



WISCONSIN LEGISLATIVE COUNCIL

Special Committee Staff Brief 02-2

**GRANDPARENT AND OTHER RELATIVE
CAREGIVERS FOR CHILDREN**

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STAFF BRIEF 02-2

GRANDPARENT AND OTHER RELATIVE CAREGIVERS FOR CHILDREN

INTRODUCTION

The Special Committee is directed to study: (1) current law relating to relative caregivers under the Children's Code and under current law relating to guardianship and kinship care; (2) relatives who care for children under an informal agreement between the child's parent and the relative and whether such relatives should be granted decision-making authority with respect to the child's care; and (3) third-party visitation law and enforcement of third-party visitation orders.

According to U.S. census data, in 2000, there were 46,461 grandchildren under the age of 18 living in grandparent-headed households in Wisconsin. This represents 3.4% of the total number of children under the age of 18 in Wisconsin in 2000 and a 31.4% increase from the number of children living in grandparent-headed households in 1990.

Wisconsin ranks 44th for the percentage of children under 18 living in grandparent-headed households and 28th for the number of children under 18 living in grandparent-headed households.¹

Based upon census data in 2000, the U.S. Census Bureau estimates that in 2000, 59,704 grandparents in Wisconsin had their own grandchildren under the age of 18 in their households. Of these, it is estimated that 30,197 are responsible for their grandchildren. Further, of this number it is estimated that:

1. 8,948 of the grandparents had been responsible for their grandchildren for less than one year.
2. 6,400 of the grandparents had been responsible for their grandchildren for one or two years.

¹*Census 2000 Number and Percentage Change Since 1990 Children Under 18 Living in Grandparent-Headed Households; States Ranked by Percentage of Children Under 18 Living in Grandparent-Headed Households; and States Ranked by Number of Children Under 18 Living in Grandparent-Headed Households*, U.S. Census Bureau 1990 Census and 2000 Census SF1 Data; compiled by AARP Grandparent Information Center.

3. 5,513 of the grandparents had been responsible for their grandchildren for three or four years.

4. 9,336 of the grandparents had been responsible for their grandchildren for five or more years.

It is also estimated that 56.2% of the grandparents who were responsible for their minor grandchildren in 2000 were female and 79.7% were married. In addition, 70% of these grandparents were in the labor force and 7.9% were in poverty.²

[Anne Sappenfield, Senior Staff Attorney, and Philip G. Cardis, Staff Attorney, Legislative Council staff, for the Joint Legislative Council's Special Committee on Relative Caregivers prepared this brief.]

²U.S. Census Bureau, U.S. Department of Commerce; *Profile of Selected Social Characteristics: 2000, Wisconsin*.

PART I

CHILDREN PLACED WITH A RELATIVE UNDER THE CHILDREN'S CODE

The juvenile court is the court assigned to exercise jurisdiction under the Children's and Juvenile Justice Codes. [ss. 48.02 (2m) and 938.02 (2m), Stats.] Although this Part refers only to the Children's Code [ch. 48, Stats.], these provisions also generally apply to juveniles who are found to be in need of protection or services (e.g., runaways) under the Juvenile Justice Code. [ch. 938, Stats.]

Under the Children's Code, "relative" is defined as a parent, grandparent, great-grandparent, stepparent, brother, sister, first cousin, nephew, niece, uncle, or aunt. The definition specifies that the relationship must be by blood, marriage, or adoption. [s. 48.02 (15), Stats., as affected by 2001 Wisconsin Act 16, the Executive Budget Bill.]

A. CHIPS DISPOSITIONS

Under the Children's Code, the juvenile court orders a disposition for each child who is found to be a child in need of protection or services (CHIPS) (e.g., the child has been found to have been abused or neglected). The disposition must employ the means necessary to maintain and protect the well being of the child which are the least restrictive to the rights of the parent and child and which assure the care, treatment, or rehabilitation of the child and the family consistent with the protection of the public.

When appropriate, and, in cases of child abuse and neglect, when it is consistent with the best interest of the child in terms of physical safety and physical health, the family unit must be preserved and there must be a policy of transferring custody of a child from the parent only when there is no less drastic alternative. If there is no less drastic alternative for a child than transferring custody from the parent, ***the judge must consider transferring custody to a relative whenever possible.*** [s. 48.355 (1), Stats.]

