

State of Wisconsin
Department of Children and Families
Tribal Subsidized Guardianship
Clearinghouse Rule 24-007
Chapter DCF 55

The Wisconsin Department of Children and Families proposes an order to repeal s. DCF 55.06(2)(f)2.(Note); to renumber s. DCF 55.13(1); renumber and amend ss. DCF 55.02(1) and (7); to amend ss. DCF 55.01(1), (2), and (9)(a) to (c), 55.03(1)(intro.), (a)1.a. and b., (b)1. and 3., (c) and (d), 55.04(1)(intro.), (b), (c), (d), and (2), 55.05(title), (1)(intro.), (d), and (2), 55.06(1) and (2)(f)2. and (m), 55.08(2)(a)1., 55.10(3)(b) and (4)(a)3.c., 55.12(1)(intro.), (a), (b), and (d), 55.125(1)(c), (d), (3), (4)(a), (b), and (5), and 55.13(2)(intro.), (b), (d), (e)1., (3)(a) to (c) and (Note); and to create ss. DCF 55.01(3), 55.02(1g), (3m), (5s), (14), and (15), 55.125(1)(e), and 55.13(1g), relating to tribal subsidized guardianship.

Analysis Prepared by the Department of Children and Families

Statutory authority: Section 227.11 (2) (a), Stats.

Statutes interpreted: Section 48.623, Stats., as affected by 2023 Wisconsin Act 19

Related statutes and rules: Sections 48.62 and 48.685, Stats., and ss. DCF 12 and 56

Explanation of Agency Authority

The department administers s. 48.623, Stats., as affected by 2023 Wisconsin Act 19, relating to subsidized guardianships.

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

Summary of the Rule

The proposed rules bring the subsidized guardianship rules into conformance with s. 48.623, Stats., as affected by 2023 Wisconsin Act 19, which allows federally-recognized tribes located in Wisconsin to determine eligibility for and make payments under the subsidized guardianship program. Each tribe will have the option to enter into an agreement with the department to make payments for subsidized guardianships ordered by the tribal court located in Wisconsin or to enter into, or continue to enter into, an agreement with a county to make the payments. Counties and tribes receive state reimbursement for subsidized guardianship payments.

Tribal Administration

Changes to bring the rule into conformance with tribal administration of the subsidized guardianship program include the following:

- Adding a description of tribal administration of the subsidized guardianship program in s. DCF 55.01 that is cross-referenced throughout the rule to clarify applicability.
- Adding “a tribal child welfare agency” to the definition of “agency.”

- Adding a definition of “adoption” that includes customary adoption, where applicable, according to tribal law or custom.
- Replacing the term “agency” with “a county department or the department” in provisions required by the Wisconsin Indian Child Welfare Act under s. 48.028, Stats., which does not apply to tribes.
- Exempting tribal child welfare agencies from the requirement that agencies use the department’s form when explaining a child’s permanency options.
- Separating requirements applicable to county departments and the department from those applicable to tribal child welfare agencies when referring to a permanency plan since not all tribes use permanency plans.
- Removing the term “electronic” when referring to a child’s case record since tribes do not use the department’s automated child welfare system.
- Allowing a background investigation of an interim caretaker and prospective successor guardian that is conducted by a tribal child welfare agency to be conducted under s. 48.685, Stats., and s. DCF 55.13 or by meeting the background check requirements for foster parent licensing under 42 USC 671 (a) (20).

References to Tribal Law, Tribal Court Orders, and Related Issues

The rules also make clarifications and corrections to references to equivalent tribal law, tribal court orders, and related issues including the following:

- Changing “substantially similar Wisconsin tribal law” to “substantially similar law of a tribe” and defining “tribe” as a federally-recognized Indian tribe located in Wisconsin.
- Changing “a substantially similar Wisconsin tribal court order” to “a substantially similar tribal court order” since tribe is defined as an Indian tribe located in Wisconsin.
- Changing “under s. 48.977 (2), Stats., or under a substantially similar Wisconsin tribal law” to “under s. 48.977 (2), Stats., or under a tribal court order that is substantially similar to an order under s. 48.977, Stats.”
- Adding “or a substantially similar tribal law or policy of a tribe, a bureau of Indian education-operated school, or a tribally controlled school” to a reference to an individualized education program under s. 115.787, Stats.
- Adding “jurisdiction” and “United States jurisdiction” to background check provisions that refer to counties and states and adding contact information for the Wisconsin Tribal Court Judges Association to a note on contacting county clerks of court.

Other

The rules also rename the defined term “like-kin” as “fictive kin” to avoid confusion with the term “like-kin” used in other child welfare contexts with a different meaning.

In addition, the rules repeal a requirement that a prospective guardian complete a form on any private health insurance coverage before guardianship is established because the information in the form has not been used.

