



## Legislative Fiscal Bureau

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May 21, 2001

Joint Committee on Finance

Paper #1050

### *Temporary Assistance for Needy Families (TANF)*

## **Kinship Care Funding (DHFS – Children and Families)**

[LFB 2001-03 Budget Summary: Page 391, #7]

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### **CURRENT LAW**

*Creation.* The state's kinship care program was created in 1995 Wisconsin Act 289, which also created the Wisconsin Works program to replace the former aid to families with dependent children (AFDC) program. Under AFDC, non-legally responsible relatives who provided care for children were eligible for an AFDC payment based on the income of the child.

*Eligibility and Benefits.* The Department of Health and Family Services (DHFS) reimburses counties (other than Milwaukee County) for kinship care benefit payments counties make to eligible relatives. In Milwaukee County, DHFS makes these payments directly to eligible relatives. Kinship care relatives who provide care and maintenance for a child may receive a kinship care payment of \$215 per month if:

- The county or DHFS determine that there is a need for the child to be placed with the kinship care relatives and that the placement with the relative is in the best interests of the child;
- The county or DHFS determines that the child meets one or more of the criteria for children in need of protection or services or juveniles in need of protection or services, or that the child would be at risk of meeting one or more of these criteria;
- The county or DHFS conducts a background investigation of the kinship care relative, any employee and prospective employee of the kinship care relative who has or would have regular contact with the child for whom kinship care payments would be made and any other adult resident in the kinship care relative's home to determine if the kinship care relative,

employee, prospective employee or adult resident has any arrests or convictions that could adversely affect the child or the kinship care relative's ability to care for the child;

- The kinship care relative cooperates with the county or DHFS in the application process, including applying for other forms of assistance for which the kinship care relative may be eligible; and
- The child for whom the kinship care relative is providing care and maintenance is not receiving supplemental security income (SSI) benefits.

At least every 12 months, the county or DHFS reviews the case of a relative receiving kinship care to determine if the conditions under which the case was initially determined eligible still exist. If those conditions no longer exist, the county or DHFS discontinues making the kinship care payments.

Eligibility for kinship care is different from eligibility for the former AFDC payment to a non-legally responsible relative in two ways. First, there is no financial eligibility requirement for kinship care, other than prohibiting payment on behalf of children who receive SSI payments. Second, the relative and the child placed in the relative's home must meet certain nonfinancial criteria, as described above, in order to be eligible for a kinship care payment. Under AFDC, there were no eligibility requirements other than the financial criteria and the requirement that the child actually reside in the relative's home.

*Funding.* Kinship care benefit payments are funded entirely with federal temporary assistance to needy families (TANF) block grant funds transferred to DHFS from the Department of Workforce Development (DWD). In 2000-01, \$24,719,500 PR was budgeted in DHFS to fund kinship care benefit payments. This amount includes a supplement of \$197,800 PR approved by the Joint Committee on Finance in March, 2001, under s. 16.515 of the statutes. As of February, 2001, kinship care payments were made on behalf of approximately 8,600 children statewide.

## **GOVERNOR**

Delete \$1,420,400 PR annually to reflect a reestimate of the amount of funding that will be required to fully fund kinship care payments in the 2001-03 biennium. The bill would provide a total of \$23,101,300 PR for kinship care benefits in each year of the 2001-03 biennium.

## **DISCUSSION POINTS**

### **Funding**

1. For the period between January, 2000, through February, 2001 (the last month for which caseload data are available), DHFS and counties made kinship care payments on behalf of an average of 8,780 children monthly, including 5,534 children in Milwaukee County and 3,245

children in other counties. The data do not indicate a trend in monthly caseload changes. Consequently, the total amount of funding required to support kinship care benefit payments in the 2001-03 biennium can be estimated by applying average caseloads during this period, adjusting this number to reflect known waiting lists, and applying the \$215 monthly payment.

2. By using this method, it is estimated that the costs for kinship care benefit payments in the 2001-03 biennium will total \$23,198,000 PR annually, or \$96,700 more in each year than the amounts that would be provided in the bill. Consequently, if the Committee wished to provide an amount of funding for benefits payments that reflect the statewide estimated costs of the program, it could modify the bill by providing an additional \$96,700 PR in each year to support kinship care benefits in the 2001-03 biennium.

3. However, the program was not created as a statewide benefit program, nor is it administered in this manner.

DHFS allocates kinship care benefits funding to counties on a calendar year basis. These allocations were originally determined by a formula that factored in county and statewide caseload and total funding budgeted for the program. First, DHFS used each county's average monthly caseload in the most recent full calendar year for which there was data, determined the county's percentage of the total kinship care statewide caseload (in non-Milwaukee counties) and allocated to each county its respective percentage of the total appropriation. Funding for Milwaukee County's payments is budgeted separately within the total kinship care benefits appropriation.

