

**State of Wisconsin
Department of Children and Families**

Kinship Care and Long-Term Kinship Care

DCF 58

The Wisconsin Department of Children and Families proposes to repeal and recreate ch. DCF 58, relating to kinship care and long-term kinship care.

Analysis Prepared by the Department of Children and Families

Statutory authority: Sections 48.57 (3m) (h) and (i) and (3n) (h) and (i) and 227.11 (2) (a), Stats.

Statutes interpreted: Section 48.57 (3m), (3n), and (3p), Stats.

Related statutes and rules: Section 48.977, Stats.; ch. 54, Stats.; DCF 55 and 56

Explanation of Agency Authority

Section 48.57 (3m) (i), Stats., provides that the department shall promulgate rules to implement s. 48.57 (3m), Stats., including rules to provide assessment criteria for determining whether a relative caregiver who is providing care and maintenance for a child is eligible to receive payments and rules governing the provision of payments for the care and maintenance of a child after the child attains 18 years of age. The rules shall also provide that any criteria established under the rules shall first apply to applications for payments received, and to reviews conducted on the effective date of those rules.

Section 48.57 (3n) (i), Stats., provides that the department shall promulgate rules to implement s. 48.57 (3n), Stats., including rules governing the provision of payments for the care and maintenance of a child after the child attains 18 years of age.

Section 48.57 (3m) (h) and (3n) (h), Stats., provide that a kinship care agency may recover an overpayment from a relative caregiver who continues to receive payments by reducing the amount of the relative caregiver's monthly payment. The department may by rule specify other methods for recovering overpayments. A county department that recovers an overpayment due to the efforts of its officers and employees may retain a portion of the amount recovered, as provided by the department by rule.

Section 227.11 (2) (a) (intro.), Stats., expressly confers rule-making authority on each agency to promulgate rules interpreting the provisions of any statute enforced or administered by the agency.

Summary of the Proposed Rule

The current kinship care and long-term kinship care rule has not been significantly updated since it was created almost 20 years ago. The proposed rule repeals and recreates the kinship care and long-term kinship care rule to modernize program administration, add specificity, clarify requirements, improve consistency among local agencies, and incorporate statutory updates.

Unified Organization of the Rule

The current rule is organized into 3 subchapters: general provisions, provisions applicable to the kinship care program only, and provisions applicable to the long-term kinship care program only. The proposed rule creates a single section that lists all of the eligibility conditions for both kinship care and long-term kinship care. Other sections of the rule provide further detail for the more complex eligibility conditions. Differences in detail between the kinship care and long-term kinship care programs are noted throughout the rule where applicable.

Efficient and Consistent Program Administration

The proposed rule includes a number of provisions that will ease the workload of kinship care agencies and provide a more consistent experience for relative caregivers throughout the state, including the following:

- Eliminating agency policies other than waiting list priorities.
- Requiring the use of forms prescribed by the department throughout the rule.
- Consolidating most agency procedures into a single section of the rule.
- Specifying home visit evaluation standards.
- Requiring a single application if a relative caregiver is applying for payments for more than one child at the same time.
- Simplifying eligibility determination if a relative caregiver is applying for payments for a new child within 6 months after the kinship care agency determined that the relative caregiver was eligible to receive payments for a different child. The relative caregiver will complete only the child-specific portions of the new application, and the kinship care agency will use information obtained for the other child's eligibility and require new information or actions only if necessary.
- Ensuring that kinship care payments continue when a family moves within the state.
- Allowing the kinship care agency to presume that living with the relative caregiver is in the best interest of the child if the agency is determining the relative caregiver's eligibility for long-term kinship care or voluntary kinship care and a court order or voluntary transition-to-independent-living agreement placing the child in the relative caregiver's home expired or was terminated within the previous 6 months.

Child Welfare Automation System eWiSACWIS

At the same time that the rule becomes effective, county departments and the department will begin using the department's child welfare automation system eWiSACWIS for administration of kinship care and long-term kinship care. The eWiSACWIS system will guide agencies on the types of eligibility documentation required and allow agency staff to easily indicate the type of documentation received with less written narrative.

The proposed rule requires that a kinship care agency with access to the eWiSACWIS system enter any information related to a relative caregiver's eligibility into the eWiSACWIS system within 5 working days after making any decision affecting eligibility. Agencies that do not have access to the eWiSACWIS system will be required to document eligibility decisions by completing a form prescribed by the department and obtaining and retaining supporting documentation as necessary.

With eligibility information on eWiSACWIS, a relative caregiver that moves to an area of the state served by a different kinship care agency will not be required to reapply for payments if the new agency has access to the eWiSACWIS system, and agencies will not need to duplicate work. If the kinship care agency serving either the relative caregiver's old or new residence does not have access to the eWiSACWIS system, the proposed rule requires that the agency serving the relative caregiver's old residence transfer eligibility documentation to the agency serving the relative caregiver's new residence. Tribal kinship care agencies do not have access to the eWiSACWIS system.

Home Visit Requirements

When determining eligibility for both the kinship care and long-term kinship care programs, a kinship care agency is required to determine if living with the relative caregiver is in the best interest of the child.

Under the current rule, agencies assessing the best interest of the child are required to visit the relative caregiver's home when determining eligibility for long-term kinship care program, but are not required to visit the relative caregiver's home when determining eligibility for kinship care.

The proposed rule requires kinship care agencies to visit the home of a relative caregiver when determining eligibility for both the kinship care and long-term kinship care programs, unless the child was placed in the relative caregiver's home under a court order and is under the placement and care responsibility of a supervising child welfare agency. In practice, most agencies have already been conducting home visits when determining kinship care eligibility and have developed their own evaluation standards, resulting in eligibility criteria that varies by location in the state.

The proposed rule creates statewide home visit assessment criteria, including criteria on the characteristics of a relative caregiver and the physical environment of the relative caregiver's home, with a focus on the safety of the child.

Voluntary Kinship Payments When Relative Moves

Kinship care agencies issue kinship care and long-term kinship care payments to relative caregivers from funds allocated by the department based on each agency's expected caseload within the limits of available funding. Under the current rule, a relative caregiver receiving kinship care payments for a child that was not placed in the relative caregiver's home under a court order (voluntary kinship care) can be put on a waiting list if the relative caregiver moves to an area of state where the kinship care agency does not have funding available to begin the payments.

With the same circumstances under the proposed rule, the kinship care agency in the area of the relative caregiver's old residence will be required to continue making the kinship care payments to the relative caregiver until the department amends or renews the contract with the kinship care agency in the area of the relative caregiver's new residence or the agency otherwise has kinship care funding available to make the payments. The kinship care agency in the area of the relative caregiver's new residence is required to place the relative caregiver's name at the top of the agency's waiting list. 2019 Wisconsin Act 9 increases kinship care funding to allow for a higher caseload by \$3,399,400 in SFY20 and by \$4,392,300 in SFY21, so fewer waiting lists are expected in this biennium.

Criminal History Background Check

The proposed rule extends the timeframe for kinship care agencies to begin a criminal history background check from 5 days to 10 working days after the agency receives a complete application from a relative caregiver.

The rule also provides that a director may designate an individual to fulfill the director's responsibilities of making the background check determinations for long-term kinship care and conducting the review of a barred offense for kinship care, which is the first-level appeal. A designee of the director must be a manager in the kinship care agency that does not directly supervise the agency staff that make eligibility determinations for kinship care or long-term kinship care. If a director designates an individual to these determination, the kinship agency shall submit the name of the designee and the designee's position in the agency to the department each January.

In addition, the proposed rule includes the following clarifications regarding the criminal history background check:

- Section 48.57 (3p) (d), Stats., requires that kinship care agencies submit the fingerprints of a relative caregiver, prospective adult resident, or prospective employee to the Department of Justice for a search of the databases maintained by the FBI if the person is not a resident of this state; the person has resided outside the state at any time within the preceding 5 years; or the kinship care agency

determines that the person's employment, licensing, or state court records provide a reasonable basis for further investigation.

- Barred offenses for kinship care are specified under s. 48.57 (3p) (g), Stats., and these are the only offenses for which a review by the director is available before a hearing with the division of hearings and appeals.

Statutory Updates

The proposed rule incorporates the following statutory updates:

- 2015 Wisconsin Act 55 amends the definition of "child" to provide that the relative caregiver of a child that is 19 or 20 years of age and has an individualized education program under s. 115.787, Stats., in effect may be eligible for kinship care or long-term kinship care only if the child is placed in the relative caregiver's home under an order under s. 48.355, 48.357, 48.365, 938.355, 938.357, or 938.365, Stats., that terminates under s. 48.355 (4) (b) or 938.355 (4) (am), Stats., after the person attains 18 years of age or under a voluntary transition-to-independent-living agreement under s. 48.366 (3) or 938.366 (3), Stats.

- 2015 Wisconsin Act 166 authorizes a hearing with the Division of Hearings and Appeals for background check denials.

- 2017 Wisconsin Act 365 updates the population of Milwaukee County from 500,000 to 750,000.

Summary of Data and Analytical Methodologies

In response to a number of legislative inquiries on behalf of constituents that were placed on a waiting list for kinship care following a move to a new county or tribal area, the department is proposing that the kinship care agency in the county or tribal area of the relative caregiver's old residence continue making voluntary kinship care payments to a relative caregiver that moves to a new county or tribal area where the kinship care agency has a waiting list until other funding is arranged.

The department also reviewed local agency policies and procedures and addressed commonly-asked questions by kinship care agencies when developing the proposed rule. The department received comments on various drafts of the proposed rule from the Out-of-Home Care Committee, kinship care agency coordinators, Indian Child Welfare Directors, and the Relative Caregivers Stakeholder Group.

Summary of Related Federal Law

Funding for kinship care and long-term kinship care is through the federal Temporary Assistance for Needy Families (TANF) program.

Social security number. Under 45 CFR 205.52, the state's TANF plan must require each individual applying or receiving TANF funds to furnish a social security number as a condition of eligibility. An individual that does not have a social security number is required to apply to the Social Security Administration with assistance from the state or local agency, provide verification of the application, and provide the number when it is received. Assistance may not be denied or delayed pending the issuance or verification of the number.

Child support cooperation. 42 USC 654 (29) (A) requires cooperation with the child support agency's efforts at enforcing support, subject to good cause as defined by the agency administering the TANF program.

Comparison to Adjacent States

Comparable programs in adjacent states appear to offer child-only TANF grants for relative caregivers with few eligibility conditions beyond the TANF requirements for child support cooperation and provision of the child's social security number. Michigan may also require that a child under 6 years of age receives

scheduled immunizations with limited exemptions and a child 6 years of age and over attends school full-time.

Effect on Small Businesses

The department is not aware of any small businesses affected by the proposed rule.

