State of Wisconsin
Department of Children and Families

Subsidized Guardianship

DCF 55

The Wisconsin Department of Children and Families proposes to repeal s. DCF 55.03 (1) (b) 1. (note) and 55.10 (2) (b); to renumber and amend s. DCF 55.02 (7); to amend ss. DCF 55.02 (3) and (6), 55.03 (1) (c), 55.10 (2) (c), 55.10 (5) (d) 1., and 55.13 (title), (1), (2) (intro.), (a) to (d),(e) 1., 2., (f), (4) (intro.), and (5); to repeal and recreate s. DCF 55.02 (11); and to create ss. DCF 55.02 (7) (b), 55.06 (2) (h) 11. and (m), (3), and (3) (note), 55.10 (1) (j) and (5) (c) 4., and 55.125, relating to subsidized guardianship.

Analysis Prepared by the Department of Children and Families

Statutory authority: Section 48.623 (7) (dm), Stats., as created by 2015 Wisconsin Act 143; Section 48.623 (7) (e), Stats., as created by 2015 Wisconsin Act 129; and Section 227.11 (2) (a), Stats.
Statutes interpreted: Section 48.623, Stats.
Related statute or rule: Section 48.977, Stats.; Chapters DCF 12 and 56

Explanation of Agency Authority

Section 48.623 (7) (dm), Stats., as created by 2015 Wisconsin Act 143, directs the department to promulgate rules to establish the conditions that must be met for a person specified in s. 48.623 (1) (b) 1. c., Stats., to be eligible for subsidized guardianship payments. Section 48.623 (1) (b) 1. c., Stats., as created by 2015 Wisconsin Act 143, provides that, subject to the rules promulgated under s. 48.623 (7) (dm), Stats., a guardian may be a person who has a significant emotional relationship with the child and who, during the child's placement in out−of−home care, developed a relationship with the child that is similar to a familial relationship.

Section 48.623 (7) (e), Stats., as created by 2015 Wisconsin Act 129, directs the department to promulgate rules governing the payment of monthly subsidized guardianship payments to a successor guardian of a child.

Eligibility for subsidized guardianship under s. 48.623 (1), Stats., includes the requirement that the child has been removed from his or her home under a voluntary agreement under s. 48.63, Stats., or under a substantially similar tribal law or under a 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.

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, subject to specified conditions.

Summary of the Proposed Rule

Addition to Definition of Like-kin

Among other conditions, eligibility for subsidized guardianship payments is limited to a guardian of a child who is a relative as defined in s. 48.02 (15), Stats., or like-kin to the child. The current rule defines "like-kin" as "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.

2015 Wisconsin Act 143 provides that, subject to the rules promulgated under s. 48.623 (7) (dm), Stats., a guardian may also be a person who has a significant emotional relationship with the child or the child's family and who, during the child's placement in out−of−home care, developed a relationship with the child that is similar to a familial relationship. The rules add the following requirements to the new addition to the definition of "like-kin":

- The person is a foster parent who has had a relationship with the child for at least 2 years.
- The child is 14 years of age or older.
- The child has been in out-of-home care for 15 out of the last 22 months.
- The agency or court determines that placement with a fit and willing relative is not in the child's best interest.

Successor Guardianship

The federal *Preventing Sex Trafficking and Strengthening Families Act* provides that upon the death or incapacity of a subsidized guardian, states are required to continue monthly subsidized guardianship payments to a successor guardian if the prospective successor guardian was named in the guardian's subsidized guardianship agreement entered into before the guardian's death or incapacity and other eligibility conditions are met.

Before monthly subsidized guardianship payments can be made to a prospective successor guardian, 2015 Wisconsin Act 129 and the rule requires the agency to first determine whether the prospective successor guardian is eligible to enter into a subsidized guardianship agreement. Eligibility requirements include that the prospective successor guardian demonstrates a strong commitment to caring permanently for the child, the child has been consulted about the arrangement if the child is age 14 or over, the agency determines that the prospective guardian is eligible to be licensed as a foster parent, and the agency determines that placement of the child with the prospective successor guardian is in the best interests of the child.