Summary of Related Federal Law

There is no federal law on tribal administration of the subsidized guardianship program. General provisions on the subsidized guardianship program are in 42 USC 671 (a) (28) and 42 USC 673 (d).

Summary of Data and Analytical Methodologies

Not applicable

Comparison to Adjacent States

Not applicable

Effect on Small Businesses

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

Analysis Used to Determine Effect on Small Businesses

The rule affects tribal child welfare agencies located in Wisconsin, children under the jurisdiction of a tribal court located in Wisconsin, subsidized guardians and proposed subsidized guardians of children under the jurisdiction of a tribal court located in Wisconsin, and county human and social service departments.

Agency Contact

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Rule Text

SECTION 1. DCF 55.01 (1) and (2) are amended to read:

DCF 55.01 (1) ~~Guardianships~~ A guardianship under s. 48.977, Stats.

(2) ~~Guardianships~~ A guardianship under a ~~Wisconsin~~ tribal ~~law~~ court order that is substantially similar to an order under 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 the governing body of a tribe and a county or, 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), Stats., between a the governing body of a tribe and the department.

SECTION 2. DCF 55.01 (3) is created to read:

DCF 55.01 (3) A guardianship under a tribal court order that is substantially similar to an order under s. 48.977, Stats., and as provided for in an agreement that is made between the governing body of a tribe and the department and that allows the tribe to administer subsidized guardianships.

SECTION 3. DCF 55.02 (1) is renumbered DCF 55.02 (1r) and amended to read:

DCF 55.02 (1r) “Agency” means a county department of social services under s. 46.22, Stats.; a county department of human services under s. 46.23, Stats.; a tribal child welfare agency; or, 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), Stats., the department.

SECTION 4. DCF 55.02 (1g), (3m), and (5s) are created to read:

DCF 55.02 (1g) “Adoption” includes customary adoption, where applicable, according to tribal law or custom.

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

(5s) “Indian tribe” has the meaning given in s. 48.02 (8r), Stats.

SECTION 5. DCF 55.02 (7) is renumbered DCF 55.02 (5g) and DCF 55.02 (5g) (intro.), as renumbered, is amended to read:

DCF 55.02 (5g) (intro.) “~~Like-kin~~ Fictive kin” means a person who has a significant emotional relationship with the child or the child’s family and to whom any of the following applies:

SECTION 6. DCF 55.02 (9) (a) to (c) is amended to read:

DCF 55.02 (9) (a) Sections 48.205 (1), 48.207, 48.208, 48.209, 48.21, 48.32, 48.345, 48.357, 48.363, or 48.365, Stats., or a substantially similar ~~Wisconsin~~ tribal law.

(b) Sections 938.205 (1), 938.207, 938.208, 938.209, 938.21, 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.

SECTION 7. DCF 55.02 (14) and (15) are created to read:

DCF 55.02 (14) “Tribe” means an Indian tribe located in Wisconsin.

(15) “Tribal private guardianship order” means a guardianship order of a tribal court that is granted under a tribal law that is substantially similar to s. 48.9795, Stats.

SECTION 8. DCF 55.03 (1) (intro.), (a) 1. a. and b., (b) 1. and 3., (c), and (d) are amended to read:

DCF 55.03 (1) CHILD AND GUARDIAN. (intro.) 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 court order that is substantially similar to an order under s. 48.977, Stats., and an agreement specified in s. DCF 55.01 (2) or (3), if the agency determines that all of the following apply:

(a) 1. a. 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 the child's home would be contrary to the welfare of the child.

(b) 1. The guardian is a relative of the child or ~~like-kin~~ fictive kin to 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 nonclient residents in the guardian's home have met the background check requirements specified in s. 48.685, Stats., and ss. DCF 56.05 (1) (f) and 56.055, or, for a background investigation conducted by a tribal child welfare agency, all adults residing in the guardian's home have met either the requirements specified in s. 48.685, Stats., or the background check requirements for foster parent licensing under 42 USC 671 (a) (20).

(c) An order under s. 48.345, 48.357, 48.363, 48.365, 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) (a), Stats., or a substantially similar proceeding under ~~Wisconsin~~ tribal law has been dismissed.

(d) If ~~the agency~~ a county department or the department 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.

SECTION 9. DCF 55.04 (1) (intro.), (b), (c), (d), and (2) are amended to read:

DCF 55.04 (1) (intro.) An agency shall explain to each foster parent who is a relative of or ~~like kin~~ fictive kin to a foster child for whom the foster parent is providing care and maintenance the foster parent's eligibility for services and the expectations involved with the following permanency options for the child:

(b) Guardianship under s. 48.977, Stats., or under a tribal court order that is substantially similar to an order under s. 48.977, Stats., with subsidized guardianship payments under s. 48.623, Stats., and this chapter.