Calendar year 2001 kinship care benefit allocations to counties were reduced 4% from calendar year 2000 levels, because the overall kinship care benefit funding level was reduced by this percent. DHFS chose to adjust all county allocations equally, rather than use the formula to allocate funds in calendar year 2001, which would have reduced some counties' allocations by amounts greater than 4%.

4. DHFS has established a process (referred to as "deobligate/reobligate") under which counties with projected shortfalls in their kinship care funding may receive additional funding from the state at the end of the calendar year. DHFS asks each county whether the county will have surplus funds for the calendar year or if the county is in need of additional funds to make payments for eligible persons who are on a waiting list. DHFS will then reallocate the excess kinship care funds from counties with projected surpluses to those counties in need of funds. DHFS currently conducts this process within DHFS administrative regions. The additional cases that receive monthly payments are then considered part of the county's actual caseload figure. There is no guarantee that counties will receive extra funds at the end of the year, but this process has, to some extent, allowed DHFS to adjust funding allocations based on need.

5. There are two points to consider regarding the original allocation formula. First, waitlisted cases are not included in the actual caseload from the previous year. Actual caseload indicates the number of children who have a kinship care relative receiving monthly payments for them. Second, if, after the deobligate/reobligate process, there are still cases on the waiting list, these cases are not included in the actual caseload figure.

6. As a matter of policy, DHFS has directed counties and tribes not to place court-ordered kinship care cases on waiting lists. Counties must accommodate these cases and thus, reserve some funding to ensure that these court-ordered cases receive payments. However, the statutes do not make a distinction between court-ordered and non-court-ordered cases.

7. In summary, the program is not structured or administered as a statewide benefits program with a single budget. For this reason, although total funding provided for the program may be sufficient on a statewide basis to support the kinship care program, individual counties and tribes may have surpluses and shortfalls in their kinship care budgets when their actual caseloads do not correspond with the initial allocations they receive. DHFS can make interim adjustments to counties' allocations through the "deobligate/reobligate" process, which can reduce, to some extent, the problem.

By continuing to budget kinship care benefits costs as if there was a single, statewide budget for the program, some counties and tribes will continue to place eligible families on waiting lists, either because: (a) differences exist between initial allocations of funds among counties and the amount of funding each county needs to support actual caseloads in a calendar year; (b) counties reserve funding for court-ordered cases; or (c) the total funding budgeted for the program (based on the current estimate), may be insufficient to support statewide actual program costs.

### **Entitlement and the Use of Waiting Lists**

8. The level of funding the Committee chooses to provide for kinship care benefit payments should be based on its determination of whether the kinship care program is, or should be, an entitlement program. If the Committee determines that the program is, or should be, an entitlement program, state or counties must make payments to all eligible families. If the Committee determines that the program is an entitlement, then it must determine whether the state or whether counties are financially responsible for the costs of kinship care benefits. Alternatively, if the Committee determines that the program is not, nor should be, an entitlement program, then the Committee may budget any funding amount for the program that it determines appropriate, weighing the needs of eligible families with other uses of TANF and county funds.

9. Under s. 48.57(3m)(am) of the statutes, DHFS and counties "shall make payments in the amount of \$215 per month to a kinship care relative who is providing care and maintenance for a child..." if the relative and child meet the kinship care eligibility requirements. However, because the provision refers to a sum-certain appropriation, DHFS staff interpret this provision to imply that the total payment amounts are limited to the amounts the Legislature budgets for the program.

10. This interpretation suggests that the Legislature can and should budget any amount for the program that it believes is appropriate to meet the program's objectives. The Committee has used this approach in past biennial budget deliberations to estimate the statewide caseload and budget an amount that would fully support payments based on this caseload. However, as indicated in the first section of this paper, this method is likely to result in some counties maintaining waiting lists for benefits payments. On the other hand, this method of budgeting for the program may effectively control state kinship care benefits costs because DHFS and counties may only expend

their allocated amounts.

11. Under this interpretation, kinship care can be viewed in the same manner as other county-administered human services programs, such as the community options program and the family support program, under which counties may place eligible individuals on waiting lists for services if funding is insufficient to meet program demand.

12. Alternatively, it could be argued that the kinship care program is, or should be, an entitlement program. From an equity standpoint, it can be argued that all families that meet the program's eligibility criteria should receive kinship care benefits and new applicants for benefits should not be disadvantaged because a county or DHFS has insufficient funding to support benefit payments. Relatives placed on waiting lists have been determined eligible for kinship care because the county or DHFS have already determined that it would in the best interests of that child to be in the relative's home and that the child is at-risk of being in need of protection or services.