Under current law, a child who has been found to be in need of protection or services may be placed by the juvenile court with a relative as a disposition as follows:

1. The child may be placed in the home of a relative. However, a child may not be placed with a relative who has been convicted of first- or second-degree intentional homicide of a parent of the child unless the conviction has been reversed, set aside, or vacated or the judge determines by clear and convincing evidence that the placement would be in the best interests of the child. The judge must consider the wishes of the child in making that determination. [s. 48.345 (3) (a), Stats.]

2. The court may transfer legal custody to a relative of the child, if it is shown that the rehabilitation or the treatment and care of the child cannot be accomplished by means of voluntary consent of the parent or guardian. [s. 48.345 (4) (a), Stats.] "Legal custody" is defined as a legal status created by the order of a court, which confers the right and duty to protect, train, and discipline the child, and to provide food, shelter, legal services, education, and ordinary

medical and dental care, subject to the rights, duties, and responsibilities of the guardian of the child and subject to any residual parental rights and responsibilities and the provisions of any court order. [s. 48.02 (12), Stats.]

A CHIPS dispositional order made before the child reaches 18 years of age that places the child in an out-of-home placement, such as with a relative, terminates when the child reaches 18 years of age, at the end of one year after entry of the order or, if the child is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching age 19, when the child reaches age 19, whichever is later, unless the judge specifies a shorter period of time or terminates the order sooner. [s. 48.355 (4), Stats., as affected by 2001 Wisconsin Act 109, the “Budget Reform Bill.”]

B. PERMANENCY PLANS

Permanency plans are typically prepared for each child living in a foster home, treatment foster home, group home, child caring institution, secure detention facility, or shelter care facility. Under 2001 Wisconsin Act 190, the Budget Reform Bill, the agency that placed the child or arranged the placement or the agency assigned primary responsibility for providing services to the child must also prepare a written permanency plan for a child living in the home of a relative other than a parent if one of the following conditions exists:

1. The child is being held in temporary physical custody.
2. The child is in the legal custody of the agency.
3. The child is under the supervision of an agency under a court order.
4. The child is in the out-of-home placement under a voluntary agreement between the agency and the child’s parent.
5. The child is under the guardianship of the agency.

[s. 48.38 (2), Stats.]

The requirement for a permanency plan does not apply to children who are voluntarily placed with a kinship care relative.

Under the Budget Reform Bill, the agency assigned primary responsibility for children in a relative’s home must file a permanency plan with the court with respect to not less than 33% of those children by July 1, 2002; not less than 67% by September 1, 2002; and all of them by November 1, 2002, giving priority to those children who have been living in the home of a relative for the longest period of time.

A permanency plan includes a description of the services offered and any services provided in an effort to prevent the removal of the child from his or her home, while assuring that the health and safety of the child are the paramount concerns, and to achieve the goal of the permanency plan. Among other items, the permanency plan must include a statement as to the availability of a safe and appropriate placement with a fit and willing relative of the child and, if a decision is made not to place the child with an available relative, a statement as to why

placement with the relative is not safe and appropriate. [s. 48.38 (4) (a) and (bm), Stats., as affected by 2001 Wisconsin Act 109.]

The goals of the permanency plan may include the following for the child:

1. Being returned safely to the child's home.
2. Being placed for adoption.
3. Being placed with a guardian.
4. Being permanently placed with a fit and willing relative, who is not adopting or assuming guardianship of the child.
5. Some other alternative permanent placement.

[s. 48.38 (4) (fg), Stats., as affected by 2001 Wisconsin Act 109.]

The permanency plan is reviewed every six months by the court or a panel appointed by the court to determine the continuing need for the out-of-home placement and the extent to which appropriate services are being provided. [s. 48.38 (5) and (5m), Stats., as affected by 2001 Wisconsin Act 109.]

PART II

RELATIVE GUARDIANS

Under Wisconsin law, all minors and incompetents are subject to guardianship.³ A “guardian” is defined as “one appointed by a court to have care, custody and control of the person of a minor or an incompetent or the management of the estate of a minor, an incompetent or a spendthrift.” [s. 880.01 (3), Stats.]

