



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0066/5
GMM:cjs:ph

DOA:.....Major, BB0187 - Child abuse and neglect appeals

FOR 2013-2015 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; **relating to:** the budget.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

CHILDREN

Under current law, a county department of human services or social services or, in Milwaukee County, DCF or a licensed child welfare agency under contract with DCF (collectively “agency”) that investigates a report of suspected child abuse or neglect must determine, within 60 days after receipt of the report, whether abuse or neglect has occurred. If the agency determines that a specific person has abused or neglected the child, the person may appeal the determination in accordance with procedures established by DCF by rule.

This bill eliminates the authority of DCF to establish procedures for an appeal of a determination that a specific person has abused or neglected a child. Instead, the bill provides: 1) that if an agency makes an initial determination that a specific person has abused or neglected a child, the agency must provide the person with an opportunity for a review of that initial determination in accordance with rules promulgated by DCF before the agency may make a final determination that the person has abused or neglected a child; and 2) that a person who has been determined to have abused or neglected a child has the right to a hearing on that determination under procedures provided under current law for the administrative and judicial review of a contested case, which is an agency proceeding in which, after a hearing required by law (contested case hearing), a substantial interest of a party is determined by a decision or order.

Under the bill, to receive a contested case hearing on a determination that a specific person has abused or neglected a child, the person must send to DCF a written request for a contested case hearing within ten days after the date of the notice of the determination. Subject to certain exceptions, DCF then must commence the hearing within 90 days after receipt of the request for the hearing and issue a final decision within 60 days after the close of the hearing. Following the contested case hearing, any party to the proceeding may then obtain judicial review of the final administrative decision in the contested case.

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

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

SECTION 1. 48.981 (3) (c) 5m. of the statutes is amended to read:

48.981 (3) (c) 5m. ~~If the~~ The county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department ~~determines~~ may include in a determination under subd. 4. a determination that a specific person has abused or neglected a child, ~~the~~ If the county department, department, or licensed child welfare agency, ~~within 15~~ makes an initial determination that a specific person has abused or neglected a child, ~~the county department, department, or licensed child welfare agency shall provide~~ that person with an opportunity for a review of that initial determination in accordance with rules promulgated by the department before the county department, department, or licensed child welfare agency may make a final determination that the person has abused or neglected a child. Within 5 days after the date of the ~~a final~~ determination, ~~that a specific person has abused or neglected a child, the county department, department, or licensed child welfare agency shall~~ notify the person in writing of the determination, the person's right to appeal a contested case hearing on the determination under ch. 227, and the procedure procedures under sub. 5p. by which the person may appeal the determination, and

~~the person may appeal the determination in accordance with the procedures established by the department under this subdivision. The department shall promulgate rules establishing procedures for conducting an appeal under this subdivision. Those procedures shall include a procedure permitting an appeal receive that hearing.~~

5p. A person determined under subd. 4. to have abused or neglected a child has the right to a contested case hearing on that determination under ch. 227. To receive that hearing, the person must send to the department a written request for a hearing under s. 227.44 within 10 days after the date of the notice under subd. 5m. of the determination. The department shall commence the hearing within 90 days after receipt of the request for the hearing, unless the hearing is rescheduled on the request of the person requesting the hearing or the contested case proceeding is held in abeyance as provided in this subdivision, and shall issue a final decision within 60 days after the close of the hearing. Judicial review of the final administrative decision following the hearing may be had by any party to the contested case proceeding as provided in ch. 227. The person presiding over a contested case proceeding under this subdivision to be held may hold the hearing in abeyance pending the outcome of any criminal proceedings or any proceedings under s. 48.13 based on the alleged abuse or neglect or the outcome of any investigation that may lead to the filing of a criminal complaint or a petition under s. 48.13 based on the alleged abuse or neglect.

SECTION 9306. Initial applicability; Children and Families.

(1) CONTESTED CASE HEARINGS ON CHILD ABUSE OR NEGLECT DETERMINATIONS. The treatment of section 48.981 (3) (c) 5m. of the statutes first applies to a notice under

section 48.981 (3) (c) 5m. of the statutes of a determination under section 48.981 (3) (c) 4. of the statutes issued on the effective date of this subsection.

SECTION 9406. Effective dates; Children and Families.

(1) CONTESTED CASE HEARINGS ON CHILD ABUSE OR NEGLECT DETERMINATIONS. The treatment of section 48.981 (3) (c) 5m. of the statutes and SECTION 9306 (1) of this act take effect on January 1, 2015.

(END)