However, since there is no legal obligation for the relative to provide care and maintenance for the child (unless a court order places the child in the relative's home), if the relative is placed on a waiting list, it is not clear what would happen to the child. The relative could refuse to provide care and maintenance to the child, requiring the child to return home or go elsewhere. Alternatively, the relative could provide care and maintenance for the child without the kinship care payment.

13. Under proposed administrative rules submitted to the Legislative Rules Clearinghouse on April 9, 1999, agencies would have been permitted to place an approved applicant for kinship care on a waiting list if the agency had expended its kinship care benefit allocation. However, a Legislative Council staff review of the proposed rule questioned the statutory authority for DHFS to propose a rule that would authorize waiting lists. Specifically, the Legislative Council staff review states: "the statutes are ambiguous as to whether kinship care or long-term kinship care are entitlement programs and waiting lists are not allowed or whether they are not entitlements and waiting lists are allowed. The issue of whether a county department must make a payment when the state appropriation to reimburse counties has been depleted has not been resolved." These rules are still under review in DHFS.

14. The basis for the Legislative Council staff statement regarding authority to establish waiting lists is based on the Finance Committee's action to maintain current law when this issue was discussed during the Committee's 1997-99 biennial budget deliberations. At the time, the Committee considered that the kinship care statutes were ambiguous regarding the issue of entitlement. Two separate alternatives were discussed, one that would have clarified that kinship care was an entitlement, the other would have clarified that kinship care was not an entitlement. Neither alternative was adopted.

15. The Committee had a similar discussion during the 1999-01 biennial budget deliberations. At that time, the Committee discussed four alternatives, any of which would have clarified the issue of entitlement. The Committee approved providing \$500,000 PR in 1999-00 for a supplemental kinship care fund budgeted in DHFS and a corresponding increase in TANF funds

budgeted in DWD. Expenditures from this fund could only be used to supplement a county's kinship care allocation or the DHFS allocation for kinship care benefits in Milwaukee County in order to prevent the need to place eligible kinship care relatives on a waiting lists if payments for kinship care benefits exceed the amount allocated. However, the Governor vetoed this provision. Consequently, the statutes remain ambiguous about the issue of entitlement.

16. Without further clarification by the Legislature, it is anticipated that DHFS and counties will continue to administer the kinship care program as a non-entitlement program. If funding budgeted for the program is insufficient to support benefits, DWD and DHFS may, but are not required to, seek supplemental funding for the program. In determining whether the use of waiting lists is acceptable under the kinship care program, the Committee should consider what effect statutory language changes would have on the ability to supplement kinship care allocations in the future if waiting lists develop.

In March, 2001, under s. 16.515 of the statutes, the Committee increased funding for the program by \$197,800 in 2000-01 to eliminate waiting lists on December 1, 2000, for the kinship care program. Under s. 16.515, with the approval of the Committee, the DOA Secretary may supplement any sum certain PR appropriation that is determined insufficient because of unforeseen emergencies or insufficient to accomplish the purpose for which it was made, if it found that an emergency exists. If the statutes specify that kinship care is not an entitlement or that waiting lists are allowable, it would be more difficult to argue that development of kinship care waiting lists constitutes an emergency and ground for supplementation under s. 16.515.

17. If the Committee wants to ensure that kinship care payments are provided to all eligible kinship care relatives, the Committee could delete current references to the sum certain appropriation to reflect that DHFS' and counties' liability for kinship care payments would not be limited to the amounts appropriated by the Legislature. The practical effect of such a change would require that if demand for kinship care exceeds the amounts appropriated by the Legislature, the county would be required to fund any additional need unless the Legislature approves additional funding to address waiting lists in those counties. Since DHFS is responsible for making kinship care payments in Milwaukee County, if additional need developed in Milwaukee County, DHFS would be required to seek additional expenditure authority from the Legislature. In this way, the kinship care program would be considered in the same manner as the medical assistance (MA) program, in which benefits funding is budgeted in a sum certain appropriation. If projected MA benefits costs exceed budgeted amounts, DHFS must seek additional funding from the Legislature to supplement the appropriation.

18. Under other human services programs, which are clearly not entitlement program and waiting lists are authorized, such as COP and the family support program, the statutes specify that counties' liability to provide services under those programs is limited to the amount of funding available for those programs. To be consistent with other human service program that are not entitlements, a similar provision could be adopted for kinship care which would limit DHFS' and counties' liability for kinship care payments to the appropriation amounts, rather than addressing the issue of entitlement specifically.

