



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0067/5
GMM:eev:rs

DOA:.....Major, BB0186 – Adoption assistance and subsidized guardianships
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 (county department) or, in a county having a population of 750,000 or more, DCF may provide monthly subsidized guardianship payments to the guardian of a child who has been adjudged to be in need of protection or services if certain conditions have been met, including the conditions that the child has been residing in the home of the guardian for not less than six consecutive months, the child's situation precludes the child from returning home or from being adopted, and the guardian has a strong commitment to caring for the child permanently. Currently, the amount of a monthly subsidized guardianship payment is *equal to* the foster care payment received by the guardian for the month immediately preceding the month in which the guardianship order was granted or a lesser amount if agreed to by the guardian.

This bill requires a county department or DCF, whichever is applicable, to determine the amount of a monthly subsidized guardianship payment based on the circumstances of the guardian and the needs of the child, but provides that that amount *may not exceed* the foster care payment received by the guardian for the month immediately preceding the month in which the guardianship order was granted.

Current law also permits DCF to provide payments to the adoptive or proposed adoptive parents of a child with special needs to assist in the cost of care of the child

when DCF determines that those payments are necessary to assure the child's adoption (adoption assistance). Currently, an agreement to provide adoption assistance may be made only for a child who is in the guardianship of DCF, an American Indian tribal agency in this state (tribal agency), or *another agency* authorized to place children for adoption or who is in a subsidized guardianship. This bill permits an adoption assistance agreement to be made only for a child who is in the guardianship of DCF, a tribal agency, or *a county department* authorized to place children for adoption; who is in a subsidized guardianship; or who is otherwise eligible for adoption assistance payments under Title IV-E of the federal Social Security Act.

Currently, the initial amount of adoption assistance for the support of a child who was in foster care or subsidized guardianship care immediately prior to placement for adoption is *equivalent to* the amount of the payments for that care at the time the adoption assistance agreement is signed, and the initial amount of adoption assistance for the support of a child who was not in that care immediately prior to placement for adoption is *equivalent to* the uniform foster care rate applicable to the child at the time the adoption assistance agreement is signed, unless a lesser amount is agreed to by the proposed adoptive parents, except that the initial amount of adoption assistance for the support of a child who is at high risk of developing moderate or intensive difficulty-of-care problems is \$0, but that amount may be increased if the child develops those problems.

This bill requires DCF to determine the initial amount of adoption assistance for the support of a child based on the circumstances of the adoptive family and the needs of the child, but provides that that amount *may not exceed* the amount of the child's foster care or subsidized guardianship care payments or the uniform foster care rate, whichever is applicable, at the time the adoption assistance agreement is signed.

Under current law, when the court assigned to exercise jurisdiction under the Children's Code (juvenile court) or a tribal court enters an order terminating parental rights to a child (TPR), the juvenile court or tribal court may transfer guardianship of the child to DCF, which is then responsible for securing the adoption of the child. If a permanent adoptive placement is not in progress two years after the entry of the TPR order, DCF may petition the juvenile court or tribal court to transfer legal custody of the child to a county department or back to the Indian tribe. This bill requires DCF, when guardianship of a child is transferred to DCF following a TPR, to seek a permanent adoptive placement for the child or to seek to enter into a subsidized guardianship agreement with a proposed guardian of the child and to petition the juvenile court or tribal court for the appointment of that individual as the guardian of the child.

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. 48.43 (7) of the statutes is renumbered 48.43 (7) (a) and amended to read:

48.43 (7) (a) If the agency specified under sub. (1) (a) is the department and, the department shall seek a permanent adoptive placement for the child or seek to enter into a subsidized guardianship agreement under s. 48.623 (2) with a proposed guardian of the child and petition the court for the appointment of that individual as the guardian of the child under s. 48.977 (2).

(b) If a permanent adoptive or subsidized guardianship placement is not in progress 2 years after entry of the order, the department may petition the court to transfer legal custody of the child to a county department, except that the department may not petition the court to transfer to a county department legal custody of a child who was initially taken into custody under s. 48.195 (1). The court shall transfer the child's legal custody to the county department specified in the petition. The department shall remain the child's guardian.

SECTION 2. 48.48 (3m) (d) of the statutes is amended to read:

48.48 (3m) (d) The tribal court has signed a written contract that addresses federal and state law and that provides that the tribal court will accept the return of the legal custody or the legal custody and guardianship of the child if the department petitions the tribal court to do so under s. 48.485 (2).

SECTION 3. 48.485 of the statutes is renumbered 48.485 (1) and amended to read:

48.485 (1) If the department accepts guardianship or legal custody or both from a tribal court under s. 48.48 (3m), the department shall seek a permanent adoptive placement for the child or seek to enter into a subsidized guardianship agreement under s. 48.623 (2) with a proposed guardian of the child and petition the court for

the appointment of that individual as the guardian of the child under s. 48.977 (2) or under a substantially similar tribal law.

(2) If a permanent adoptive or subsidized guardianship placement is not in progress within 2 years after entry of the termination of parental rights order by the tribal court, the department may petition the tribal court to transfer legal custody or guardianship of the Indian child back to the Indian tribe, except that the department may not petition the tribal court to transfer back to an Indian tribe legal custody or guardianship of an Indian child who was initially taken into custody under s. 48.195 (1).