The Children’s Code provides that a guardian has the duty and authority to make important decisions in matters having a permanent effect on the life and development of the child and the duty to be concerned about the child’s general welfare, including but not limited to:

1. The authority to consent to marriage, enlistment in the U.S. Armed Forces, major medical, psychiatric, and surgical treatment, and obtaining a motor vehicle operator’s license.
2. The authority to represent the child in legal actions and make other decisions of substantial legal significance concerning the child but not the authority to deny the assistance of counsel.
3. The right and duty of reasonable visitation of the child.
4. The rights and responsibilities of legal custody except when legal custody has been vested in another person or when the child is under the supervision of the Department of Corrections.

[s. 48.023, Stats.]

A. RELATIVE GUARDIANS FOR CHIPS

The juvenile court may appoint a relative as the guardian for a child who is found to be in need of protection or services if all of the following conditions apply:

1. The child has been adjudged to be in need of protection or services and placed outside of his or her home pursuant to one or more court orders for a cumulative total period of one year or longer.
2. The person nominated as the guardian of the child is a relative with whom the child has been placed and that it is likely that the child will continue to be placed with that relative for an extended period of time or until the child attains the age of 18 years.
3. It is not in the best interests of the child to terminate the child’s parent’s parental rights.

³This Part does not discuss the designation and appointment of guardians and standby guardians upon the death or debilitation of a parent.

4. The parents of the child are neglecting, refusing, or unable to carry out the duties of a guardian.

5. The agency primarily responsible for providing services to the child has made reasonable efforts to make it possible for the child to return to his or her home while assuring that the child's health and safety are the paramount concerns, but that reunification of the child with the parents is unlikely or not in the best interests of the child. However, a court need not find that the agency has made those reasonable efforts with respect to a parent of the child if "aggravating circumstances" apply to that parent (e.g., the parent has abandoned the child or subjected the child to abuse or has been convicted of specified serious crimes).

[s. 48.977 (2), Stats.]

The duties and authority of a relative guardian under this provision are the general duties and authority of a guardian unless they are limited by the court. [s. 48.977 (5), Stats.]

Guardians appointed under this provision may apply for long-term kinship care payments of \$215 per month. [s. 48.57 (3n), Stats.] [See Part III, H., below.]

B. CH. 880 GUARDIANS

A relative may also be appointed as a guardian under ch. 880, Stats., by the circuit court. Under s. 880.07, Stats., any relative, public official, or other person, may petition for the appointment of a guardian of a person subject to guardianship which includes minors. [s. 880.07 (1), Stats.]

The court must hold a hearing on a petition for guardianship of a minor to determine whether the minor is a proper subject for guardianship. If the minor is found to be in need of a guardian, the court must appoint one guardian or a husband and wife as guardians. [s. 880.12 (1), Stats.]

Unless the guardian is removed earlier, a guardianship of a minor terminates when the minor attains majority (unless the minor is incompetent) or lawfully marries. [ss. 880.16 and 880.26 (1), Stats.]

PART III

KINSHIP CARE PROGRAM

The Kinship Care Program provides a payment of \$215 per month to eligible kinship care relatives who are providing care and maintenance for a child. [s. 48.57 (3m) (am), Stats.] “Kinship care relative” is defined as a stepparent, brother, sister, stepbrother, stepsister, first cousin, nephew, niece, aunt, uncle or any person of a preceding generation as denoted by the prefix of grand, great or great-great, whether by blood, marriage or legal adoption, or the spouse of any such person, even if the marriage is terminated by death or divorce. Under the kinship care program, “child” includes a person who 18 years old, a full-time student in good academic standing at a secondary school or its vocational or technical equivalent, and reasonably expected to complete his or her program of study and be granted a high school diploma or high school equivalency diploma. [s. 48.57 (3m) (a) 1. and 2., Stats.]

The Kinship Care Program was created by 1995 Wisconsin Act 289, which also created the Wisconsin Works (W-2) program. That act eliminated the Aid to Families with Dependent Children (AFDC) program, including the portion of the AFDC program that paid AFDC benefits to a nonlegally responsible relative (NLRR) who was providing care for a child. The Kinship Care Program is generally viewed as replacing the AFDC-NLRR program; however, the eligibility criteria vary significantly.

As of June 2002, kinship care payments, including long-term kinship care payments, were made on behalf of an average of 8,397 children monthly, including an average of 4,988 children in Milwaukee County.

