcf.wisconsin.gov>, in the child welfare licensing/background checks section. The applicable crimes for subsidized guardianship payments are the same as the applicable crimes for foster care.

(b) The person has been convicted of an offense that is not a crime specified in s. 48.685 (1)

(c) or (5) (bm), Stats., but that is substantially related to the care of children.

Note: For guidance in determining whether an offense is substantially related, see s. DHS 12.06. If a conviction is for an offense that is not a crime specified in s. 48.685 (1) (c) or (5) (bm), Stats., but that is substantially related to the care of children, rehabilitation approval under s. 48.685 (5) (a), Stats., and ch. DHS 12 is not available.

(c) A governmental body has made a finding that the person has abused or neglected any client or misappropriated the property of any client.

(d) There has been substantiated finding under s. 48.981 (3) (c) 4., Stats., that the person has abused or neglected a child.

(e) The person has been convicted of a violation of the law of any other state or United States jurisdiction that would be a violation of par. (a) to (d) if committed in this state.

(5) DENIALS. The agency shall provide the department with information about each person who is denied monthly subsidized guardianship payments or permission to reside in the home of an interim caretaker for a reason specified in sub. (4).

Note: The agency provides the required information to the department on form DCF-F-CFS2191, *Negative Action Notice*. The department forwards the information to the Department of Health Services as required under s. 48.623 (6) (b), Stats. The form is available in the forms section of the department's website, <http://www.dcf.gov>, or by writing to the Division of Safety and Permanence, P.O. Box 8916, Madison WI 53708-8916.

SECTION 2. EFFECTIVE DATE. This rule shall take effect upon publication as provided in s. 227.24 (1) (c), Stats.