SECTION 4. 48.623 (1) (intro.) of the statutes is amended to read:

48.623 (1) ELIGIBILITY. (intro.) A county department or, ~~in a county having a population of 750,000 or more~~ as provided in sub. (3) (a), the department shall provide monthly subsidized guardianship payments in the amount specified in sub. (3) (b) to a guardian of a child under s. 48.977 (2) or under a substantially similar tribal law if the county department or department determines that the conditions specified in pars. (a) to (d) have been met. A county department or, ~~in a county having a population of 750,000 or more~~ as provided in sub. (3) (a), the department shall also provide those payments for the care of a sibling of such a child, regardless of whether the sibling meets the conditions specified in par. (a), if the county department or department and the guardian agree on the appropriateness of placing the sibling in the home of the guardian. A guardian of a child under s. 48.977 (2) or under a substantially similar tribal law is eligible for monthly subsidized guardianship payments under this subsection if the county department or, ~~in a county having a population of 750,000 or more~~, the department, whichever will be providing those payments, determines that all of the following apply:

SECTION 5. 48.623 (3) (a) of the statutes is amended to read:

48.623 (3) (a) Except as provided in this paragraph, the county department shall provide the monthly payments under sub. (1) or (6). The county department shall provide those payments from moneys received under s. 48.48 (8p) or 48.569 (1) (d). In a county having a population of 750,000 or more or in the circumstances specified in s. 48.43 (7) (a) or 48.485 (1), the department shall provide the monthly payments under sub. (1) or (6). The department shall provide those payments from the appropriations under s. 20.437 (1) (dd) and (pd). In any other county, the county department shall provide those payments from moneys received under s. 48.569 (1) (d).

****NOTE: This is reconciled s. 48.623 (3) (a). This SECTION has been affected by drafts with the following LRB numbers: LRB-0015/5 and LRB-0067/4

SECTION 6. 48.623 (3) (b) of the statutes is amended to read:

48.623 (3) (b) The county department or, as provided in par. (a), the department shall determine the amount of a monthly payment under sub. (1) or (6) for the care of a child shall equal based on the circumstances of the guardian and the needs of the child. That amount may not exceed the amount received under s. 48.62 (4) by the guardian of the child for the month immediately preceding the month in which the guardianship order was granted or a lesser amount if agreed to by the guardian and specified in the agreement under sub. (2) (b). A guardian or an interim caretaker who receives a monthly payment under sub. (1) or (6) for the care of a child is not eligible to receive a payment under s. 48.57 (3m) or (3n) or 48.62 (4) for the care of that child.

SECTION 7. 48.975 (3) (a) 1. of the statutes is amended to read:

48.975 (3) (a) 1. Except as provided in subd. 3., for support of a child who was in foster care or subsidized guardianship care immediately prior to placement for

adoption, the department shall determine the initial amount of adoption assistance for maintenance shall be equivalent to based on the circumstances of the adoptive family and the needs of the child. That amount may not exceed the amount of that ~~the child's foster care or subsidized guardianship care payment at the time that the agreement under sub. (4) (a) is signed or a lesser amount if agreed to by the proposed adoptive parents and specified in that agreement.~~

SECTION 8. 48.975 (3) (a) 2. of the statutes is amended to read:

48.975 (3) (a) 2. Except as provided in subd. 3., for support of a child not in foster care or subsidized guardianship care immediately prior to placement for adoption, the department shall determine the initial amount of adoption assistance for maintenance shall be equivalent to based on the circumstances of the adoptive family and the needs of the child. That amount may not exceed the uniform foster care rate applicable to the child that is in effect at the time that the agreement under sub. (4) (a) is signed or a lesser amount if agreed to by the proposed adoptive parents and specified in that agreement.

SECTION 9. 48.975 (4) (a) of the statutes is amended to read:

48.975 (4) (a) Except in extenuating circumstances, as defined by the department by rule promulgated under sub. (5) (a), a written agreement to provide adoption assistance shall be made prior to adoption. An agreement to provide adoption assistance may be made only for a child who, at the time of placement for adoption, is in the guardianship of the department or ~~other agency~~ a county department authorized to place children for adoption, is ~~is~~ in the guardianship of an American Indian tribal agency in this state, ~~or is~~ is in a subsidized guardianship under s. 48.623, or is otherwise eligible for adoption assistance payments under [42 USC 673 \(a\) \(2\) \(A\)](#).

SECTION 10. 48.977 (3r) of the statutes is amended to read:

48.977 (3r) SUBSIDIZED GUARDIANSHIP. Subsidized guardianship payments under s. 48.623 (1) may not be made to a guardian of a child unless a subsidized guardianship agreement under s. 48.623 (2) is entered into before the guardianship order is granted and the court either terminates any order specified in sub. (2) (a) or dismisses any proceeding in which the child has been adjudicated in need of protection or services as specified in sub. (2) (a). If a child's permanency plan calls for placement of the child in the home of a guardian and the provision of monthly subsidized guardianship payments to the guardian, the petitioner under sub. (4) (a) shall include in the petition under sub. (4) (b) a statement of the determinations made under s. 48.623 (1) and a request for the court to include in the court's findings under sub. (4) (d) a finding confirming those determinations. If the court confirms those determinations, appoints a guardian for the child under sub. (2), and either terminates any order specified in sub. (2) (a) or dismisses any proceeding in which the child is adjudicated to be in need of protection or services as specified in sub. (2) (a), the county department or, ~~in a county having a population of 750,000 or more,~~ as provided in s. 48.623 (3) (a), the department shall provide monthly subsidized guardianship payments to the guardian under s. 48.623 (1).

SECTION 9306. Initial applicability; Children and Families.

(1) SUBSIDIZED GUARDIANSHIP AND ADOPTION ASSISTANCE AGREEMENTS. The treatment of sections 48.623 (1) (intro.) and (3) (b), 48.975 (3) (a) 1. and 2. and (4) (a), and 48.977 (3r) of the statutes first applies to a subsidized guardianship agreement or an adoption assistance agreement entered into or amended on the effective date of this subsection.

(END)