The Kinship Care Program is administered by the county departments of human or social services (county department) or, in Milwaukee County, by the Department of Health and Family Services (DHFS). In addition, DHFS may enter into an agreement with the governing body of a federally recognized American Indian tribe or band (tribe) to administer the program within the boundaries of the tribe’s reservation. [s. 48.57 (3m) (am), Stats.] Currently, eight of the 11 tribes in Wisconsin administer kinship care.

A. FUNDING

Kinship care is funded with federal Temporary Assistance for Needy Families (TANF) block grant funds. [s. 20.435 (3) (kc), Stats.] Based on a formula established by DHFS, the moneys are allocated to counties, to DHFS for Milwaukee County, and to tribes. In general, the formula factors in the county and statewide caseloads and the total appropriations for the Kinship Care Program. This funding may only be used for kinship care benefits and assessment costs; it is not available to the counties, DHFS, or tribes for other purposes.

If money will be unexpended, DHFS has established a process to reallocate money from one county and make it available to other counties. If the allocation to a county or a tribe is insufficient, the county or tribe may provide kinship care benefits by using its own resources.

B. ELIGIBILITY

In order to qualify for kinship care payments, a relative must apply for benefits and must cooperate in the application process, which includes applying for other forms of assistance for which the child may be eligible. The agency administering the Kinship Care Program must assist the relative in applying for medical assistance for the child. The relative must not be receiving long-term kinship care or foster care payments for the child and the child must not be receiving federal supplemental security income or state supplemental payments. [s. 48.57 (3m) (am) 1., 5. and 5m., Stats., and ss. HFS 58.04 (3) and 58.07, Wis. Adm. Code.]

The county department, DHFS, or tribe must conduct a criminal background investigation of each kinship care relative, as discussed below. The kinship care relative also must state that he or she does not have any arrests or convictions that could adversely affect the child or the relative's ability to care for the child. The relative must make similar statements about his or her employees or prospective employees who would have regular contact with the child and about any adult resident in the relative's home. [s. 48.57 (3m) (am), Stats.]

The county department must also determine that placement with a kinship care relative is needed and in the best interest of the child by funding all of the following:

1. The child meets one or more of the CHIPS or juvenile in need of protection or services (JIPS) criteria or would be at risk of meeting one or more of the CHIPS or JIPS criteria if the child were to remain in his or her home.⁴

2. The child needs the kinship living arrangement based upon at least one of the following:

- a. The child's need for adequate food, shelter, and clothing can be better met with the relative than with the child's parent or parents.
- b. The child's need to be free from physical, sexual or emotional injury, neglect or exploitation can be better met with the relative than with the child's parent or parents.
- c. The child's need to develop physically, mentally, and emotionally to his or her potential can be better met with the relative than with the child's parent or parents.

⁴For a child who is 18 years old and attending high school, the child must meet, or be at risk of meeting, one or more of the CHIPS or JIPS criteria if the child were under 18. CHIPS criteria are set forth in s. 48.13, Stats., and include such grounds as abandonment, abuse, or neglect; JIPS criteria are set forth in s. 938.13, Stats., and include such grounds as uncontrollable or runaway juveniles.

- d. The child's need for a safe or permanent family can be better met with the relative than with the child's parent or parents.⁵
3. The proposed kinship living arrangement is in the best interests of the child as follows:
 - a. If the child is placed with the relative under a CHIPS or JIPS order, by a tribal court in a CHIPS-related matter, by the action of the child welfare agency pursuant to a court order, or by a child welfare agency which is the guardian of the child, the agency shall assume that the living arrangement is in the best interests of the child.
 - b. If the child is not placed by order of a court, the agency shall determine if the kinship living arrangement is in the best interests of the child by making a reasonable effort to contact all the child's custodial parents to determine that they are aware of and have consented to the living arrangement. If consent is received, the kinship living arrangement must be determined to be in the best interests of the child. If the agency, after making reasonable efforts to contact all custodial parents, is unable to contact the custodial parents, the agency may determine that the inability to make such contact indicates that the placement with the relative is in the best interests of the child. If both parents are custodial parents, the approval of one of the parents may suffice for the agency to determine that the living arrangement is in the best interests of the child. If only one parent is a custodial parent, the approval of that parent suffices for the agency to determine that the living arrangement is in the best interests of the child.⁶

C. ANNUAL PLACEMENT REVIEW

The county department, DHFS, or tribe must reassess eligibility for kinship care payments at least once every 12 months to determine whether the eligibility criteria continue to exist. If they do not, payments must be discontinued. [s. 48.57 (3m) (d), Stats., and s. HFS 58.13, Wis. Adm. Code.]