Analysis Used to Determine Effect on Small Businesses

In general, the program is administered by county and tribal agencies, except in Milwaukee where the department's Milwaukee Division of Child Protective Services contracts with the Professional Services Group, Children's Hospital, and SaintA to perform assessments. None of these entities is a small business.

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SECTION 1. DCF 58 is repealed and recreated to read:

Chapter DCF 58

KINSHIP CARE AND LONG-TERM KINSHIP CARE

DCF 58.01 Purpose. This chapter is promulgated under the authority of ss. 48.57 (3m) (h) and (i) and (3n) (h) and (i) and 227.11 (2), Stats., to establish criteria and procedures for determining initial and continuing eligibility of a relative providing care and maintenance for a child for a monthly payment to assist with the expenses involved in providing that care and maintenance and for recovering overpayments.

DCF 58.02 Definitions. In this chapter:

- (1) "Adult resident" means a person 18 years of age or over who meets any of the following conditions:
- (a) Lives at the home of a relative caregiver with the intent of making that home the person's home.
 - (b) Lives at the home of a relative caregiver for more than 30 days cumulative in any 6-month period.
- (2) "Background check" means the requirements under s. 48.57 (3p), Stats., and s. DCF 58.05.
- (3) "Background information disclosure" means the form prescribed by the department on which a person provides information for purposes of the background check under s. 48.57 (3p), Stats., and s. DCF 58.05.

Note: DCF-F-2978-E, *Background Information Disclosure*, is available on the department's website at <https://dcf.wisconsin.gov/forms>.

(4) "Child" means a person under 18 years of age. "Child" also includes a person 18 years of age or over if any of the following applies:

(a) The person is under 19 years of age, is a full-time student in good academic standing at a secondary school or its vocational or technical equivalent, and is reasonably expected to complete the program of study and be granted a high school or high school equivalency diploma.

(b) The person is under 21 years of age and meets all of the following conditions:

1. The person is a full-time student at a secondary school or its vocational or technical equivalent.

2. There is an individualized education program under s. 115.787, Stats., in effect for the person.

3. The person is placed in the home of the relative caregiver under any of the following:

a. A court order under s. 48.355, 48.357, 48.365, 938.355, 938.357, or 938.365, Stats., that terminates under s. 48.355 (4) (b) or 938.355 (4) (am), Stats., after the person attains 18 years of age, or a substantially similar Wisconsin tribal law.

b. A voluntary transition-to-independent-living agreement.

c. The placement and care responsibility of another state under 42 USC 675 (8) (B) (iv) until that state provides reimbursement for the placement of the child in a relative caregiver's home in Wisconsin.

(5) "Child support agency" means a county or tribal office, officer, board, department, or agency designated by the county board or elected tribal council to administer the child support, spousal support, and establishment of paternity program on behalf of the department pursuant to s. 59.53 (5), Stats., or a cooperative agreement with the department.

(6) "Child welfare agency" means a county department of social services under s. 46.22, Stats.; a county department of human services under s. 46.23, Stats.; the department in a county having a population of 750,000 or more; a tribal agency appointed by the tribal governing body; or another state that has placement and care responsibility under 42 USC 675 (8) (B) (iv) of a child in Wisconsin until the other state provides reimbursement for the child's placement in a relative caregiver's home in Wisconsin.

(7) “Conviction record” means the record of a person’s arrests and convictions.

(8) “Court order” means a court order under s. 48.21, 48.355, 48.217, 48.357, 48.365, 938.21, 938.217, 938.355, 938.357, or 938.365, Stats., that terminates under s. 48.355 (4) (b) or 938.355 (4) (am), Stats., after the person attains 18 years of age, or a substantially similar Wisconsin tribal law.

(9) “Custodial parent” means a parent that has legal custody of a child.

(10) “Department” means the department of children and families.

(11) “Director” means the director of a county department of social services under s. 46.22, Stats., or a county department of human services under s. 46.23, Stats.; the division administrator of the department’s division of Milwaukee child protective services; or the person designated by the governing body of a Wisconsin tribe.

(12) “Division of hearings and appeals” means the division of hearings and appeals in the department of administration.

(13) “Employee” means a person hired by a relative caregiver to work in a position in which the person has contact with the child on a regular basis.

(14) “Final substantiated finding” means all of the following:

(a) A final determination made after January 1, 2015, that a person has abused or neglected a child under s. 48.981 (3) (c) 5m., Stats., and s. DCF 40.04 if the final determination has not been reversed or modified on appeal.

(b) A determination made before January 1, 2015, that a person has abused or neglected a child under s. 48.981 (3) (c) 4., 2013 Stats., if the determination has not been reversed or modified on appeal.

(c) A finding that is comparable to a final substantiated finding in any other jurisdiction.

(15) “Kinship care” means the program under s. 48.57 (3m), Stats.

(16) “Kinship care agency” or “agency” means a county department of social services under s. 46.22, Stats.; a county department of human services under s. 46.23, Stats.; the department in a county having a population of 750,000 or more; a tribal agency appointed by the tribal governing body that has entered an agreement with the department to administer kinship care or long-term kinship care as provided under s.

48.57 (3t), Stats.; or a public or private agency under contract with a county department, the department, or a tribal agency for the purpose of administering all or part of kinship care or long-term kinship care.

(17) “Kinship care payment” means a monthly payment in an amount specified in s. 48.57 (3m) (am), Stats., that is paid to a relative caregiver that has been determined eligible for payments under s. 48.57 (3m) and (3p), Stats., and this chapter.

(18) “Legal custody” means, with respect to an individual with legal custody of a child, the right and responsibility to make major decisions, as defined under s. 767.001 (2m), Stats., concerning the child.

Note: Section 767.001 (5), Stats., defines “physical placement” as the condition under which a party has the right to have a child physically placed with that party and has the right and responsibility to make, during that placement, routine daily decisions regarding the child’s care, consistent with major decisions made by a person having legal custody.

(19) “Long-term kinship care” means the program under s. 48.57 (3n), Stats.

(20) “Long-term kinship care payment” means a monthly payment in an amount specified in s. 48.57 (3n) (am), Stats., that is paid to a relative caregiver that has been determined eligible under s. 48.57 (3n) and (3p), Stats., and this chapter.

(21) “Medical assistance” means the assistance program under 42 USC, ch. 7, subch. XIX, and ch. 49, Stats., subch. IV.

(22) “Relative” means an adult that is the child’s stepparent, brother, sister, stepbrother, stepsister, half brother, half sister, brother-in-law, sister-in-law, first cousin, 2nd cousin, nephew, niece, uncle, aunt, stepuncle, stepaunt, 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 person named in this subsection, even if the marriage is terminated by death or divorce.

(23) “Relative caregiver” means a relative that is providing care and maintenance for a child and is applying for, or receiving, kinship care payments or long-term kinship care payments.

(24) “Voluntary kinship care” means the program under s. 48.57 (3m), Stats., when the child is not placed in the relative caregiver’s home under a court order or a voluntary transition-to-independent-living agreement and is not under the placement and care responsibility of a child welfare agency.

(25) “Voluntary transition-to-independent-living agreement” means a voluntary agreement under s. 48.366 (3) or 938.366 (3), Stats.

DCF 58.03 Types of relative caregiving. This chapter applies to the following types of relative caregiving of a child:

(1) COURT-ORDERED OUT-OF-HOME CARE PLACEMENT. A relative applying for or receiving kinship care payments on behalf of a child that was placed in the relative’s home under a court order or a voluntary transition-to-independent-living agreement and is under the placement and care responsibility of a child welfare agency. The relative is also applying for or has applied for a license to operate a foster home under ch. DCF 56, unless the child was placed in the relative caregiver’s home by a court order of a tribal court.

(2) VOLUNTARY. A relative applying for or receiving kinship care payments on behalf of a child residing with the relative for a child that was not placed in the relative caregiver’s home under a court order or a voluntary transition-to-independent-living agreement and is not under the placement and care responsibility of a child welfare agency. The child’s living arrangement with the relative may be informal or the relative may be the child’s guardian under ch. 54, Stats.

(3) GUARDIAN APPOINTED FOR CHILD IN NEED OF PROTECTION OR SERVICES. A relative that is applying for or receiving long-term kinship care payments and is a child’s guardian under s. 48.977, Stats.

DCF 58.04 Eligibility criteria for kinship care and long-term kinship care. A relative caregiver shall be eligible to receive kinship care payments or long-term kinship care payments if the kinship care agency determines that all of the following conditions are met:

(1) APPLICATION. (a) *All applicants.* The relative caregiver applies for kinship care payments or long-term kinship care payments using the application form prescribed by the department.

(b) *Court-ordered out-of-home care placement.* 1. If the child is placed in the home of the relative caregiver under a court order or a voluntary transition-to-independent-living agreement and a child welfare agency has placement and care responsibility for the child, the relative caregiver also completes the

application for a license to operate a foster home, including the completion of forms prescribed by the department under ch. DCF 56.

2. Notwithstanding subd. 1., a relative caregiver of a child placed in the relative caregiver's home under a court order or a voluntary transition-to-independent-living agreement is not required to apply for a license to operate a foster home if the child was placed in the relative caregiver's home by a court order of a tribal court.

Note: If a relative caregiver has a private guardianship of the child under ch. 54, Stats., a child welfare agency does not have placement and care responsibility for the child, unless there is another court order giving the child welfare agency placement and care responsibility.

(c) *More than one child.* A relative caregiver may apply for kinship care or long-term kinship care for more than one child on the same application form.

Note: DCF-F-CFS2023, *Kinship Care Payment Application*, is the application prescribed by the department if the relative caregiver is not required to apply for a license to operate a foster home. DCF-F-2483-E, *Joint Court-Ordered Kinship Care and Foster Care Application –Part A* is the application form prescribed by the department if the child is in a court-ordered out-of-home care placement. Both application forms are available on the department's website at <https://dcf.wisconsin.gov/forms>.

(2) COOPERATION WITH AGENCY. The relative caregiver cooperates with the kinship care agency, including all of the following:

(a) Completing and returning any forms prescribed by the department.

(b) Returning phone calls from the kinship care agency.

(c) Providing information through home visits, interviews, and documentation as necessary for the kinship care agency to determine or redetermine the eligibility of the relative caregiver for kinship care or long-term kinship care.

(d) Applying for other forms of assistance for which the child may be eligible, including financial assistance and medical assistance for the child.

Note: See the Kinship Navigator Portal at <https://dcf.wi.gov/kinship/navigator> for information on available resources.