19. Alternatively, if the Committee believes that kinship care is, or should not be, an entitlement program but wants to minimize the use of waiting lists when demand exceeds funding, the Committee could establish a reserve of funding available to supplement a DHFS or county kinship care allocation when DHFS' or a county's expenditures for kinship care exceed the amounts allocated. This reserve could be established by providing \$500,000 PR (TANF) in 2001-02. Since the funding would be provided in an annual appropriation, the Committee could specify that DHFS could carry any unused amounts of the reserve into 2002-03 to address waiting lists in that fiscal year. However, this alternative needs to be weighed against the availability of TANF funds and other TANF programs, such as child care.

20. Some may argue that if kinship care is clarified to be a non-entitlement program and waiting lists are allowed, the Committee may not have the authority to supplement the kinship care benefit appropriation. Therefore, if the Committee believes that kinship care is not, nor should be, an entitlement program, but wants to be able to provide additional funding for the program when demand exceeds available funding, current statutes could be modified to provide the Joint Committee on Finance the explicit authority to supplement the kinship care benefit appropriation if the amounts budgeted for the program are insufficient to fully fund payments to persons who are eligible for the program.

**ALTERNATIVES TO BILL**

**A. Kinship Care Benefits Funding Level**

1. Approve the Governor's recommended funding level for kinship care benefits.
2. Increase funding for kinship care benefits by \$96,700 PR annually to reflect current estimates of kinship care payments made by DHFS and the counties. Total funding for kinship care benefits would be \$23,198,000 PR annually. Increase FED TANF funding in DWD by corresponding amounts.

<b>Alternative A2: DHFS</b>	<b>PR</b>
<b>2001-03 FUNDING</b> (Change to Bill)	\$193,400

<b>Alternative A2: DWD</b>	<b>FED</b>
<b>2001-03 FUNDING</b> (Change to Bill)	\$193,400

3. In addition to Alternatives (A1) or (A2), provide \$500,000 PR in 2001-02 for a supplemental kinship care fund budgeted in DHFS and a corresponding increase in TANF funds budgeted in DWD and specify that DHFS could only make expenditures from this fund to supplement a county's kinship care allocation or the DHFS allocation for kinship care payments in Milwaukee County in order to prevent the need to place eligible kinship care relatives on a waiting list if payments for kinship care exceed the amount allocated. Further, specify that DHFS could

carry any unused funding from this provision to 2002-03. Increase FED TANF funding in DWD by corresponding amounts.

<b>Alternative A3: DHFS</b>	<b>PR</b>
<b>2001-03 FUNDING</b> (Change to Bill)	\$500,000

<b>Alternative A3: DWD</b>	<b>FED</b>
<b>2001-03 FUNDING</b> (Change to Bill)	\$500,000

## **B. Entitlement**

1. *No Entitlement.* Specify that, despite meeting the eligibility criteria for kinship care or long-term kinship care, a kinship care relative providing care and maintenance for a child is not entitled to receive either kinship care payments or long-term kinship care payments. Specify that a county department of human services or social services *may* make kinship care or long-term kinship care payment to an eligible relative. Specify that DHFS' and counties' responsibility relating to kinship care funding is limited to the funds appropriated for this purpose. In addition, authorize DHFS and counties to establish waiting lists for families that meet the program's eligibility criteria.

2. *Authorize JFC Supplements.* Clarify that the kinship care program is a non-entitlement program and that DHFS and counties may establish waiting lists for families that meet the program's eligibility criteria. However, authorize the Joint Committee on Finance to supplement the kinship care appropriation under s. 16.515 if the amounts budgeted for the program are insufficient to fund benefits payments to eligible families.

3. *State Entitlement.* Clarify that a kinship care relative providing care and maintenance for a child and who meets the eligibility criteria for kinship care of long-term kinship care is entitled to receive either kinship care payments or long-term kinship care payments and waiting lists are not allowed. In addition, specify that the state is responsible to fully fund this program. Delete references to the current appropriations to clarify that DHFS' responsibility to support kinship care payments is not limited to the amounts appropriated by the Legislature.

4. *DHFS/County Entitlement.* Clarify that a kinship care relative providing care and maintenance for a child and who meets the eligibility criteria for kinship care of long-term kinship care is entitled to receive either kinship care payments or long-term kinship care payments and that DHFS and counties may not establish waiting lists for the program. In addition, specify that it is the county's responsibility, and in Milwaukee County, the state's responsibility, to fully fund the program, notwithstanding state and county kinship care allocations. Delete references to the current appropriation to clarify that counties' and DHFS' responsibility for kinship care payments is not limited to the amounts appropriated by the Legislature.

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