



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-4184/1
EHS:klm/kjf/cjs

2021 SENATE BILL 491

August 5, 2021 - Introduced by Senators BERNIER, BALLWEG, COWLES, DARLING, FELZKOWSKI, KOOYENGA, MARKLEIN and ROTH, cosponsored by Representatives LOUDENBECK, ROZAR, ARMSTRONG, BILLINGS, BORN, DITTRICH, DOYLE, GUNDRUM, KITCHENS, KNODL, KURTZ, MILROY, MOSES, L. MYERS, NOVAK, PRONSHINSKE, J. RODRIGUEZ, SCHRAA, SNYDER, SPIROS, SUBECK, TAUCHEN, TITTL, TUSLER and PENTERMAN. Referred to Committee on Human Services, Children and Families.

1 **AN ACT to amend** 20.437 (1) (kz), 48.48 (8p), 48.569 (1) (d), 48.623 (1) (intro.),
2 48.623 (2) (c), 48.623 (3) (a), 48.623 (3) (d), 48.623 (6) (am) (intro.) and 48.623
3 (6) (bm) (intro.); and **to create** 48.623 (3) (e) and 48.623 (7) (f) of the statutes;
4 **relating to:** subsidized guardianship payments.

Analysis by the Legislative Reference Bureau

This bill requires the Department of Children and Families alone to provide subsidized guardianship payments.

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, the Department of Children and Families must 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: 1) the child, if 14 years of age or over, has been consulted with regarding the guardianship arrangement; 2) the guardian has a strong commitment to caring for the child permanently; 3) the guardian is licensed as the child's foster parent, which licensing includes an inspection of the guardian's home under rules promulgated by DCF; 4) the guardian and all adult residents of the guardian's home have passed a criminal background investigation; and 5) prior to being named as guardian of the child, the guardian entered into a subsidized guardianship agreement with the county department or DCF. Current law also requires a county department or DCF to provide monthly subsidized guardianship payments to an

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interim caretaker or successor guardian upon the death or incapacity of the guardian.

Under the bill, county departments and DCF in a county having a population of 750,000 or more enter into subsidized guardianship agreements with guardians, but only DCF provides the payments. The bill requires a county department to notify DCF when it enters into or amends such an agreement or when an interim caretaker is appointed. The bill requires DCF to promulgate rules governing the method by which county departments must provide that notification, and to consult with counties in determining that method.

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:

1 **SECTION 1.** 20.437 (1) (kz) of the statutes is amended to read:

2 20.437 (1) (kz) *Interagency and intra-agency aids; tribal placements and*
3 *guardianships.* The amounts in the schedule to be used for unexpected or unusually
4 high-cost out-of-home care placements of Indian children by tribal courts, including
5 placements of Indian juveniles who have been adjudicated delinquent, ~~and for~~
6 ~~subsidized guardianship payments under s. 48.623 (1) or (6) for guardianships of~~
7 ~~Indian children ordered by tribal courts.~~ All moneys transferred from the
8 appropriation account under s. 20.505 (8) (hm) 21. shall be credited to this
9 appropriation account. Notwithstanding s. 20.001 (3) (a), the unencumbered
10 balance on June 30 of each year shall revert to the appropriation account under s.
11 20.505 (8) (hm).

12 **SECTION 2.** 48.48 (8p) of the statutes is amended to read:

13 48.48 (8p) To reimburse tribes and county departments, from the
14 appropriation under s. 20.437 (1) (kz), for unexpected or unusually high-cost
15 out-of-home care placements of Indian children by tribal courts, other than
16 placements to which s. 938.485 (4) applies, ~~and for subsidized guardianship~~

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1 ~~payments under s. 48.623 (1) or (6) for guardianships of Indian children ordered by~~
2 ~~tribal courts.~~ In this subsection, “unusually high-cost out-of-home care
3 placements” means the amount by which the cost to a tribe or to a county department
4 of out-of-home care placements of Indian children by tribal courts, other than
5 placements to which s. 938.485 (4) applies, exceeds \$50,000 in a fiscal year.