D. APPEAL PROCESS

If an application for kinship care benefits is not acted on within 45 days or is denied for reasons other than the applicant's criminal background, the applicant may appeal the decision to

⁵In determining that one or more of the criteria are met, the agency shall personally interview the prospective kinship care relative. Also, each agency administering the Kinship Care Program shall establish a written policy describing its requirements for documentation for determining need for the living arrangement.

⁶For voluntary placements, the agency must also determine that both: (a) the kinship care relative's parenting history and parenting ability do not include behaviors or actions that are contrary to the health, safety or welfare of the child; and (b) a minor child residing in the kinship care relative's home has not committed any delinquent acts or other acts that endangered the safety of another child or that could adversely affect the child for whom the kinship care payment would be made or the kinship care relative's ability to care for the child. [s. HFS 58.10, Wis. Adm. Code.]

the Division of Hearings and Appeals, Department of Administration. The kinship care relative also may appeal a decision to discontinue payments after a placement review. The petition must be filed within 45 days of the denial, failure to act, or discontinuation of benefits. [s. 48.57 (3m) (f), Stats., and s. HFS 58.08 (2) (b), Wis. Adm. Code.]

E. CRIMINAL BACKGROUND INVESTIGATIONS

Investigations

The county department, DHFS, or tribe must conduct a criminal background investigation of all of the following:

- The kinship care relative.
- The employees and prospective employees of the relative who have or would have regular contact with the child.
- Any other adult resident of the relative's home.

The purpose of the investigation is to determine if the relative or other person has an arrest or conviction history that could adversely affect the child or the relative's ability to care for the child.

The investigation must be conducted after receipt of an application but may also be conducted at any other time the county department, DHFS, or tribe considers to be appropriate. The county department, DHFS, or tribe has the option of provisionally approving benefits based on the relative's statements regarding his or her arrest and conviction record while an investigation is pending.

The criminal background investigation is conducted with the assistance of the Wisconsin Department of Justice (DOJ). If a person being investigated is not a resident of Wisconsin (or has been a nonresident within the five years preceding the application) or if records provide a reasonable basis for further investigation, the county department or DHFS must require fingerprinting. DOJ may submit the fingerprint cards to the Federal Bureau of Investigation.

Crimes Requiring Denial of Benefits

Kinship care payments must be denied if the kinship care relative has been convicted of any of the following crimes or had any of the following penalties imposed in Wisconsin or under a similar law in another state or under federal law:

- Felony conviction under the Uniform Controlled Substances Act. [ch. 961.]
- Penalties imposed for habitual criminality [s. 939.62.]; certain domestic abuse offenses [s. 939.621]; use of a dangerous weapon [s. 939.63]; use of a bulletproof garment while committing a felony [s. 939.64]; concealing identity while committing a crime [s. 939.641]; and hate crime [s. 939.645].

- Convictions of a crime against life and bodily security [ch. 940]; *except* failure by a peace officer to render aid [s. 940.291]; and failure by an individual to aid a victim or report a crime [s. 940.34].
- Conviction of a crime against sexual morality [ch. 944]; *except* solicitation of drinks by an employee from a customer [s. 944.36]; and the following crimes if the violation was 20 or more years prior to the investigation: prostitution [s. 944.30]; patronizing prostitutes [s. 944.31]; and pandering [s. 944.33].
- Convictions of a crime against children [ch. 948]; *except* contributing to truancy [s. 948.45]; receiving property from a child [s. 948.63]; and tattooing a child [s. 948.70, Stats.].

In addition, a kinship care relative is prohibited from employing anyone who would have regular contact with the child or from permitting any adult to be a resident of his or her home if the employee or adult has been convicted of such crimes or had such penalties imposed.

Appeals

A person who is denied kinship care payments or who is prohibited from employing a person or from permitting an adult to reside in his or her home because the person, employee, or adult resident has been convicted of any of these crimes or had any of these penalties imposed may request a review of the denial or prohibition.