(e) Cooperating with referral of the child's parent or parents to the child support agency, except in any of the following circumstances:

1. The child is age 18 years or over.
2. The relative caregiver has a pending good cause claim under s. DCF 58.12.
3. The relative caregiver requested and the kinship care agency granted a good cause exemption to the requirement that a relative caregiver cooperates with referring the child's parent to the child support agency under s. DCF 58.12.

(f) Notifying the kinship care agency of a change in circumstances specified under s. DCF 58.10 (1).

(g) Cooperating with eligibility redeterminations and reviews under s. DCF 58.10.

(h) If the child is age 18 or over and the relative caregiver is applying for or receiving voluntary kinship care payments or long-term kinship care payments, providing the kinship care agency with a form prescribed by the department that has been signed by the relative caregiver and an official from the child's school that verifies that the child meets the criteria in s. DCF 58.02 (4) (a) or (b) 1. and 2.

Note: DCF-F-CFS2167, *Kinship Care School Verification*, is available on the department's website at <https://dcf.wisconsin.gov/forms>.

(3) NO SIMULTANEOUS PAYMENTS. (a) The relative caregiver does not simultaneously receive any of the following payments for the care and maintenance of the same child:

1. Kinship care payments and long-term kinship care payments.
2. Kinship care payments or long-term kinship care payments and foster care payments under s. 48.62 (4), Stats.; subsidized guardianship payments under s. 48.623 (1) or (6), Stats.; or any comparable payments from another jurisdiction.

(b) The relative caregiver does not receive kinship care payments or long-term kinship care payments for providing care and maintenance for a child who is receiving supplemental security income under 42 USC 1381 to 1383c or state supplemental payments under s. 49.77, Stats., due to the child's own disability.

(4) RELATIONSHIP AND RESIDENCE VERIFICATION. (a) The relative caregiver provides all of the following to the kinship care agency:

1. Documentation that verifies the relative caregiver's relationship to the child, such as a birth certificate, a marriage license, guardianship papers, or paternity papers. If no formal documentation is

available, the relative caregiver may attest to the relationship on the application under sub. (1).

2. Documentation that verifies that the child is residing with the relative caregiver, such as the child's medical assistance card or a written statement from a school representative. If no formal documentation is available, the relative caregiver may attest to the living arrangement on the application under sub. (1).

(b) The kinship care agency may request additional information on a relative caregiver's relationship to the child or the child's residence with the relative caregiver at any time.

(5) **BACKGROUND CHECK.** The relative caregiver complies with the requirements of s. 48.57 (3p), Stats., and s. DCF 58.05.

(6) **BEST INTEREST OF THE CHILD.** The kinship care agency determines that living with the relative caregiver is in the best interest of the child under s. DCF 58.06.

(7) **NEED FOR PROTECTION OR SERVICES.** (a) For kinship care, the criteria under s. DCF 58.07 (1) are met.

(b) For long-term kinship care, the criteria under s. DCF 58.07 (2) are met.

(8) **CHILD'S GRADE.** The relative caregiver informs the kinship care agency of the last grade that the child has completed.

(9) **CHILD'S SOCIAL SECURITY NUMBER.** (a) Within 90 days after the kinship care agency determines a relative caregiver's initial eligibility for kinship care payments or long-term kinship care payments, the relative caregiver provides the kinship care agency with the child's social security number.

(b) If a relative caregiver is unable to obtain a social security number for the child by the deadline in par. (a), the relative caregiver notifies the kinship care agency of the actions taken to obtain the social security number and the current status of the request. The kinship care agency shall document the relative caregiver's efforts.

DCF 58.05 Background check. (1) WHEN CONDUCTED. (a) *Mandatory.* 1. 'Application.' Within 10 working days after receiving a complete application as specified under s. DCF 58.08 (1), the kinship

care agency shall begin the background check of the relative caregiver and any adult residents, prospective adult residents, employees, or prospective employees under s. 48.57 (3p), Stats., and this section.

2. 'Prospective adult resident or employee.' Within 10 working days after receiving notice from a relative caregiver of a prospective employee, prospective adult resident, or new adult resident, the kinship care agency shall begin the background check of the prospective employee, prospective adult resident, or adult resident under s. 48.57 (3p), Stats., and this section.

Note: See the definitions of "adult resident" and "employee" in s. DCF 58.02 (1) and (13).

(b) *Discretionary.* 1. At any time that the kinship care agency considers to be appropriate, an agency may conduct a background check of a relative caregiver, adult resident, prospective adult resident, employee, or prospective employee.

2. A kinship care agency may investigate the background of a relative caregiver, adult resident prospective adult resident, employee, or prospective employee at any time the agency considers to be appropriate without conducting a complete background check.

Note: The agency is not required to repeat a fingerprint-based FBI criminal history check for a discretionary background check.

(2) **PROVISIONAL APPROVAL.** (a) The following provisional actions are allowed if a relative caregiver states to the kinship care agency that none of the persons who are subject to a background check has any arrests or convictions that could adversely affect the child or relative caregiver's ability to care for the child:

1. The kinship care agency may make kinship care payments or long-term kinship care payments to the relative caregiver.

2. The relative caregiver may allow a prospective adult resident to be an adult resident and may allow a prospective employee to be an employee.

(b) The provisional approval under par. (a) expires the earlier of the following:

1. When the kinship care agency determines whether the person who is the subject of the background check meets the conditions under s. 48.57 (3p), Stats., and this section.

2. Ninety days after the provisional approval was granted.

(3) PROVIDE INFORMATION. (a) The relative caregiver shall ensure that each person who is the subject of a background check does all of the following:

1. Completes the background information disclosure and written authorization for the kinship care agency to make follow-up contact with the Wisconsin department of justice and any other person or organization.

Note: DCF-F-2978-E, *Background Information Disclosure*, is available in the forms section of the department website at <https://dcf.wisconsin.gov>.

2. Provides information on the person's places of residence during the preceding 5-year period.

(b) The relative caregiver shall submit the information under par. (a) to the kinship care agency.

(c) A person who is the subject of a background check shall submit a complete set of the person's fingerprints in a technology approved by the Wisconsin department of justice or other law enforcement agency if any of the following conditions is met:

1. The person is not a resident of this state.

2. The person has resided outside the state at any time within the preceding 5 years.

3. The kinship care agency determines that the person's employment, licensing, or state court records provide a reasonable basis for further investigation.

(4) CONDUCT BACKGROUND CHECK. (a) The kinship care agency shall obtain information on a person who is the subject of a background check by doing all of the following:

1. Requesting a search of the criminal history records maintained by the department of justice.

2. Submitting the person's fingerprints to the department of justice for submission to the federal bureau of investigation if any of the conditions under sub. (3) (c) is met.

(b) When the kinship care agency is conducting a background check of a relative caregiver, the agency shall conduct a reverse search of the Wisconsin sex offender registry using the relative caregiver's address to determine if a person residing at that address has committed a sex offense that is specified in s. 48.57

(3p) (g), Stats.

Note: A reverse search of the sex offender registry by address can be done by entering the relative caregiver's address at <https://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.

(5) FOLLOW-UP. If a relative caregiver is applying for or receiving kinship care payments, the kinship care agency shall investigate further if the criminal history records of the person who is the subject of the background check indicate any of the following:

(a) If the criminal history records indicate a charge of a crime specified in s. 48.57 (3p) (g), Stats., or comparable law in another state, but do not completely and clearly indicate the final disposition of the charge, the kinship care agency shall make every reasonable effort to contact the clerk of courts to determine the final disposition of the charge.

(b) If the background information disclosure indicates a charge or conviction of a crime specified in s. 48.57 (3p) (g), Stats., or comparable law in another state, but the criminal history records do not include the charge or conviction, the agency shall make every reasonable effort to contact the clerk of courts to obtain a copy of the criminal complaint and the final disposition of the complaint.

(c) If the results of the criminal history records, the background information disclosure, or any other information indicate a conviction for a violation of s. 940.19 (1), 940.195, 940.20, 941.30, 942.08, 947.01 (1), or 947.013, Stats., or comparable law in another state, not more than 5 years before the kinship care agency obtained the information, the agency shall make every reasonable effort to contact the clerk of courts to obtain a copy of the criminal complaint and judgment of conviction relating to that violation.

Note: A list of Wisconsin county clerks of court is available at <https://www.wicourts.gov/contact/docs/clerks.pdf>.

(6) KINSHIP CARE BARRED OFFENSES. (a) A kinship care agency may not make kinship care payments to a relative caregiver if the relative caregiver or an employee or adult resident has been convicted of a crime or has had a penalty imposed that is specified in s. 48.57 (3p) (g), Stats., unless a director's review

under s. DCF 58.11 (1) or a division of hearings and appeals hearing order under s. 48.57 (3m) (g), Stats., determines that there are no arrests, convictions, or penalties that are likely to adversely affect the child or the relative caregiver's ability to care for the child.

(b) A relative caregiver may not employ a person or permit a person to reside in the relative caregiver's home if the person has been convicted of a crime or has had a penalty imposed that is specified in s. 48.57 (3p) (g), Stats., unless a director's review under s. DCF 58.11 (1) or a division of hearings and appeals hearing order under s. 48.57 (3m) (g), Stats., determines that there are no arrests, convictions, or penalties that are likely to adversely affect the child or the relative caregiver's ability to care for the child.

Note: A list of the criminal convictions and penalties that are barred offenses for kinship care under s. 48.57 (3p) (g), Stats., is available on the department's website at <https://dcf.wisconsin.gov/files/cwportal/kc/kc-barredcrimes.pdf>.

Pending charges and convictions that are not specified under s. 48.57 (3p) (g), Stats., may be considered when determining the best interest of the child under s. DCF 58.06 (2) (c).

(7) LONG-TERM KINSHIP CARE STANDARD. (a) A kinship care agency may not make long-term kinship care payments to a relative caregiver if the director determines that the relative caregiver or an employee or adult resident of the relative caregiver has an arrest or conviction that is likely to adversely affect the child or the relative caregiver's ability to care for the child, unless the director's decision is overturned by the division of hearings and appeals under s. 48.57 (3n) (g), Stats.

(b) A relative caregiver may not employ a person or permit a person to reside in the relative caregiver's home if the director determines that the person has an arrest or conviction that is likely to adversely affect the child or the relative caregiver's ability to care for the child, unless the director's decision is overturned by the division of hearings and appeals under s. 48.57 (3n) (g), Stats.

Note: The kinship care agency may need to obtain a copy of the criminal complaint from the clerk of court to determine whether the circumstances of the crimes or the reason for the penalties could adversely affect the child or the relative caregiver's ability to care for the child. A list of Wisconsin county clerks of court is available at <https://www.wicourts.gov/contact/docs/clerks.pdf>.

