

# Statement of Scope

## Department of Children and Families

**Rule Number:** Chapter DCF 55

**Relating to:** Subsidized Guardianship

**Rule Type:** Emergency and Permanent

This statement of scope was approved by the governor on March 9, 2016.

### **1. Finding/nature of emergency (for emergency rules only)**

2015 Wisconsin Act 129, Section 22, authorizes the department to promulgate the rules required under s. 48.623 (7) (e), Stats., without providing a finding of emergency.

2015 Wisconsin Act 143, Section 4, authorizes the department to promulgate the rules required under s. 48.623 (7) (d), Stats., without providing a finding of emergency.

### **2. Detailed description of the objective of the rule**

2015 Wisconsin Act 129 and 42 USC 673 (d) (3) permit the appointment of a successor guardian for a child in need of protection or services upon the death or incapacity of the child's guardian. Section 48.623 (6), Stats., as affected by 2015 Wisconsin Act 129, provides the conditions the successor guardian must meet to be eligible for monthly subsidized guardianship payments. The emergency and proposed rules will specify the procedures for the payment of subsidized guardianship to a successor guardian of a child.

2015 Wisconsin Act 143 permits monthly subsidized guardianship payments to a person who has a significant emotional relationship with a child and who has developed a "like-kin" relationship with a child during the child's placement in out-of-home care if the person also meets conditions in rules established by the department. The emergency and proposed rules will establish these conditions. Before Act 143, a person with a "like-kin" relationship with a child was only eligible to receive subsidized guardianship payments if the relationship existed before the child entered out-of-home care.

The rules will also provide that a guardian is not eligible to receive subsidized guardianship payments if the child's parent is residing in the guardian's home, unless the parent is residing in the guardian's home on a short-term basis or the guardian is providing care for both the parent and the child.

### **3. Detailed explanation of statutory authority for the rule**

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.

Section 48.623 (7) (d), 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) (d), 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.

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.

**4. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule**

200 hours

**5. List with description of all entities that may be affected by the emergency and proposed rules**

Division of Milwaukee Child Protective Services; county departments of social services and human services; successor guardians, foster parents and other potential guardians who develop a relationship with a child who is placed in out-of-home care; children in out-of-home care; children in the care of a successor guardian; and children in the care of a subsidized guardian.

**6. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the emergency and proposed rules**

42 USC 673 (d) (3), as created by Section 207 of the *Preventing Sex Trafficking and Strengthening Families Act*, allows 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.”

Under 42 USC 675 (a) (2) (A) and (C) and 42 USC 675 (b), Title IV-E payments are available for “foster care” provided by someone other than a biological parent. A child living with his or her parents would not be considered to be living in a “foster home” and, thus, would not be eligible for Title IV-E payments.

**7. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses)**

None or minimal

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