(c) Guardianship under s. 48.977, Stats., or under a tribal court order that is substantially similar to an order under s. 48.977, Stats., with long-term kinship care payments under s. 48.57 (3n), Stats., and ch. DCF 58.

(d) Guardianship under s. 48.9795, Stats., or under a tribal private guardianship order.

(2) ~~An agency~~ A county department or the department shall use a form prescribed by the department to explain the permanency options under sub. (1), and the relative or ~~like kin~~ fictive

kin foster parent shall sign the form acknowledging that the options have been explained to the foster parent following the explanation. The ~~agency~~ county department or department 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~~ fictive kin foster parent decides to pursue subsidized guardianship for the child.

SECTION 10. DCF 55.05 (title), (1) (intro.) and (d), and (2) are amended to read:

DCF 55.05 (title) Eligibility determination and documentation ~~in child's permanency plan.~~

(1) (intro.) For a child whose permanency ~~plan~~ goal 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:

(d) If the child is an Indian child, a county department or the department includes 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.

(2) ~~The agency~~ A county department or the department 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. A tribal child welfare agency shall submit the completed form under sub. (1) and the court report to the court that will be issuing the guardianship order.

SECTION 11. DCF 55.06 (1) and (2) (f) 2. are amended to read:

DCF 55.06 (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~~ court order that is substantially similar to an order under s. 48.977, Stats., and an agreement specified in s. DCF 55.01 (2) or (3), and before providing subsidized guardianship payments to the guardian. The agency shall provide the prospective guardian with a copy of the signed agreement.

~~(2) (f) 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.~~

SECTION 12. DCF 55.06 (2) (f) 2. (Note) is repealed.

SECTION 13. DCF 55.06 (2) (m) is amended to read:

DCF 55.06 (2) (m) That the guardian may name a prospective successor guardian of the child to assume the duty and authority of guardianship upon the death or incapacity of the guardian. The prospective successor guardian would be eligible for monthly subsidized guardianship payments only if the conditions specified in s. 48.623 (6) (bm), Stats., and s. DCF 55.125 are met and the court appoints the successor guardian to assume the duty and authority of guardianship under s. 48.977 (5m), Stats., or under a ~~substantially similar Wisconsin tribal law~~ court order that is substantially similar to an order under s. 48.977, Stats., and an agreement specified in s. DCF 55.01 (2) or (3).

SECTION 14. DCF 55.08 (2) (a) 1. is amended to read:

DCF 55.08 (2) (a) 1. The guardianship was established under s. 48.977, Stats., or under a ~~substantially similar Wisconsin tribal law~~ court order that is substantially similar to an order under s. 48.977, Stats., and an agreement specified in s. DCF 55.01 (2) or (3).

SECTION 15. DCF 55.10 (3) (b) and (4) (a) 3. c. are amended to read:

DCF 55.10 (3) (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) (a) 3. c. There is an individualized education program under s. 115.787, Stats., or a substantially similar tribal law or policy, a bureau of Indian education-operated school, or a tribally controlled school in effect for the child, and the guardian or interim caretaker submits a copy to the agency.

SECTION 16. DCF 55.12 (1) (intro.), (a), (b), and (d) are amended to read:

DCF 55.12 (1) ELIGIBILITY. (intro.) Upon the death or incapacity of a guardian or upon the termination of a guardianship under s. 48.977 (7), Stats., or under a ~~substantially similar Wisconsin tribal law~~ court order that is substantially similar to an order under s. 48.977, Stats., and an agreement specified in s. DCF 55.01 (2) or (3), 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. For a background investigation conducted by a tribal child welfare agency, the investigation may be conducted under s. 48.685, Stats., and s. DCF 55.13 or by meeting the background check requirements for foster parent licensing under 42 USC 671 (a) (20).

(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, a county department or the department determines the best interests of the Indian child ~~shall be determined~~ in accordance with s. 48.01 (2), Stats.

(d) ~~If the agency~~ a county department or the department knows or has reason to know that the child is an Indian child, the ~~agency~~ county department or department 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~~ the county department or department finds good cause, as described in s. 48.028 (7) (e), Stats., for departing from that order.

SECTION 17. DCF 55.125 (1) (c) and (d) amended to read:

DCF 55.125 (1) (c) The agency determines that the prospective successor guardian is eligible to be licensed as a foster parent under ch. DCF 56 and the prospective guardian and nonclient residents in the prospective guardian's home meet the requirements of the background check in s. 48.685, Stats., and s. DCF 55.13. For a background investigation conducted by a tribal child welfare agency, the investigation may be conducted under s. 48.685, Stats., and s. DCF 55.13 or by meeting the background check requirements for foster parent licensing under 42 USC 671 (a) (20).