DCF 58.06 Best interest of the child. (1) CRITERIA FOR BEST INTEREST DETERMINATION. (a) *Kinship care.* For kinship care eligibility, the kinship care agency shall determine if living with the relative caregiver is in the best interest of the child based on the criteria in this section, unless an exception in par.

(c) applies.

(b) *Long-term kinship care.* For long-term kinship care eligibility, the kinship care agency shall determine if living with the relative caregiver on a long-term basis is in the best interest of the child based on the criteria in subs. (2) to (4), unless the exception in par. (c) 2. applies.

(c) *Presumption of best interest.* Notwithstanding par. (a) or (b), the kinship care agency shall presume it is in the child's best interest to live with the relative caregiver if any of the following conditions is met:

1. 'Court order.' The child was placed in the home of the relative caregiver under a court order or a voluntary transition-to-independent-living agreement, and a child welfare agency has placement and care responsibility for the child.

Note: The child welfare agency with placement and care responsibility continues to be responsible for managing the safety of the out-of-home care placement.

2. 'Recent court order.' The kinship care agency is determining the relative caregiver's eligibility for voluntary kinship care or long-term kinship care within 6 months after a court order or voluntary transition-to-independent-living agreement placing the child in the relative caregiver's home expired or was terminated.

(2) CHARACTERISTICS OF THE RELATIVE CAREGIVER. (a) The relative caregiver has or exhibits all of the following characteristics to a degree that allows the relative caregiver to adequately care for the child:

1. A positive approach to parenting the child, including all of the following:

a. If the relative caregiver has parenting history, the parenting history does not include behaviors or actions that are contrary to the health, safety, or welfare of a child, or the kinship care agency determines that the relative caregiver has a positive approach to parenting the child despite the parenting history.

b. The relative caregiver does not inflict or tolerate infliction of abuse and does not neglect the child.

2. A demonstrated interest in integrating the child into the relative caregiver's household and the ability to manage the stress of doing so.

3. An adequate recognition of the child's strengths and needs consistent with the child's age and abilities.

4. The ability to provide stable and appropriate care for the child, given the child's age, strengths, needs, and abilities.

5. The ability and willingness to work with the child's parents, if the relative caregiver is applying for or receiving voluntary kinship care and does not have guardianship of the child under ch. 54, Stats.

(b) The relative caregiver, employees, and adult residents do not have any final substantiated findings of child abuse or neglect that are likely to adversely affect the child or the relative caregiver's ability to care for the child.

(c) If the kinship care agency conducts a background check on a person subject to the background check under s. DCF 58.05 (1), the agency determines that the person does not have any pending charges or convictions that are likely to adversely affect the child or the relative caregiver's ability to care for the child.

(3) OTHER MINOR CHILD IN THE HOME. No minor child residing in the relative caregiver's home endangers the safety of another child.

(4) PHYSICAL ENVIRONMENT. The physical environment of the relative caregiver's home is safe for the child, including all of the following:

(a) The relative caregiver's home is constructed, arranged, and maintained in a manner that is safe.

(b) The relative caregiver's home has all of the following:

1. Living areas that are large enough for the child and other household members.

2. Furnishings and equipment necessary to adequately accommodate the child and other household members.

3. a. A safe and appropriate sleeping arrangement for the child.

b. If the child is under 12 months of age, the child sleeps alone in a crib, bassinet, or playpen.

(c) The property on which the relative caregiver's home is situated and all buildings and structures on that property are safe.

(d) The relative caregiver considers the child's developmental level and ensures that materials and equipment that may be hazardous to the child are stored in areas not readily accessible to the child.

Potentially hazardous materials and equipment may include weapons, ammunition, poisons, insecticides, flammable or combustible materials, alcohol, tobacco products, medications, power tools, detergents, and plastic bags.

(e) The relative caregiver makes every reasonable effort to correct any hazard to the safety of the child in the home or on the premises.

(5) VOLUNTARY KINSHIP CARE ONLY. The kinship care agency determines all of the following conditions are met:

(a) *Child's basic needs.* The child needs to live with the relative caregiver because one or more of the following basic needs of the child can be better met by the relative caregiver than the child's parent or parents:

1. The child's need for adequate food, shelter, clothing, and education.
2. The child's need to be free from physical, sexual, or emotional injury, neglect, or exploitation.
3. The child's need for a safe or permanent family.
4. The child's need to develop physically, mentally, and emotionally to the child's potential.

(b) *Parental consent.* The kinship care agency determines that the child's custodial parent or parents have consented to the child living with the relative caregiver, except that no consent is required if the relative caregiver has guardianship of the child under ch. 54, Stats.

DCF 58.07 Need for protection or services. (1) KINSHIP CARE. When determining the eligibility of a relative caregiver to receive kinship care payments, the kinship care agency shall determine if any of the following conditions is met:

(a) *Court order.* The child has been placed with the relative caregiver by a court order under s. 48.13 or 938.13, Stats., or a substantially similar Wisconsin tribal law.

(b) *Voluntary kinship care.* 1. If the child was not placed with the relative caregiver by a court order under s. 48.13 or 938.13, Stats., or a substantially similar Wisconsin tribal law, the kinship care agency determines any of the following:

- a. The child meets one or more of the criteria under s. 48.13 or 938.13, Stats.
- b. There is a reasonable probability that the child would be at risk of meeting one or more of the criteria under s. 48.13 or 938.13, Stats., if the child were to remain in the parent's home.
- c. If the child is age 18 or over, there is a reasonable probability that the child would meet or be at risk of meeting one or more of the criteria under s. 48.13 or 938.13, Stats., if the child were under 18 years of age and in the parent's home.

2. The kinship care agency shall base a determination involving reasonable probability under subd. 1. b. or c. on any of the following:

- a. The kinship care agency, court, or a tribal court has made a similar determination about the child or a sibling of the child within the previous 12 months.
- b. Evidence of behavior by the child or a parent of the child that if increased in degree, could meet one or more of the criteria under s. 48.13 or 938.13, Stats.
- c. A parent of the child has made threatening and credible statements that, if carried out, could meet one or more of the criteria under s. 48.13, Stats.
- d. Information provided by the relative caregiver, a parent of the child, or any other credible person supports a determination that the circumstances in the child's home could result in the child being at risk of meeting one or more of the criteria under s. 48.13 or 938.13, Stats., if the child were to remain in the home.

(2) LONG-TERM KINSHIP CARE. When determining the eligibility of a relative caregiver to receive long-term kinship care payments, the kinship care agency shall require the relative caregiver to provide proof that the relative caregiver is the child's guardian under s. 48.977, Stats.

DCF 58.08 Agency procedures. (1) APPLICATION. (a) *Complete application.* A kinship care agency shall consider a relative caregiver's application for kinship care payments or long-term kinship care payments to be complete when the agency has received all of the following from the relative caregiver:

1. All information required on the application form prescribed by the department under s. DCF 58.04 (1).

2. All information that a relative caregiver is required to provide for background checks under s. DCF 58.05 (3).

(b) *Agency timeframe for determining eligibility.* Except as provided under s. DCF 58.09, a kinship care agency shall approve or deny a relative caregiver's application within 45 days after receiving the complete application specified under par. (a).

Note: See s. DCF 58.05 (1) for the deadline for beginning background checks.

(c) *Reapplication within 2 years.* A kinship care agency may refuse to accept an application for kinship care or long-term kinship care from a relative caregiver that was determined ineligible for the same program within the previous 2 years if the agency determines that the reason for the previous denial or termination of payments has not changed.

(2) HEALTH INSURANCE. A kinship care agency shall do all of the following:

(a) Provide information on medical assistance to all relative caregivers during the initial eligibility determination process.

(b) Require that a relative caregiver that does not have private health insurance for the child apply for medical assistance for the child and assist the relative caregiver with applying if appropriate.

(c) Inform a relative caregiver that has private health insurance for the child that medical assistance may be available as a secondary health insurance.

(3) AGENCY ELIGIBILITY OR TERMINATION CRITERIA PROHIBITED. A kinship care agency may not create eligibility or termination criteria for kinship care or long-term kinship care that are in addition to the criteria in this chapter and s. 48.57 (3m), (3n), and (3p), Stats.

(4) BEST INTEREST DETERMINATION. (a) *Voluntary and long-term kinship care.* When determining whether living with the relative caregiver is in the best interest of the child under s. DCF 58.06, the kinship care agency shall do all of the following:

1. Assess the ability of the relative caregiver to care for the child and the safety of the relative caregiver's home. Do the following if applicable:

a. If a kinship care agency determines that a relative caregiver has a positive approach to parenting the

child under s. DCF 58.06 (2) (a) 1., despite a parenting history that includes behaviors or actions that are contrary to the health, safety, or welfare of a child, the agency shall document the reasons for concern in the relative caregiver's parenting history and the agency's rationale for determining that the relative caregiver has a positive approach to parenting the child despite the parenting history.

b. If the relative caregiver does not have safe sleeping arrangements for the child as required under s. DCF 58.06 (4) (b) 3., the kinship care agency shall assist the relative caregiver in obtaining the needed crib or bed.

Note: The contract between the department and a county for the provision of child welfare services includes an allocation for kinship care assessments that may be used for relative caregiver needs, such as purchasing a needed crib or bed.

2. Ask each child for whom the relative caregiver is applying for or receiving kinship care payments or long-term kinship care payments how the child feels about living with the relative caregiver, unless the question is not age or developmentally appropriate for the child.

3. When determining a relative caregiver's initial eligibility for kinship care or long-term kinship care, check for any of the following:

a. Child abuse or neglect investigations or final substantiated findings in each county in Wisconsin in which the relative caregiver, adult residents, prospective adult residents, employees, and prospective employees reside or have resided within the previous 5 years.

b. Investigations or findings on a child abuse or neglect registry maintained by any jurisdiction outside Wisconsin in which the relative caregiver, adult residents, prospective adult residents, employees, or prospective employees reside or have resided within the previous 5 years.

4. When redetermining a relative caregiver's eligibility, make the checks specified under subd. 3. in any jurisdiction where the relative caregiver, adult resident, or employee reside or have resided since the most recent check by the kinship care agency.

(b) *Voluntary kinship care; parental consent.* 1. 'Request express consent for living arrangement.' When determining a relative caregiver's initial eligibility for voluntary kinship care when the relative caregiver does not have guardianship of the child, the kinship care agency shall make diligent efforts to

contact the parent or parents that have legal custody of the child and request that the parent or parents sign a form prescribed by the department expressly consenting to the child living with the relative caregiver. The initial effort to contact the custodial parent or parents shall be by mail. The agency may also attempt contact by phone, in person, or by electronic mail.

Note: DCF-F-5371, *Voluntary Kinship Care Parental Approval*, is available on the department's website at <https://dcf.wisconsin.gov/forms>.