If a prospective successor guardian is eligible, the agency and the prospective successor guardian shall enter into a subsidized guardianship agreement. An agency may not provide subsidized guardianship payments to the prospective successor guardian until the court appoints the person as guardian of the child under s. 48.977 (5m), Stats., or a substantially similar tribal law and an agreement under s. DCF 55.01 (2), and any order under s. 48.345, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363, or 938.365, Stats., 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) (b), Stats. Once the court appoints the person as guardian under s. 48.977 (5m), Stats., and dismisses the specified orders, the agency shall provide monthly payments.

Suspension of Payments if Parent in Home

The rules provide that a guardian is required to report to the agency if the child's parent has resided with the guardian and child for more than 60 days, unless the guardian is providing care for the child's parent and the child's parent is a minor or the child's parent is subject to an order for adult protective services or protective placement. The agency will suspend monthly payments to the guardian for the time the parent is in the home beyond 60 days unless one of these exceptions applies.

Summary of Factual Data and Analytical Methodologies

- The definition of "like-kin" for a person who has a significant emotional relationship with a child that is similar to a familial relationship and that developed during the child's placement in out-of-home care is based on data that shows children age 14 and over are less likely to be adopted than children under age 14. Adoption is the preferred permanency option for a child.
- The successor guardianship provisions specify procedures to implement state and federal statutes and Administration for Children and Families program interpretations.
- The rule allows very limited circumstances when a guardian can receive subsidized guardian payments if the child's parent is in the home for more than 60 days.

Summary of Related Federal Law

42 USC 673 (d) (3), as created by Section 207 of the *Preventing Sex Trafficking and Strengthening Families Act*, provides for continuation of subsidized guardianship payments if the guardian dies or is incapacitated, and a successor guardian was named in the agreement before the guardian's death or incapacity. Implementation of Section 207 is required as a condition of funding under Title IV-E of the Social Security Act. Section 207 was effective September 29, 2014, and Wisconsin is currently under a Program Improvement Plan due to delayed implementation.

The Administration for Children and Families (ACF) Program Instruction ACYF-CB-PI-10-11, *Fostering Connections to Success and Increasing Adoptions Act of 2008 Comprehensive Guidance*, July 9, 2010, provides that a State has discretion to define the term "relative" for the purposes of the subsidized guardianship program. The ACF will accept a Title IV-E plan or

amendment that contains a reasonable interpretation of "relative," including a plan that limits the term to biological and legal familial ties or a plan that more broadly includes tribal kin, extended family and friends, or other "fictive kin."

Comparison to Adjacent States

Minnesota. The definition of "relative" includes an individual who is an important friend with whom a child has resided or had significant contact. Minnesota has provisions on successor guardianship that are similar to the Wisconsin provisions.

Illinois. The definition of "fictive kin" is an individual who is shown to have close personal or emotional ties with the child or the child's family prior to the child's placement with the individual. Illinois has provisions on successor guardianship that are similar to the Wisconsin provisions.

Iowa. Iowa does not have a federally-funded subsidized guardianship program.

Michigan. It appears that nonrelatives may be eligible to be a legal custodian of the child and receive state-funded guardianship assistance. Michigan has successor guardianship provisions that apply to Title IV-E-funded guardianship assistance payments.

Effect on Small Businesses

The rule does not affect small businesses.

Analysis Used to Determine Effect on Small Businesses

The rule affects individuals, county departments of social services and human services, and the department.

Agency Contact Person

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Place Where Comments are to be Submitted and Deadline for Submission

Comments may be submitted to Elaine Pridgen, Office of the Secretary, Department of Children and Families, 201 E. Washington Avenue, P.O. Box 8916, Madison, WI, 53708-8916 or dcfpublichearing@wisconsin.gov. The comment deadline is October 20, 2016.