(d) The agency determines that placement of the child with the prospective successor guardian is in the best interests of the child. In the case of an Indian child, a county department or the department determines the best interests of the Indian child ~~shall be determined~~ in accordance with s. 48.01 (2), Stats.

SECTION 18. DCF 55.125 (1) (e) is created to read:

DCF 55.125 (1) (e) If a county department or the department knows or has reason to know that the child is an Indian child, the county department or department provides notice of the Indian child's placement in the home of the prospective successor guardian to the Indian child's parent, Indian custodian, and tribe and determines that the home of the prospective successor guardian complies with the order of placement preference under s. 48.028 (7) (b), Stats., or, if applicable, s. 48.028 (7) (c), Stats., unless the county department or department finds good cause, as described in s. 48.028 (7) (e), Stats., for departing from that order.

SECTION 19. DCF 55.125 (3), (4) (a) and (b), and (5) are amended to read:

DCF 55.125 (3) SUBSIDIZED GUARDIANSHIP AGREEMENT. The agency shall enter into a written, signed subsidized guardianship agreement with the prospective successor guardian under s. DCF 55.06 if the agency determines that the prospective successor guardian is eligible under sub. (1). The agency shall enter into the subsidized guardianship agreement with the prospective successor guardian before guardianship is established under s. 48.977 (5m), Stats., or under a ~~substantially similar Wisconsin tribal law~~ court order that is substantially similar to an order under s. 48.977, Stats., and an agreement specified in s. DCF 55.01 (2) or (3).

(4) (a) A court appoints the successor guardian to assume the duty and authority of guardianship under s. 48.977 (5m), Stats., or under a ~~substantially similar Wisconsin tribal law~~

court order that is substantially similar to an order under s. 48.977, Stats., and an agreement specified in s. DCF 55.01 (2) or (3).

(b) Any order under s. 48.345, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363, or 938.365, Stats., or a substantially similar 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., or under a substantially similar tribal law has been dismissed, as provided in s. 48.977 (3r) (b), Stats., or under a substantially similar ~~Wisconsin~~ tribal law or a substantially similar tribal court order and an agreement specified in s. DCF 55.01 (2) or (3).

(5) MONTHLY PAYMENTS. An agency shall provide monthly subsidized guardianship payments in an amount determined under s. DCF 55.07 or 55.08 to a guardian appointed under s. 48.977 (5m), Stats., or under a ~~substantially similar Wisconsin tribal law~~ court order that is substantially similar to an order under s. 48.977, Stats., and an agreement specified in s. DCF 55.01 (2) or (3).

SECTION 20. DCF 55.13 (1) is renumbered DCF 55.13 (1r).

SECTION 21. DCF 55.13 (1g) is created to read:

DCF 55.13 (1g) TRIBAL AGENCY. A background investigation under s. DCF 55.12 (1) (a) or 55.125 (1) (c) that is conducted by a tribal child welfare agency may be conducted under s. 48.685, Stats., and this section or by meeting the background check requirements for foster parent licensing under 42 USC 671 (a) (20).

SECTION 22. DCF 55.13 (2) (intro.), (b), (d) and (e) 1. and (3) (a) to (c) and (Note) are amended to read:

DCF 55.13 (2) (intro.) After the agency receives the information under sub. ~~(4)~~ (1r) and before the agency provides subsidized guardianship payments to an interim caretaker or enters into a subsidized guardianship agreement with a prospective successor guardian, the agency shall do all of the following:

(b) The agency shall submit the fingerprints of the interim caretaker or prospective successor guardian under sub. ~~(4)~~ (1r) (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.

(d) If the agency is informed that a nonclient resident in the interim caretaker's or prospective successor guardian's home resided outside the state of Wisconsin at any time during the 5-year period before the search, the agency shall obtain a criminal history records search from any state or United States jurisdiction in which the person is or was a resident.

(e) 1. If the agency is informed that the interim caretaker or prospective successor guardian or a nonclient resident in the interim caretaker's or prospective successor guardian'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 or jurisdiction in Wisconsin in which the person is a resident or was a resident during those 5 years for information on any child abuse or neglect report or finding.

(3) (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) (b)~~, 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 or United States jurisdiction, 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.

Note: A list of Wisconsin county clerks of court is available at <http://www.wicourts.gov/contact/docs/clerks.pdf>. Contact information for the Wisconsin Tribal Court Judges Association is available at <http://www.wtja.org/wisconsin-tribal-courts.php>. 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 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.

SECTION 23. EFFECTIVE DATE. These rules shall take effect the first day of the month following publication in the Administrative Register, as provided in s. 227.22 (2) (intro.), Stats.