2. 'Express denial.' The kinship care agency shall determine that a relative caregiver is ineligible to receive voluntary kinship care and contact the local child protective services agency if the relative caregiver does not have guardianship of the child and a custodial parent expressly denies consent for the child to live with the relative caregiver.

Note: In some circumstances, it may be appropriate for the relative caregiver to seek guardianship of the child.

3. 'Implied consent.' A kinship care agency may determine that consent by the child's custodial parent or parents for the child to live with the relative caregiver is implied if any of the following conditions is met:

a. The kinship care agency makes diligent efforts to contact the child's custodial parent or parents and does not receive a response from any of the child's custodial parents within 20 days after the agency's first attempt to contact the custodial parent or parents.

b. The child's custodial parent or parents respond to the kinship care agency in a manner that is not an express denial of consent for the child to live with the relative caregiver.

Note: The agency is seeking consent for the child to live with the relative caregiver. Parental consent for the relative caregiver to receive kinship care payments is not required. If a parent informs the agency that the parent does not want to pay child support, the agency should focus the conversation on consent for the living arrangement.

c. The child has 2 custodial parents, one custodial parent responds in a manner that is not an express denial of consent for the child to live with the relative caregiver, and the other custodial parent does not respond to the agency's diligent efforts to contact the parent within 20 days after the first attempt to contact the parent.

(5) CHILD SAFETY. (a) *Child protective services.* A kinship care agency that has reasonable cause to suspect that the child has been abused or neglected or has been threatened with abuse or neglect and that abuse or neglect will occur shall make a child abuse or neglect report to the local child protective services agency under s. 48.981 (2), Stats.

(b) *Court.* 1. 'Guardian; not in best interest.' If a kinship care agency has concerns about whether it continues to be in a child's best interest to live with a relative caregiver that has been appointed the child's guardian under s. 48.977 or ch. 54, Stats., the kinship care agency shall inform the court that appointed the guardianship.

2. 'Parent in home; long-term kinship care.' If a child's parent resides with the child and the relative caregiver that is the child's guardian under s. 48.977, Stats., for more than 30 days, the kinship care agency shall inform the court that appointed the guardianship.

Note: Guardianships under s. 48.977, Stats., are the result of a previous action under ch. 48, Stats., in which child safety may have been an issue. Therefore, it is imperative that the kinship care agency responds accordingly when the agency becomes aware of a situation that circumvents the guardianship.

(6) CHILD AGE 18 OR OVER. A kinship care agency may contact the school that a child age 18 or over is attending to verify the documentation submitted by the relative caregiver under s. DCF 58.04 (2) (h).

(7) ADDITIONAL CHILD WITHIN 6 MONTHS. If a relative caregiver applies for kinship care or long-term kinship care for a child that moves into the relative caregiver's home within 6 months after the kinship care agency determined that the relative caregiver is eligible for kinship care or long-term kinship care for a different child, all of the following apply:

(a) The kinship care agency shall direct the relative caregiver to complete only the child-specific portions of the application under s. DCF 58.04 (1).

(b) The kinship care agency is not required to conduct new background checks under s. DCF 58.05.

(c) In determining whether living with the relative caregiver is in the best interest of the child under s. DCF 58.06, the kinship care agency may use information obtained for the agency's most recent determinations under s. DCF 58.06 (2) to (4) for the other children.

(d) At the earliest date that an eligibility redetermination is required under s. DCF 58.10 (3) for the

care of any child in the relative caregiver's home, the kinship care agency shall redetermine the relative caregiver's eligibility for all children in the home for whom the relative caregiver is receiving kinship care payments or long-term kinship care payments.

(8) DETERMINATION. (a) A kinship care agency shall determine whether a relative caregiver is eligible to receive kinship care payments or long-term kinship care payments and send the relative caregiver a written notice of the decision on a form prescribed by the department.

(b) A notice denying or terminating a relative caregiver's eligibility shall include the reasons for the denial or termination and a summary of appeal rights under s. DCF 58.11 and s. 48.57 (3m) (f), (3n) (f), and (3p) (h) or (hm), Stats., as applicable.

(c) A notice terminating eligibility shall inform the relative caregiver that payments will continue until a review or hearing decision is issued if the relative caregiver submits a request for a review or hearing as specified under s. DCF 58.11 within 10 days after the date of the notice. Any payments issued while the review or hearing is pending may be recovered by the kinship care agency if the agency's determination is upheld.

Note: DCF-F-5370-E, *Kinship Care Eligibility Determination*, is available on the department's website at <https://dcf.wisconsin.gov/forms>.

(9) PAYMENT. (a) *Kinship care payments.* After a kinship care agency has determined that a relative caregiver is eligible to receive kinship care payments, the agency shall issue payments that begin as follows:

1. For a child that was placed in the relative caregiver's home under a court order or a voluntary transition-to-independent-living agreement, the later of the following:

a. The date the child was placed in the relative caregiver's home under a court order or a voluntary transition-to-independent-living agreement.

b. Ninety days prior to the date the kinship care agency received the relative caregiver's application information under sub. (1) (a).

2. For voluntary kinship care, the date on which the kinship care agency received the relative

caregiver's application information under sub. (1) (a), unless the relative caregiver is placed on a waiting list under sub. (11).

(b) *Long-term kinship care payments.* After a kinship care agency has determined that a relative caregiver is eligible to receive long-term kinship care payments, the agency shall issue payments that begin the later of the following:

1. The date the relative caregiver was appointed to be the child's guardian under s. 48.977, Stats.
2. Ninety days prior to the date the kinship care agency received the relative caregiver's application information under sub. (1) (a).

(10) WAITING PROHIBITED. (a) *Waiting list prohibited.* A kinship care agency may not place any of the following relative caregivers on a waiting list:

1. 'Long-term kinship care.' A relative caregiver that has been determined eligible for long-term kinship care payments.
2. 'Kinship care with court-ordered placement.' A relative caregiver that has been determined eligible for kinship care payments if the child was placed with the relative caregiver under a court order or a voluntary transition-to-independent-living agreement and a child welfare agency has placement and care responsibility for the child.
3. 'Type of relative caregiving changes to voluntary.' A relative caregiver whose type of relative caregiving under s. DCF 58.03 changes to s. DCF 58.03 (2) while the relative caregiver is receiving kinship care payments or long-term kinship care payments.

(b) *Continued payment by previous agency until funding available.* 1. Subject to subds. 2. and 3., a kinship care agency shall continue to make kinship care payments to a relative caregiver receiving voluntary kinship care payments from the agency if the relative caregiver moves to an area of the state where the kinship care agency has a waiting list.

2. The kinship care agency serving the area of the relative caregiver's new residence under subd. 1. shall place the relative caregiver's name at the top of the agency's waiting list.

3. The kinship care agency serving the area where the relative caregiver is residing shall begin making

the kinship care payments to the relative caregiver when the agency's contract with the department is renewed or amended or the agency otherwise has kinship care funding available to make the payments.

(11) WAITING LIST POLICY AND PROCEDURES FOR VOLUNTARY KINSHIP CARE. (a) *Policy.* Each kinship care agency shall develop a waiting list policy for relative caregivers that have been determined eligible to receive voluntary kinship care payments at a time when the kinship care agency's allocation for kinship care payments is insufficient to begin the payments. A kinship care agency's waiting list policy shall include all of the following:

1. The priority order in which the agency will move relative caregivers off the waiting list to begin making the kinship care payments. The kinship care agency may establish priorities based any of the following criteria:

- a. The order in which applications are received.
- b. The lack of stability in the living arrangement if a payment is not made.
- c. The level or urgency of the child's need under s. DCF 58.06 (5) (a).
- d. If the child is under the guardianship of the relative caregiver by a statutory provision other than s. 48.977, Stats.

2. The criteria and procedures for granting an exception to the priorities established under subd. 1., if the agency grants exceptions.

3. Whether the agency provides a retroactive payment for all or part of the time period that a relative caregiver is on the waiting list.

(b) *Agency submittal.* Each kinship care agency shall submit the agency's waiting list policy under par. (a) to the department by [LRB inserts date that is the first day of the second month after the effective date of rule] and following any change to the agency's waiting list policy.

(c) *Authorization.* A kinship care agency may establish a waiting list for newly-eligible relative caregivers if all of the following conditions are met:

1. The kinship care agency's allocation for kinship care payments in the current fiscal year will be fully expended by payments to existing relative caregivers.

2. The kinship care agency notifies the department that the agency expects to be placing newly-eligible relative caregivers on the waiting list for the remainder of the fiscal year.

Note: Notice should be submitted to Kinship Care Program Coordinator, DCF/DSP, P.O. Box 8916, Madison, WI 53708-8916.

(d) *Funding available.* When a kinship care agency has sufficient funds to begin kinship care payments to a relative caregiver that the agency placed on a waiting list, the kinship care agency shall do all of the following:

1. Notify the relative caregiver in writing that funding is available and request that the relative caregiver contact the agency if the relative caregiver continues to be interested in and eligible for kinship care payments.

2. Begin payments to the relative caregiver for the time period beginning no later than the first day of the following month after the relative caregiver contacts the kinship care agency to express continued interest in and eligibility for kinship care payments.

(12) DOCUMENTATION. (a) *Eligibility decisions.* 1. Within 5 working days after making any decision related to a kinship care agency's determination, redetermination, or review of a relative caregiver's eligibility for kinship care or long-term kinship care, a kinship care agency that has access to the department's child welfare automation system shall enter any information related to the decision and any supporting documentation in the child welfare automation system.

Note: The department's child welfare automation system is eWiSACWIS.

2. A kinship care agency that does not have access to the department's child welfare automation system shall document eligibility decisions by completing the form prescribed by the department and obtaining and retaining supporting documentation as necessary.

Note: Tribal kinship care agencies do not have access to eWiSACWIS. DCF-F-5372-E *Tribal Agency Kinship Care Eligibility Determination*, is available in the forms section of the department's website <https://dcf.wisconsin.gov/forms>.

(b) *Status.* Within 5 working days after the occurrence, a kinship care agency shall enter documentation of any of the following in the department's child welfare automation system or the department's automated kinship care tracking system:

1. A relative caregiver is placed on waiting list.
2. Kinship care payments or long-term kinship care payments to a relative caregiver begin or end.
3. A relative caregiver files an appeal of an agency decision under s. DCF 58.11.

(c) *Documentation transfer to or from a tribal agency.* A kinship care agency shall transfer documentation regarding a relative caregiver's eligibility for kinship care or long-term kinship care to another kinship care agency if all of the following conditions are met:

1. The relative caregiver is receiving kinship care payments or long-term kinship care payments and moves with the child to an area of the state served by another kinship care agency.

2. The kinship care agency serving the area of either the relative caregiver's old residence or new residence does not have access to the department's child welfare automation system.