SECTION 1. DCF 55.02 (3) and (6) are amended to read:

DCF 55.02 (3) "Child" means a person less than 18 years of age, except as provided in s. DCF 55.10 (4).

(6) "Interim caretaker" means a person seeking or receiving payments under s. 48.623 (6) (am), Stats.

SECTION 1m. DCF 55.02 (7) is renumbered to DCF 55.02 (7) (intro.) and (a) and amended to read:

DCF 55.02 (7) "Like-kin" means a person who has a significant emotional relationship with the child or the child's family and and to whom any of the following applies:

(a) ~~who, prior~~ Prior to the child's placement in out-of-home care, the person had an existing relationship with the child or the child's family that is similar to a familial relationship.

SECTION 2. DCF 55.02 (7) (b) is created to read:

DCF 55.02 (7) (b) During the child's placement in out-of-home care, the person developed a relationship with the child or the child's family that is similar to a familial relationship and all of the following apply:

1. The person is a foster parent who has had a relationship with the child for at least 2 years.
2. The child is 14 years of age or older.
3. The child has been in out-of-home care for 15 out of the last 22 months.
4. The agency or court determines that placement with a fit and willing relative is not in the child's best interest.

SECTION 3. DCF 55.02 (11) is repealed and recreated to read:

DCF 55.02 (11) "Relative" has the same meaning as in s. 48.02 (15), Stats.

SECTION 4. DCF 55.03 (1) (b) 1. (note) is repealed.

SECTION 5. DCF 55.03 (1) (c) is amended to read:

DCF 55.03 (1) (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) (a), Stats., or a substantially similar proceeding under Wisconsin tribal law has been dismissed.

SECTION 6. DCF 55.06 (2) (h) 11., (2) (m), (3), and (3) (note) are created to read:

DCF 55.06 (2) (h) 11. The child's parent has resided with the guardian and child for more than 60 days, unless the guardian is providing care for the child's parent and any of the following applies:

a. The child's parent is a minor.

b. The child's parent is subject to an order for adult protective services or protective placement under s. 55.12, Stats.

Note: Section 55.12, Stats., is the statutory section on adult protective services or protective placement orders.

(m) That, in the agreement or in an amended agreement, 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 and an agreement specified in s. DCF 55.01 (2).

(3) An agency shall use a form prescribed by the department to amend a subsidized guardianship agreement with a guardian to include a prospective successor guardian.

Note: Form DCF-F-5038-E, *Amended Subsidized Guardianship Agreement to Include Successor Guardian*, 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.

SECTION 7. DCF 55.10 (1) (j) is created to read:

DCF 55.10 (1) (j) The child's parent has resided with the guardian and child for more than 60 days, unless the guardian is providing care for the child's parent and any of the following applies:

1. The child's parent is a minor.

2. The child's parent is subject to an order for adult protective services or protective placement under s. 55.12, Stats.

Note: Section 55.12, Stats., is the statutory section on adult protective services or protective placement orders.

SECTION 8. DCF 55.10 (2) (b) is repealed.

SECTION 9. DCF 55.10 (2) (c) is amended to read:

DCF 55.10 (2) (c) If the agency <u>receives notice from the guardian or otherwise</u> knows or suspects that a change listed in sub. (1) has occurred.

SECTION 10. DCF 55.10 (5) (c) 4. is created to read:

DCF 55.10 (5) (c) 4. The child's parent has been residing with the guardian and the child for more than 60 days and the child's parent is not a minor and is not subject to an order for protective services or protective placement under s. 55.12, Stats.

SECTION 11. DCF 55.10 (5) (d) 1. is amended to read:

DCF 55.10 (5) (d) 1. A change of circumstances under sub. (1) (a) to ~~(g)~~ (h) has occurred.