The review must include consideration of the following factors on a case-by-case basis:

1. The length of time between the date of the arrest, conviction, or imposition of the penalty and the date of the review.
2. The nature of the violation or penalty and how that violation or penalty affects the ability of the kinship care relative to care for the child.
3. Whether making an exception to the denial or prohibition would be in the best interests of the child.

If the reviewer determines that the record does not include any arrests, convictions, or penalties that are likely to adversely affect the child or the relative's ability to care for the child, the reviewer may approve kinship care payments or may permit the relative to employ the person or allow the person to be an adult resident in the home. [s. 48.57 (3p), Stats., and s. HFS 58.08 (2) (a), Wis. Adm. Code.]

F. WAITING LISTS FOR PAYMENTS

The statutes are ambiguous as to whether kinship care is an entitlement program. If it is an entitlement, benefits must be paid if eligibility criteria are met, regardless of whether the allocation of moneys is sufficient. If it is not an entitlement, then waiting lists are permissible if allocations to a county, DHFS, or tribe are not sufficient to provide benefits and the county or tribe does not choose to supply any additional funding necessary to provide benefits.

DHFS places applicants on a waiting list and permits county departments and tribes to place applicants on waiting lists if the agency has expended its kinship care benefit allocation for the agency's fiscal year or has established a caseload which will result in the agency expending its allocation by the end of the year and has notified DHFS of the need for a waiting list.

Under DHFS's administrative rules, an agency may prioritize applicants on the waiting list according to any of the following criteria, as described in the agency's written policy:

1. The lack of stability in the living arrangement if a payment is not made.
2. The order in which the applications are received.
3. The level or urgency of the child's need, as defined for determining eligibility for payments, described above.
4. If the child is under the guardianship of the kinship care applicant.

An applicant may not be placed on a waiting list if a court has ordered that the child be placed with the relative. (Approximately 25% of kinship care cases are court-ordered cases.) [s. HFS 58.12, Wis. Adm. Code.]

G. LONG-TERM KINSHIP CARE

The Long-Term Kinship Care Program, created by 1995 Wisconsin Act 105, bears many similarities to the Kinship Care Program. For example, payments are made from the same appropriation, the payment amounts are identical, the same entities administer the programs, and the definitions of "kinship care relative" and "long-term kinship care relative" are the same. However, long-term kinship care payments are available *only* to a relative who has been appointed as the child's long-term guardian under s. 48.977, Stats. [See Part II, A, above.]

In general, because of the previous, extensive court involvement in a case (adjudicating CHIPS and appointing the relative as the long-term guardian), the initial assessment of a long-term kinship care case does not involve the determinations that are required for kinship care. However, the agency must do all of the following:

1. Determine through proof provided by the applicant, that the applicant has been named guardian for the child under s. 48.977, Stats.
2. Inspect the applicant's home.
3. Interview the applicant.
4. Determine that the child's long-term placement with the applicant is in the best interests of the child. [s. HFS 58.15, Wis. Adm. Code.]

Other differences between the two programs include a less extensive annual review for the Long-Term Kinship Care Program and a different process for dealing with the results of a criminal background investigation. In contrast to the Kinship Care Program, there is no automatic denial of long-term kinship care benefits based on certain convictions or penalties;

rather, the director of the county department (or, in Milwaukee County, the person designated by the Secretary of Health and Family Services, or the person designated by a tribe) must determine whether any arrests, convictions, or penalties are likely to adversely affect the child or the long-term kinship care relative's ability to care for the child.

A final difference between the programs is that, if an agency approves the long-term kinship care payment, the agency and the relative must enter into a written agreement under which the long-term kinship care relative agrees to provide care and maintenance for the child and the agency agrees to make a monthly long-term kinship care payment to the relative until the earliest of the following:

1. The date on which the child attains the age of 19 years.
2. The date on which the child, if over 18 years of age, is no longer a full-time student in good academic standing or is no longer reasonably expected to graduate.
3. The date on which the child dies.
4. The date on which the child is placed outside the long-term kinship care relative's home under a court order or under a voluntary placement agreement.
5. The date on which the child ceases to reside with the long-term kinship care relative.
6. The date on which the long-term kinship care relative's guardianship under s. 48.977, Stats., terminates.
7. The date on which the child moves out of the state. [s. HFS 58.15, Wis. Adm. Code.]