(13) LONG-TERM KINSHIP CARE AGREEMENT. A kinship care agency that determines that a relative caregiver is eligible to receive long-term kinship care payments shall enter into a written agreement with the relative caregiver using a form prescribed by the department. Under the written agreement, the relative caregiver agrees to provide care and maintenance for the child and the kinship care agency agrees to provide long-term kinship care payments to the relative caregiver until the date of a change in circumstances specified in s. 48.57 (3n) (am) 6., Stats.

Note: DCF-F-CFS2190-E, *Long-Term Kinship Care Agreement*, is available on the department's website at <https://dcf.wisconsin.gov/forms>.

(14) CHANGE IN TYPE OF RELATIVE CAREGIVING. (a) Following a change in a relative caregiver's type of relative caregiving as specified under s. DCF 58.03, the kinship care agency shall determine if the relative caregiver's eligibility for kinship care or long-term kinship care has changed.

(b) If the relative caregiver's eligibility for kinship care or long-term kinship care changes due to a change in the type of relative caregiving under s. DCF 58.03, the kinship care agency shall use information

about the relative caregiver and child previously obtained to the extent appropriate to document the relative caregiver's eligibility following the change in the type of relative caregiving. The kinship care agency may require additional information and actions only as necessary for the eligibility determination and may not require a relative caregiver to complete a new application under s. DCF 58.04 (1).

Note: For other provisions affecting a change in the type of relative caregiving, see s. DCF 58.06 (1) (c) 2. and sub. (10) (a) 3.

There are only minor differences in the eligibility criteria for kinship care and long-term kinship care. If a relative caregiver receiving kinship care payments is appointed the child's guardian under s. 48.977, Stats., the kinship care agency and relative caregiver will enter an agreement under sub. (13) and the kinship care agency will update the program type to long-term kinship care.

(15) DIRECTOR'S DESIGNEE. (a) The director may designate an individual to fulfill the director's responsibilities under ss. DCF 58.05 (7) and 58.11 (1) if the individual is a manager in the kinship care agency and does not directly supervise the agency staff that make eligibility determinations for kinship care or long-term kinship care.

(b) If a director designates an individual under subd. 1., the kinship agency shall submit the name of the designee and the designee's position in the agency to the department each January.

Note: Submit notice of a designee to the Kinship Care Program Coordinator, DCF/DSP, P.O. Box 8916, Madison, WI 53708-8916.

(16) OVERPAYMENTS. (a) A kinship care agency may recover an overpayment of kinship care or long-term kinship care from a relative caregiver by any of the following means:

1. Reducing the amount of relative caregiver's monthly kinship care payment or long-term kinship care payment by an amount agreed to by the relative caregiver and the kinship care agency.

2. Requesting payment within a specified time period or negotiating a payment plan.

(b) 1. A county department of social services under s. 46.22, Stats., or a county department of human services under s. 46.23, Stats., that recovers an overpayment under this section due to the county department's efforts may retain 10 percent of the amount recovered.

2. Funds retained under subd. 1. may only be spent on the county department's kinship care or long-term kinship care program.

DCF 58.09 Special provisions for court-ordered kinship care and long-term kinship care. (1)

PAYMENTS PENDING DECISION ON FOSTER CARE APPLICATION. Subject to subs. (2) and (3), a kinship care agency may make kinship care payments or long-term kinship care payments to a relative caregiver that is providing care and maintenance for a child who is placed in the home of the relative caregiver under a court order or a voluntary transition-to-independent-living agreement until the earlier of the following:

(a) Not more than 60 days after the date on which the kinship care agency received the complete application of the relative caregiver for a license to operate a foster home under ss. DCF 58.04 (1) and 58.08 (1) (a).

(b) The date on which the application for a license to operate a foster home is approved or denied or the relative caregiver is otherwise determined to be ineligible for licensure, if the application is approved or denied or the relative caregiver is otherwise determined to be ineligible for licensure within those 60 days.

(2) PAYMENT EXTENSION IF NO-FAULT DELAY. If the application for a license to operate a foster home is not approved or denied or the relative caregiver is not otherwise determined to be ineligible for licensure within 60 days after the date on which the kinship care agency received the completed application under s. DCF 58.08 (1) for any reason other than an act or omission of the relative caregiver, the kinship care agency may make payments until the earlier of the following:

(a) Four months after the date on which the kinship care agency received the completed application under s. DCF 58.08 (1) (a).

(b) The date on which the application is approved or denied or the relative caregiver is otherwise determined to be ineligible for licensure if the application is approved or denied or the relative caregiver is otherwise determined to be ineligible for licensure within those 4 months.

(3) COURT APPROVES CONTINUED PLACEMENT IN RELATIVE CAREGIVER'S HOME. Notwithstanding that a relative caregiver's application for a license to operate a foster home is denied or the relative caregiver is otherwise determined to be ineligible for licensure, the kinship care agency may make payments to a relative caregiver for as long as all other requirements to receive kinship care payments or

long-term kinship care payments, as applicable, are met if the court orders the child to remain in the relative caregiver's home based on all of the following information if submitted to the court by the kinship care agency:

(a) Information that the kinship care agency gathered for the background check required under s. 48.57 (3p), Stats., and s. DCF 58.05.

(b) The kinship care agency's assessment of the ability of the relative caregiver to care for the child and safety of the relative caregiver's home under ss. DCF58.06 and 58.08 (4) (a).

(c) A recommendation by the kinship care agency that the child remain in the home of the relative caregiver.

(4) COURT DENIES CONTINUED PLACEMENT. If a relative caregiver's application for a license to operate a foster home is denied or the relative caregiver is otherwise determined to be ineligible for licensure and the court does not order the child to remain in the relative caregiver's home under sub. (3), the kinship care agency shall request a change in placement under s. 48.357 (1) (am) or 938.357 (1) (am), Stats., or a termination of the guardianship order under s. 48.977 (7), Stats., for a relative caregiver that applied for long-term kinship care payments. Any person specified in s. 48.357 (2m) (a) or 938.357 (2m) (a), Stats., may also request a change in placement and any person who is authorized to file a petition for the appointment of a guardian for the child may also request a termination of the guardianship order.

DCF 58.10 Change in circumstances. (1) NOTIFICATION REQUIREMENTS. (a) A relative caregiver shall notify the kinship care agency within 5 working days after the date that any of the following occur:

1. The relative caregiver and child move to a new residence.
2. The relative caregiver or a prospective employee, employee, prospective adult resident, or adult resident is the subject of an investigation or final substantiated finding that the person has abused or neglected a child.
3. The relative caregiver or a prospective employee, employee, prospective adult resident, or adult resident is arrested for, charged with, or convicted of any crime.

4. The child has a new caregiver.
5. The child is no longer living with the relative caregiver.
6. The child is married.
7. The child enters the military.
8. The child is deceased.
9. The child graduates, completes, or drops out from a full-time, kindergarten to 12th grade educational program or its equivalent, and the child is 18 years of age or older.
10. There is no longer an individualized education program under s. 115.787, Stats., in effect for the child, and the child is 18 years of age or older.
11. The relative caregiver is no longer supporting the child.
12. The child's parent is residing with the relative caregiver and the child.
13. The child is placed outside the relative caregiver's home under a court order, voluntary placement agreement under s. 48.63 (1) (a) or (b) or (5) (b), Stats., or a voluntary transition-to-independent-living agreement.
14. The child is placed into the relative caregiver's home under a court order or a voluntary transition-to-independent-living agreement.
15. The relative caregiver is appointed the child's guardian under s. 48.977, Stats.
16. The relative caregiver's guardianship order under s. 48.977, Stats., terminates.
17. The relative caregiver begins receiving foster care payments under s. 48.62 (4), Stats., or from another jurisdiction.
18. The relative caregiver begins receiving subsidized guardianship payments for care of the child under s. 48.623, Stats., or comparable payments from another jurisdiction.
19. The child begins receiving supplemental security income under 42 USC 11381 to 11383c or state supplemental payments under s. 49.77, Stats., due to the child's own disability.

(b) 1. A relative caregiver shall notify the kinship care agency that a person intends to become an adult resident in the relative caregiver's home as soon as possible before the person begins residing in the home, except as provided under subd. 2.

2. If a person becomes an adult resident in a relative caregiver's home without advance notice to the relative caregiver, the relative caregiver shall notify the kinship care agency no later than 5 working days after the person becomes an adult resident.

(c) A relative caregiver shall notify the kinship care agency of a prospective new employee before employing the person.

(2) AGENCY REVIEW. (a) A kinship care agency that receives notice from the relative caregiver or otherwise knows or suspects that a change specified in sub. (1) has occurred shall review whether the relative caregiver continues to be eligible for kinship care payments or long-term kinship care payments within 20 calendar days.

(b) A kinship care agency may allow the child's parent to reside with the relative caregiver and the child for no more than 30 calendar days, unless the relative caregiver is providing care for the child's parent and any of the following apply:

1. The child's parent is a child.

Note: See s. DCF 58.02 (4) for the definition of "child" for purposes of this chapter.

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

(3) ANNUAL ELIGIBILITY REDETERMINATION. (a) *Annual redetermination date.* 1. A kinship care agency shall redetermine the eligibility of a relative caregiver to receive kinship care payments or long-term kinship care payments at least every 12 months after the agency began making kinship care payments or long-term kinship care payments to the relative caregiver.

2. If the relative caregiver is caring for more than one child and the kinship care payments or long-term kinship care payments began on different dates, the kinship care agency shall redetermine the relative caregiver's eligibility at least 12 months from the redetermination date under s. DCF 58.08 (7) (d) or

otherwise establish a single annual redetermination date for the relative caregiver.

(b) *Redetermination form.* 1. Sixty days before a relative caregiver's annual redetermination date established under par. (a), the kinship care agency shall send to the relative caregiver a form prescribed by the department that requests the relative caregiver to indicate whether any of the circumstances specified under s. DCF 58.10 (1) have occurred and the last grade that the child has completed.

2. The form under subd. 1. shall also direct the relative caregiver to contact the kinship care agency to schedule a time for the agency to visit the relative caregiver's home if the relative caregiver is receiving voluntary kinship care payments or long-term kinship care payments.

Note: DCF-F-5369-E, *Kinship Care Review of Eligibility and Notice of Change of Circumstances*, is available on the department's website at <https://dcf.wisconsin.gov/forms>.

(c) *Voluntary and long-term kinship care; home visit.* If the relative caregiver is receiving voluntary kinship care payments or long-term kinship care payments, the kinship care agency shall visit the relative caregiver's home and determine whether living with the relative caregiver continues to be in the best interest of the child under s. DCF 58.06 (1) to (4).