SECTION 12. DCF 55.125 is created to read:

DCF 55.125 Successor guardian. (1) ELIGIBILITY. Upon the death or incapacity of a guardian who was receiving subsidized guardianship payments under s. 48.623, Stats., and this chapter, the agency shall determine the eligibility of a person named as a prospective successor guardian in a subsidized guardianship agreement or amended subsidized guardianship agreement that was entered into before the death or incapacity of the guardian. A prospective successor guardian is eligible to enter into a new subsidized guardianship agreement with the agency if the agency determines all of the following apply:

(a) The prospective successor guardian demonstrates a strong commitment to caring permanently for the child.

(b) If the child is age 14 years or older, the child has been consulted with regarding the successor guardianship arrangement.

(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.

Note: The agency is not required to issue a license to the prospective successor guardian.

(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, the best interests of the Indian child shall be determined in accordance with s. 48.01 (2), Stats.

Note: Upon the death or incapacity of a guardian who did not name a prospective successor guardian in a subsidized guardianship agreement or amended subsidized guardianship agreement that was entered into before the guardian's death or incapacity, eligibility of a person to become a new subsidized guardian would be determined under s. DCF 55.03. Section DCF 55.03 would also apply to the eligibility determination of a person seeking payments under this chapter if the previous guardianship was terminated for a reason other than death or incapacity of the guardian.

(2) ELIGIBILITY DETERMINATION FORM. An agency that determines a prospective successor guardian's eligibility shall document the determination on a form prescribed by the department.

Note: Form DCF-F-5069-E, *Subsidized Guardianship Successor Guardian Eligibility Determination*, is available on the forms page 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.

(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 and an agreement specified in s. DCF 55.01 (2).

(3) COURT. An agency may not provide subsidized guardianship payments to a prospective successor guardian until all of the following occur:

(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 and an agreement specified in s. DCF 55.01 (2), Stats.

(b) Any order under s. 48.345, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363, or 938.365, Stats., 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) (b), Stats, or under a substantially similar Wisconsin tribal law and an agreement specified in s. DCF 55.01 (2), Stats.

(4) 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 and an agreement specified in s. DCF 55.01 (2), Stats.

SECTION 13. DCF 55.13 (title), (1), (2) (intro.), (a) to (d), (e) 1., 2., (f), (4) (intro.), and (5) are amended to read:

DCF 55.13 (title) DCF 55.13 Background check of interim caretaker <u>or prospective successor guardian</u> 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 <u>or determines that a prospective successor guardian is eligible to enter into a subsidized guardianship agreement</u>, the interim caretaker <u>or prospective successor guardian</u> and any nonclient resident in the interim caretaker's <u>or prospective successor guardian's</u> 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 <u>or the prospective successor guardian is not eligible to enter into a subsidized guardianship agreement</u>.

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 or the prospective successor guardian is seeking to enter into a subsidized guardianship agreement.

(b) Before an agency provides subsidized guardianship payments to an interim caretaker seeking payments under s. DCF 55.12 or enters into a subsidized guardianship agreement with a prospective successor guardian, the interim caretaker or prospective successor guardian 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 or enters into a subsidized guardianship agreement with a prospective successor guardian, 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 or prospective successor guardian and any nonclient resident in the interim caretaker's or prospective successor guardian's home.

(b) The agency shall submit the fingerprints of the interim caretaker or prospective successor guardian 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 or prospective successor guardian's address.

Note: A reverse search by address can be done by entering the interim caretaker's or prospective successor guardian's address at http://doc.wi.gov/community-resources/offender-registry. The Wisconsin Sex Offender Registry 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 sex offender registry.

(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 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) 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 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.

2. 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 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 other jurisdiction 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.

(f) 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 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.

(4) (intro.) 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. DCF 12, an agency may not provide subsidized guardianship payments to an interim caretaker or determine that a prospective successor guardian is eligible to enter into a subsidized guardianship agreement if any of the following apply regarding the interim caretaker or prospective successor guardian or a nonclient resident in the interim caretaker's or prospective successor guardian's home:

(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 or prospective successor guardian for a reason specified in sub. (4).

SECTION 14. EFFECTIVE DATE. This rule shall take effect the first day of the month following publication in the Administrative Register as provided in s. 227.22 (2) (intro.), Stats.