It should be noted that, a relative cannot simultaneously receive kinship care payments and long-term kinship care payments for caring for a child but may do so sequentially. For example, a person could receive kinship care payments, then become the child's long-term guardian and be converted to a long-term kinship care payment.⁷

⁷Because DHFS does not require counties to separately report long-term kinship care cases, those cases are included in the report of kinship care cases. Thus, no data is readily available about the number of long-term kinship care cases.

PART IV

PUBLIC BENEFITS AVAILABLE TO RELATIVE CAREGIVERS

A. SUPPLEMENTAL SECURITY INCOME

Supplemental Security Income (SSI) is a federal benefit program available to elderly, blind, and disabled individuals who have limited income and assets. The program may provide benefits to low-income relatives who are caring for a blind or disabled child. [42 U.S.C. s. 1381a.]

B. SOCIAL SECURITY DEPENDENTS BENEFITS

A minor child who is living with a relative may be eligible for Social Security benefits if the child's parent is collecting retirement or disability insurance benefits or if the parent is deceased and was either fully insured or was insured at the time of his or her death. [42 U.S.C. s. 402 (d) (1).]

Children being raised by a grandparent may also be eligible for Social Security benefits as the grandparent's dependent if: (1) the grandchild's parents are deceased or disabled; or (2) the grandchild was legally adopted by the grandparent's surviving spouse and the grandchild's parent or stepparent was not living in the same household and making regular contributions to the child's support at the time the grandparent died. In order to be considered the grandparent's dependent, the child must have begun living with the grandparent before he or she became 18 years old and must have lived with the grandparent in the United States and received at least 50% support from the grandparent. [42 U.S.C. s. 416 (e).]

C. FOSTER CARE PAYMENTS

Under current law, DHFS, a county department, or a licensed child welfare agency may license a relative's home as a foster or treatment foster home ("foster home") if the relative requests the license for a specific child who is either placed by court order or who is the subject of a voluntary placement agreement under s. 48.63, Stats. In addition, a guardian appointed under the Children's Code or ch. 880, Stats., may request to have his or her home licensed as a foster home for the guardian's minor ward who is living in the home and who is placed in the home by court order. [s. 48.62 (2), Stats.] Some counties have a policy, however, that they do not license relatives' homes as foster homes.

If a relative's home is licensed as a foster home, the relative receives foster home payments. The current monthly foster care rates are as follows:

<u>Age Of Child</u>	<u>Foster Care Rate</u>
0 to 4 years	\$302
5 to 11 years	\$329

Age Of Child

Foster Care Rate

12 to 14 years

\$375

15 years or over

\$391

The rate may be increased for a child who has emotional, behavioral, or medical problems. [s. 48.62 (4), Stats.]

D. KINSHIP CARE PAYMENTS

An eligible kinship care or long-term kinship care relative may receive kinship care payments of \$215 per month. [s. 48.57 (3m) (am), Stats.]

E. MEDICAL ASSISTANCE

Medical Assistance (MA) is generally available to children living with a relative under the following conditions:

1. The relative's home is licensed as a foster home and the child has been placed there under the Children's Code or the Juvenile Justice Code.
2. The relative is receiving kinship care or long-term kinship care payments with respect to the child and DHFS determines that no other insurance is available to the child.

[s. 49.46 (1) (a) 5. and 16., Stats.]

In addition, a child may be eligible for MA based upon his or her parents' income or the relative's income, based upon the circumstances of the child's living arrangement.

F. FOOD STAMPS

Food stamps are available to households that meet the income eligibility criteria. "Household" is defined under federal law to include a child, other than a foster child, who is under 18 years of age who lives with and is under the parental control of a household member other than his or her parent. A child is considered to be under parental control if he or she is financially or otherwise dependent on a member of the household. [7 U.S.C. s. 2012 (i) and 7 C.F.R. s. 273.1.] Therefore, a child who is living with a relative may be counted for purposes of determining the household's size and eligibility to receive food stamps and for purposes of determining the amount of the food stamp benefit the household receives.

It should be noted that recipients of food stamps who are age 18 to 60 must participate in the Food Stamp Employment and Training Program to qualify for food stamps. [s. 49.124 (1m), Stats.]