(d) *Voluntary kinship care.* If the relative caregiver is receiving voluntary kinship care payments, the kinship care agency shall also determine all of the following:

1. Whether there continues to be a need for the child to live with the relative caregiver under s. DCF 58.06 (5) (a).

2. If the conditions under s. DCF 58.07 (1), regarding the child's need for protection or services, are met.

(4) ELIGIBILITY AFTER AGE 17. (a) *Definition of child.* A relative caregiver may be eligible to receive kinship care payments or long-term kinship care payments for the care of a child who is 18 years of age or older if the child meets the conditions under s. DCF 58.02 (4) (a) or (b) and other eligibility requirements in this chapter and s. 48.57 (3m), (3n), and (3p), Stats., as applicable, are met.

(b) *Voluntary kinship care and long-term kinship care procedures.* To determine if the eligibility of a relative caregiver receiving voluntary kinship care payments or long-term kinship care payments is

expected to continue when the child turns 18 years old, the kinship care agency shall do all of the following:

1. Six months before the child's 18th birthday, the kinship care agency shall send the relative caregiver a form prescribed by the department that notifies the relative caregiver that kinship care payments or long-term kinship care payments will terminate when the child turns 18 years old unless the relative caregiver provides information regarding potential eligibility for the payments to continue.

Note: DCF-F-5373-E, *Advance Notice of Termination of Kinship Care at Age 18*, is available on the department's website at <https://dcf.wisconsin.gov/forms>.

2. If the kinship care agency has not received the completed form under and any necessary documentation from the relative caregiver by 60 days before the child's 18th birthday, the kinship care agency shall send a second copy of the form to the relative caregiver.

3. If the kinship care agency has not received the completed form under subd. 1. or 2. with any necessary documentation from the relative caregiver by 30 days before the child's 18th birthday, the payment for the month of the child's 18th birthday shall be the last payment.

4. If the kinship care agency receives the completed form under subd. 1. or 2. and any necessary documentation from the relative caregiver 30 days or more before the child's 18th birthday, the kinship care agency shall determine if eligibility will continue when the child turns 18 years old and send the notice of decision on a form prescribed by the department within 15 days after receiving the relative caregiver's completed form and any necessary documentation.

(c) *Court-ordered kinship care procedures.* 1. To determine if a relative caregiver's eligibility for kinship care is expected to continue when a child turns 18 years old if the child was placed in the relative's home under a court order or a voluntary transition-to-independent-living agreement and is under the placement and care responsibility of a child welfare agency, a kinship care agency that has access to the department's child welfare automation system shall do all of the following:

a. At least 45 days before the child's 18th birthday, verify that the child welfare agency that has placement and care responsibility of the child has entered the information that is necessary to determine the

relative caregiver's continued eligibility into the department's child welfare automation system. Contact the child welfare agency if the necessary information has not been entered.

b. At least 30 days before the child's 18th birthday, determine if eligibility will continue when the child turns 18 years old and send the notice of decision on a form prescribed by the department.

2. A kinship care agency that does not have access to the department's child welfare automation system shall use the procedures in par. (b) to determine if eligibility is expected to continue when the child turns 18 years old and the relative caregiver is receiving kinship care payments on behalf of a child that was placed in the relative's home under a court order or a voluntary transition-to-independent-living agreement.

Note: DCF-F-5373-E, *Advance Notice of Termination of Kinship Care at Age 18*, is available on the department's website at <https://dcf.wisconsin.gov/forms>.

DCF 58.11 Appeal rights. (1) KINSHIP CARE; DIRECTOR REVIEW OF BACKGROUND CHECK DENIAL.

(a) *Request for review.* 1. A relative caregiver applying for or receiving kinship care payments may submit a request for review by the director of the kinship care agency if the relative caregiver receives a written notice of any of the following:

a. Kinship care payments are denied or terminated because the background check of the relative caregiver indicates a conviction or imposition of a penalty specified under s. 48.57 (3p) (g), Stats., and s. DCF 58.05 (6).

b. The background check of a prospective adult resident, adult resident, prospective employee, or employee indicates a conviction or imposition of a penalty specified under s. 48.57 (3p) (g), Stats., and s. DCF 58.05 (6), and kinship care payments will be denied or terminated if the relative caregiver permits the prospective adult resident to reside in the relative caregiver's home, continues to permit the adult resident to reside in the relative caregiver's home, employs the prospective employee, or continues to employ the employee.

2. A relative caregiver's request for review shall be addressed to the director and submitted to the kinship care agency in the manner specified in the notice no later than 45 days after the date of the notice

under subd. 1.

3. The kinship care agency shall continue kinship care payments to a relative caregiver if the relative caregiver submits a request for review by the director within 10 days after the date of a notice of termination, pending the director's written notice of determination under par. (c) and, if the relative caregiver submits a request for a hearing under sub. (2) within 10 days after the date of the director's written notice of determination under par. (c), the hearing decision.

(b) *Standard for review.* Within 30 days after the kinship care agency receives the relative caregiver's request for review under par. (a), the director shall determine if the conviction record on which the denial, termination, prospective denial, or prospective termination is based includes any arrests, convictions, or penalties that are likely to adversely affect the child or the ability of the relative caregiver to care for the child. In reviewing the conviction record, the director shall consider all of the following factors:

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 alleged violation, violation, or penalty and how that alleged violation, violation, or penalty affects the ability of the relative caregiver to care for the child.
3. Whether making an exception to the denial would be in the best interests of the child.

(c) *Director's determination.* Within 10 working days after making the determination under par. (b), the kinship care agency shall send the relative caregiver a written notice of the director's determination and a summary of the relative caregiver's right to a hearing under sub. (2) and s. 48.57 (3m) (f) and (g), Stats.

Note: A relative caregiver applying for or receiving long-term kinship care is not eligible for a review by the director because the director makes background check determinations for long-term kinship care under s. DCF 58.05 (7).

(2) REQUEST FOR HEARING. (a) *Notice of agency action.* A relative caregiver may submit a request for a hearing to the division of hearings and appeals in the manner specified in the notice no later than 45 days after the date of a notice from the kinship care agency if the notice does any of the following:

1. Denies or terminates kinship care payments or long-term kinship care payments for a reason other than the background check.

2. Denies or terminates kinship care payments following the director's review of the relative caregiver's conviction record under sub. (1).

3. Notifies the relative caregiver that the director has reviewed the conviction record of a prospective adult resident, adult resident, prospective employee, or employee under sub. (1) and has determined that kinship care payments will be denied or terminated if the relative caregiver does any of the following:

a. Permits the prospective adult resident, or continues to permit the adult resident, to reside in the relative caregiver's home.

b. Employs the prospective employee or continues to employ the employee.

4. Denies or terminates long-term kinship care payments based on the background check of the relative caregiver under s. DCF 58.05 (7).

5. Notifies the relative caregiver that based on the background check of a prospective adult resident, adult resident, prospective employee, or employee, the director has determined that long-term kinship care payments will be denied or terminated if the relative caregiver does as provided under subd. 3. a. or b.

6. Notifies the relative caregiver of an overpayment for the first time in writing and requests that the relative caregiver repay the kinship care agency.

(b) *Failure to act on application.* If the kinship care agency fails to act on a relative caregiver's complete application as specified under s. 58.08 (1) (a), the relative caregiver may submit a request for a hearing to the division of hearings and appeals no later than 45 days after the date of the deadline for the kinship care agency to process the application under s. DCF 58.08 (1) (b).

Note: A request for a hearing may be mailed to Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875; faxed to (608) 264-9885; or delivered to 4822 Madison Yards Way, Madison, WI 53705.

(c) *No division of hearings and appeals hearing right.* A relative caregiver may not be granted a hearing with the division of hearings and appeals if any of the following conditions is met:

1. The relative caregiver is applying for or receiving kinship care payments, the kinship care agency sent the relative caregiver the notice specified under sub. (1) (a) 1., and any of the following:

a. The relative caregiver has not requested a review by the director under sub. (1).

b. The relative caregiver requested a review by the director under sub. (1), the director has not sent a notice of the determination, and the time allowed for the director to send the notice of the determination has not expired.

2. The kinship care agency determined that the person was ineligible for kinship care or long-term kinship care within the previous 2 years, and the reason for the denial or termination has not changed.

Note: For kinship care, the procedures for a hearing with the Division of Hearings and Appeals is under s. 48.57 (3m) (g), Stats. For long-term kinship care, the procedures for a hearing with the Division of Hearings and Appeals is under s. 48.57 (3n) (g), Stats.

DCF 58.12 Procedures for requesting an exemption for good cause to the requirement for cooperation in securing child support. (1) DEFINITIONS. In this section:

(a) “Emotional harm” means that the child or relative caregiver is so emotionally impaired that his or her functioning is substantially affected.

(b) “Serious nature” means:

1. In reference to a relative caregiver, that the physical or emotional impairment is or will be substantial enough to affect the relative caregiver’s capacity to care for the child.

2. In reference to a child, that the physical or emotional impairment is or will be substantial enough to affect the child’s emotional, mental, or physical functioning.

(2) RIGHT TO REQUEST GOOD CAUSE EXEMPTION. A relative caregiver may request a good cause exemption from the requirement under s. DCF 58.04 (2) (e) to cooperate with the kinship care agency in referring the child’s parent or parents to the child support agency.

(3) CLAIMING GOOD CAUSE. (a) *Notice.* 1. A kinship care agency shall notify the relative caregiver of the opportunity to claim a good cause exemption in the application for kinship care or long-term kinship care.

2. The notice shall describe the right to refuse to cooperate for good cause in securing child support and shall include advising the relative caregiver of all of the following:

a. The potential benefits the child may derive from securing child support.

b. That cooperation in securing child support is a condition of eligibility for kinship care and

long-term kinship care.

c. That good cause for refusing to cooperate may be claimed and if the kinship care agency finds that there is good cause, the relative caregiver will be excused from the cooperation requirement.

(b) *Claim.* 1. A relative caregiver may claim good cause in the department-prescribed application for kinship care and long-term kinship care under s. DCF 58.04 (1). The good cause claim form shall describe the circumstances that support a good cause claim and how a claim should be documented.

2. The information on good cause in the application shall include that the kinship care agency directs the child support agency to proceed to attempt to secure child support without the participation of the relative caregiver.

3. The claim shall be signed by the relative caregiver. The signature of the relative caregiver initiates the claim.

4. Within 2 days after the relative caregiver initiates the good cause claim under subd. 3., the kinship care agency shall notify the child support agency that the relative caregiver has filed a good cause claim and instruct the child support agency to either not initiate or to suspend activities to secure child support until the claim is determined.