6 **SECTION 3.** 48.569 (1) (d) of the statutes is amended to read:

7 48.569 (1) (d) From the appropriations under s. 20.437 (1) (b), (cx), (km), and
8 (o), the department shall distribute the funding for children and family services,
9 including funding for foster care ~~or subsidized guardianship care~~ of a child on whose
10 behalf aid is received under s. 48.645 to county departments as provided under s.
11 48.563. County matching funds are required for the distribution under s. 48.563 (2).
12 Each county’s required match for the distribution under s. 48.563 (2) shall be
13 specified in a schedule established annually by the department. Matching funds
14 may be from county tax levies, federal and state revenue sharing funds, or private
15 donations to the county that meet the requirements specified in sub. (1m). If the
16 county match is less than the amount required to generate the full amount of state
17 and federal funds distributed for this period, the decrease in the amount of state and
18 federal funds equals the difference between the required and the actual amount of
19 county matching funds.

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

21 48.623 (1) ELIGIBILITY. (intro.) ~~A county department or, as provided in sub. (3)~~
22 ~~(a), the~~ The department shall provide monthly subsidized guardianship payments
23 in the amount specified in sub. (3) (b) to a guardian of a child under s. 48.977 (2) or
24 under a substantially similar tribal law if the county department or department
25 determines that the conditions specified in pars. (a) to (d) have been met. ~~A county~~

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1 ~~department or, as provided in sub. (3) (a), the~~ The department shall also provide
2 those payments for the care of a sibling of such a child, regardless of whether the
3 sibling meets the conditions specified in par. (a), if the county department or
4 department and the guardian agree on the appropriateness of placing the sibling in
5 the home of the guardian. A guardian of a child under s. 48.977 (2) or under a
6 substantially similar tribal law is eligible for monthly subsidized guardianship
7 payments under this subsection if ~~the county department or the department,~~
8 ~~whichever will be providing those payments,~~ determines that all of the following
9 apply:

10 **SECTION 5.** 48.623 (2) (c) of the statutes is amended to read:

11 48.623 (2) (c) That the ~~county department or~~ department will pay the total cost
12 of the nonrecurring expenses that are associated with obtaining guardianship of the
13 child, not to exceed \$2,000.

14 **SECTION 6.** 48.623 (3) (a) of the statutes is amended to read:

15 48.623 (3) (a) ~~Except as provided in this paragraph, the county department~~
16 ~~shall provide the monthly payments under sub. (1) or (6). The county department~~
17 ~~shall provide those payments from moneys received under s. 48.48 (8p) or 48.569 (1)~~
18 ~~(d). In a county having a population of 750,000 or more or in the circumstances~~
19 ~~specified in s. 48.43 (7) (a) or 48.485 (1), the~~ The department shall provide the
20 monthly payments under sub. (1) or (6). The department shall provide those
21 payments from the appropriations under s. 20.437 (1) (cx) and (mx).

22 **SECTION 7.** 48.623 (3) (d) of the statutes is amended to read:

23 48.623 (3) (d) The department ~~or a county department~~ may recover an
24 overpayment made under sub. (1) or (6) from a guardian or interim caretaker who
25 continues to receive those payments by reducing the amount of the person's monthly

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1 payment. The department may by rule specify other methods for recovering those
2 overpayments. ~~A county department that recovers an overpayment under this~~
3 ~~paragraph due to the efforts of its officers and employees may retain a portion of the~~
4 ~~amount recovered, as provided by the department by rule.~~

5 **SECTION 8.** 48.623 (3) (e) of the statutes is created to read:

6 48.623 (3) (e) A county department shall, pursuant to rules promulgated under
7 sub. (7) (f), notify the department when it enters into or amends a subsidized
8 guardianship agreement under this section and when an interim caretaker is
9 appointed under sub. (6) (am).

10 **SECTION 9.** 48.623 (6) (am) (intro.) of the statutes is amended to read:

11 48.623 (6) (am) (intro.) On the death, incapacity, resignation, or removal of a
12 guardian receiving payments under sub. (1), ~~the county department or the~~
13 ~~department providing those payments~~ shall provide monthly subsidized
14 guardianship payments in the amount specified in sub. (3) (b) for a period of up to
15 12 months to an interim caretaker if all of the following conditions are met:

16 **SECTION 10.** 48.623 (6) (bm) (intro.) of the statutes is amended to read:

17 48.623 (6) (bm) (intro.) On the death or incapacity of a guardian receiving
18 payments under sub. (1), ~~the county department or the department providing those~~
19 ~~payments~~ shall provide monthly subsidized guardianship payments in the amount
20 specified in sub. (3) (b) to a person named as a prospective successor guardian of the
21 child in a subsidized guardianship agreement or amended subsidized guardianship
22 agreement that was entered into before the death or incapacity of the guardian if all
23 of the following conditions are met and the court appoints the person as successor
24 guardian to assume the duty and authority of guardianship as provided in s. 48.977
25 (5m):