(c) *Burden on relative caregiver to establish good cause circumstances.* A relative caregiver who refuses to cooperate in securing child support and who claims good cause for refusing to cooperate has the burden of establishing existence of a good cause circumstance, except as provided in subs. (5) (c) and (11) (a).

(4) GOOD CAUSE CIRCUMSTANCES. The kinship care agency shall determine if requiring cooperation is contrary to the best interests of the child or the relative caregiver. An exemption may be granted only for one of the following reasons:

(a) The relative caregiver's cooperation can be reasonably anticipated to result in any of the following:

1. Physical harm of a serious nature to the child or to the relative caregiver.
2. Emotional harm of a serious nature to the child or the relative caregiver.

(b) One of the following circumstances exists and it can be reasonably anticipated that proceeding to

secure child support would be detrimental to the child:

1. The child was conceived as the result of incest or sexual assault.
2. A petition for adoption of the child has been filed with a court.
3. The parent or parents are being assisted by a social services agency in deciding whether to terminate parental rights and the discussions have not gone on for more than 3 months.

(5) DETERMINATION OF GOOD CAUSE. (a) Within 45 days from the date a claim is signed, the kinship care agency shall determine if there is good cause for a relative caregiver to refuse to cooperate in securing child support. The 45-day period may be extended by the kinship care agency upon written notice to the relative caregiver if the kinship care agency documents that additional time is needed for any of the following reasons:

1. Information needed to verify the claim cannot be obtained by the kinship care agency within 45 days.
2. Supporting evidence was not submitted by the relative caregiver within 20 days as required under sub. (10) (a).

(b) The kinship care agency's determination on whether good cause exists shall be reviewed and signed by a supervisor in the agency.

(c) If there is no evidence or verifiable information available which suggests otherwise, the kinship care agency shall conclude that a refusal to cooperate was, in fact, a case of cooperation to the fullest extent possible.

(d) The kinship care agency shall place all of the following in the relative caregiver's case record:

1. The agency's final determination on the relative caregiver's good cause claim and the reasons for the determination.
2. All evidence submitted in support of the claim.

(e) Written notice of the final determination shall be given to the relative caregiver and to the child support agency. If the kinship care agency determines that good cause does not exist, the relative caregiver shall have 45 days from the date of the notification to do one of the following:

1. Withdraw the claim and cooperate.
2. Exclude any affected child from the application or case.
3. Withdraw the application or request that the case be closed.
4. Request a hearing under s. DCF 58.11 (2) (a) 4.

(f) A denial or termination of kinship care or long-term kinship care shall remain in effect until there is cooperation or until cooperation is no longer an issue.

(6) APPROVING OR CONTINUING PAYMENTS. If the relative caregiver is cooperating with the kinship care agency in furnishing evidence and information for a determination on good cause, the kinship care agency may not deny, delay, reduce, or discontinue a kinship care or long-term kinship care payment, pending the determination, provided that all other eligibility criteria are met.

(7) PARTICIPATION OF THE CHILD SUPPORT AGENCY. (a) The child support agency shall be given the opportunity to review and comment on the findings of the kinship care agency prior to the final determination on good cause by the kinship care agency. Consideration shall be given to any recommendation from the child support agency.

(b) The child support agency may participate in any hearing resulting from a good cause determination.

(c) The final decision on good cause shall be made by the kinship care agency.

(8) EVIDENCE. An initial good cause claim shall be based on evidence in existence at the time of the claim. There is no limitation on the age of the evidence. Once a final decision, including any hearing, is made on the claim, any subsequent claim shall have new evidence as its basis. Any of the following types of evidence may be used in determining good cause:

(a) Birth certificates or medical or law enforcement records that indicate that the child may have been conceived as a result of incest or sexual assault.

(b) Court documents or other records that indicate that a petition for the adoption of the child has been filed with a court.

(c) Court, medical, criminal, child protective services, social services, psychological, school or law enforcement records that indicate that a parent might inflict physical or emotional harm on the child or on

the relative caregiver.

(d) Medical records indicating the emotional health history and present emotional health status of the relative caregiver or the child, or a written statement from a mental health professional indicating a diagnosis or prognosis concerning the emotional health of the relative caregiver or the child.

(e) A written statement from a public or private social services agency that the parent is being assisted by that agency to determine whether or not to terminate parental rights.

(f) Sworn statements from persons other than the parent or the relative caregiver with knowledge of the circumstance on which the good cause claim is based.

(g) Any other supporting or corroborative evidence.

(9) SPECIAL REQUIREMENTS FOR PROOF OF GOOD CAUSE. (a) *Emotional harm.* If a good cause claim is based on emotional harm to the relative caregiver or to the child, the kinship care agency shall consider all of the following:

1. Present emotional state of the person subject to emotional harm.
2. Emotional health history of the person subject to emotional harm.
3. Intensity and probable duration of the emotional harm.
4. Degree of cooperation to be required.
5. Extent of involvement of the child or the relative caregiver in the establishment of the support enforcement activity to be undertaken.

(b) *Physical harm.* If a good cause claim is based on anticipated physical harm and no evidence is submitted, the kinship care agency shall conduct an investigation.

(c) *Incest or sexual assault.* If a good cause claim is based on the relative caregiver's statement that the child was conceived as a result of incest or sexual assault, but this is not documented, the claim may be reviewed as one based on emotional harm.

(10) GENERAL REQUIREMENTS FOR PROOF OF GOOD CAUSE. (a) The relative caregiver who claims good cause shall provide supporting evidence within 20 days from the day the claim is signed. The kinship care agency worker may, with supervisory approval, determine that more time is necessary because of

difficulty in obtaining certain evidence.

(b) There shall be at least one document of evidence, in addition to any sworn statements from the relative caregiver, for proof of good cause. The relative caregiver shall be encouraged to provide as many types of evidence as possible. The kinship care agency shall offer assistance in obtaining necessary evidence.

(c) When sufficient evidence to substantiate a good cause claim has not been submitted, the kinship care agency shall do all of the following:

1. Notify the relative caregiver that additional evidence is required and specify that evidence.
2. Advise the relative caregiver on how to obtain the evidence.
3. Make a reasonable effort to obtain specific documents that are not reasonably attainable by the relative caregiver without assistance.

(d) If after having been notified that additional evidence is required, the relative caregiver continues to refuse to cooperate or the evidence obtained does not establish good cause, the kinship care agency shall then notify the relative caregiver that if no further action is taken within 45 days from the date of the notification, good cause will not be found and that the relative caregiver may do any of the following:

1. Withdraw the claim and cooperate.
2. Exclude affected children from the application or case.
3. Withdraw the application or request that the case be closed.
4. Request a hearing under s. DCF 58.11 (2).

(e) If the 45 days provided for in par. (d) have expired and no action as specified in par. (d) has occurred, the kinship care agency shall deny the application for, or close the case of, any affected child.

(11) INVESTIGATION OF GOOD CAUSE CLAIM. (a) The kinship care agency shall conduct an investigation of any good cause claim based on anticipated physical harm, both when the claim is credible without supporting evidence and when supporting evidence is not available. Good cause shall be found when both the relative caregiver's statement and the investigation satisfy the kinship care agency that the relative caregiver has good cause.

(b) The kinship care agency may also investigate any good cause claim when the relative caregiver's statement, together with the corroborative evidence, does not provide a sufficient basis for a determination.

(c) Neither the kinship care agency nor the child support agency shall, in the course of any investigation, contact the parent from whom support would be sought without first notifying the relative caregiver in writing of the intention to do so. The relative caregiver shall have a 45-day period from the date of the notification to do any of the following:

1. Present additional supporting or corroborative evidence or information so that contact with the parent is unnecessary.
2. Exclude an affected child from the application or case.
3. Withdraw the application or request that the case be closed.
4. Request a hearing under s. DCF 58.11 (2).

(d) When the 45 days provided for in par. (c) have expired and no action as specified in par. (c) has occurred, the kinship care agency shall deny the application for or close the case of any affected child.

(12) NOTICE OF GOOD CAUSE FINDING. (a) *Notice to the child support agency.* The kinship care agency shall notify the child support agency in writing whether good cause is found or is not found and, if found, whether or not the child support agency should proceed to secure child support without participation of the relative caregiver.

(b) *When good cause is found.* When good cause is found, the kinship care agency shall do one of the following, as appropriate:

1. Direct the child support agency to suspend all further case activities if it is determined that the child support agency's action, even without participation of the relative caregiver, can be reasonably anticipated to result in physical or emotional harm to the child or the relative caregiver.

2. a. Advise the child support agency to proceed without the participation of the relative caregiver if the child support agency's action can reasonably be anticipated to not result in physical or emotional harm to the child or the relative caregiver.

- b. The kinship care agency shall notify the relative caregiver immediately of its intended

recommendation to the child support agency under subd. 2. a., but shall wait for 45 days from the date of the notification to notify the child support agency to allow the relative caregiver time to exclude any affected child from the application or case, to withdraw the application, or request that the case be closed or to request a hearing.

c. The kinship care agency's recommendation under subd. 2. a. to the child support agency shall be in writing and shall contain the kinship care agency's findings and the basis for its determination. A copy of the written recommendation shall be included in the relative caregiver's case record.

(c) *When good cause is not found.* When good cause is not found, the kinship care agency shall do all of the following:

1. Provide written notice to the relative caregiver.

2. Wait 45 days before taking further action. If after the 45 days, the relative caregiver still refuses to cooperate and has not excluded the affected child or withdrawn the application or requested that the case be closed, the kinship care agency shall deny the application for any affected child or close the case. If the application is denied or the case is closed for not cooperating in securing child support, the kinship care agency shall inform the a relative caregiver, in writing, of the right to a hearing under s. DCF 58.11 (2). If a hearing is requested, the kinship care agency shall direct the child support agency not to proceed with any support enforcement action during the hearing process.

(13) REVIEW OF GOOD CAUSE DETERMINATIONS. (a) Good cause determinations based on permanent circumstances need not be reviewed.

(b) The kinship care agency shall review good cause determinations involving circumstances that are subject to change at each eligibility redetermination under s. DCF 58.10, or upon the receipt of new evidence.

(c) When good cause is determined to no longer exist, the kinship care agency shall rescind its determination and immediately send written notification to the relative caregiver with the right to a hearing under s. DCF 58.11 (2), but may not notify the child support agency for 45 days from the date of the notification to allow the relative caregiver to do one of the following:

1. Cooperate.
2. Exclude any affected child from the case.
3. Request that the case be closed.
4. Request a hearing under s. DCF 58.11 (2).

(d) When the 45 days provided for in par. (c) have expired and no action as specified in par. (c) has occurred, the kinship care agency shall do both of the following:

1. Deny the application for or close the case of any affected child.
2. Inform the relative caregiver of the right to a hearing under s. DCF 58.11 (2).

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