

1999 ASSEMBLY BILL 895

March 20, 2000 – Introduced by Representative UNDERHEIM, by request of Department of Health and Family Services. Referred to Committee on Health.

1 **AN ACT** *to repeal* 252.15 (7) (c) 2.; *to renumber* 252.15 (7) (c) 1.; *to renumber*
2 *and amend* 20.435 (4) (bs) and 252.15 (7) (c) (intro.); *to amend* 46.27 (11) (c)
3 5m. (intro.), 46.27 (11) (c) 5n. (intro.), 46.27 (11) (c) 6. (intro.), 46.277 (5) (d) 1m.
4 (intro.), 46.277 (5) (d) 1n. (intro.), 46.277 (5) (d) 2. (intro.), 46.286 (1) (a) 2.
5 (intro.), 46.286 (1m), 46.286 (3) (a) (intro.), 46.289, 46.99 (2) (a) (intro.), 46.995
6 (1m), 46.995 (4m) (b) (intro.), 48.833, 48.981 (3) (cm), 48.981 (7) (cm), 48.981 (7)
7 (d), 49.45 (46) (a), 50.033 (2s) (intro.), 50.034 (5n) (intro.), 50.035 (4n) (intro.)
8 and 153.50 (6) (c) 1.; *to repeal and recreate* 46.27 (11) (c) 6. a. and 46.277 (5)
9 (d) 2. a.; *to create* 46.27 (11) (c) 6g., 46.277 (5) (d) 4., 46.286 (3) (a) 6., 48.78 (3),
10 48.981 (3) (c) 5m., 48.981 (7) (a) 15g., 48.981 (7) (cr) and 938.78 (4) of the
11 statutes; and *to affect* 1999 Wisconsin Act 9, section 402, 1999 Wisconsin Act
12 9, section 9423 (7) and 1999 Wisconsin Act 9, section 9423 (8); **relating to:**
13 appeals of substantiated child abuse or neglect findings; public disclosure of
14 certain child abuse and neglect information when there is a child fatality or

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1 near fatality; access to child abuse and neglect information by a citizen review
2 panel established or designated by the department of health and family
3 services or a county department of human services or social services; the
4 disclosure of records relating to a substitute care parent; the placement of a
5 child for adoption outside of the county where the child is located; the allocation
6 of funding for tribal adolescent services and the brighter futures initiative;
7 reporting an individual's positive HIV test to the state epidemiologist; family
8 care eligibility and referral; use of community options program and community
9 integration program funds in a community-based residential facility; medical
10 assistance alcohol and other drug abuse services in a facility; use of seclusion
11 or restraints in state-operated mental health institutes; collection of health
12 care information; the effective date for appropriations for relief block grants to
13 tribes; and making appropriations.

Analysis by the Legislative Reference Bureau**HEALTH AND HUMAN SERVICES****CHILDREN*****Introduction***

Recent changes to the Child Abuse Prevention and Treatment Act (CAPTA) and to Title IV-E of the federal Social Security Act (Title IV-E) impose additional requirements on the states as a condition for receiving funding under CAPTA and Title IV-E. Specifically, CAPTA requires a state that is applying for a grant under CAPTA to provide assurances that the state has a law by which an individual who disagrees with an official finding of child abuse or neglect can appeal such a finding and a law that allows for the public disclosure of information about a case of child abuse or neglect that has resulted in a child fatality or near fatality. CAPTA also requires a state that receives a grant under CAPTA to establish not less than three citizen review panels to evaluate the extent to which local agencies that are responsible for child protection are effectively discharging their responsibilities and to provide those citizen review panels with otherwise confidential child abuse and neglect reports and records as necessary for those panels to carry out their functions. In addition, the Adoption and Safe Families Act of 1997 (ASFA) amended Title IV-E to provide that a state is not eligible for the receipt of funding under Title IV-E (IV-E

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funding) if the state denies or delays the placement of a child for adoption when an approved family is available outside of the jurisdiction that is responsible for handling the case of the child. Title IV–E also requires a state, as a condition of eligibility for IV–E funding, to provide safeguards that restrict the disclosure of information relating to individuals who are assisted by the state’s foster care program, including a foster parent. This bill changes the laws of this state to bring those laws into conformity with CAPTA and Title IV–E, as amended by ASFA. The bill also reallocates certain funding between the brighter initiatives program and the tribal adolescent services program.

Child abuse or neglect appeal procedure

Under current law, a county department of human services or social services (county department) or, in Milwaukee County, the department of health and family services (DHFS) or a child welfare agency under contract with DHFS must determine, within 60 days after receipt of a report of suspected or threatened child abuse or neglect, whether abuse or neglect has occurred or is likely to occur. Currently, an appeal of such a determination made by a county department may be made under the municipal administrative procedure law or, if the county of the county department has elected not to be governed by that law, under a county ordinance that provides a procedure for an appeal of such a determination, and an appeal of such a determination made by DHFS may be made under the state administrative procedure and review law. Current law does not provide a procedure for appealing such a determination by a child welfare agency.

This bill requires DHFS to establish procedures for conducting an appeal of a determination that a specific person has abused or neglected a child and to include in those procedures a procedure permitting such an appeal to be held in abeyance pending the outcome of any criminal or child in need of protection or services (CHIPS) proceeding based on the alleged abuse or neglect or any investigation that may lead to the filing of a criminal complaint or a CHIPS petition based on the alleged abuse or neglect. Under the bill, if a county department, DHFS or a child welfare agency determines that a specific person has abused or neglected a child, the county department, DHFS or child welfare agency must notify the person of the determination, the person’s right to appeal the determination and the procedure by which the person may appeal the determination, and the person may appeal the determination in accordance with the procedures established by DHFS.

Public disclosure of information about child fatalities and near fatalities

Under current law, a county department, DHFS or a child welfare agency that is responsible for investigating reports of suspected or threatened child abuse or neglect (agency) must keep its records confidential and may disclose those records only under certain exceptions. This bill permits an agency to disclose to the public a written summary of certain information relating to any child who has died or been placed in serious or critical condition as a result of suspected abuse or neglect that has been reported to the agency (child fatality or near fatality) if certain circumstances apply and certain other circumstances do not apply.

Specifically, an agency may disclose all of the information from its records specified in the next paragraph if a person has been charged with a crime for causing

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the death or serious or critical condition of a child as a result of suspected abuse or neglect or if a person who is deceased would have been so charged, but for the fact that the person is deceased; if a judge, district attorney, law enforcement officer or agency or any other officer or agency whose official duties include the investigation or prosecution of crime has previously disclosed to the public that the suspected abuse or neglect has been investigated or that child welfare services have been provided to the child or the child's family; or if a parent, guardian or legal custodian of the child or the child, if 14 years of age or over, has previously disclosed or authorized the disclosure of the information. An agency may not, however, disclose that information if any of the following circumstances applies:

1. The agency determines that disclosure of the information would be contrary to the best interests of the child, the child's siblings or any other child residing in the same dwelling as the child who is the subject of the report of suspected abuse or neglect or that disclosure of the information is likely to cause mental, emotional or physical harm or danger to the child, the child's siblings, any other child residing in the same dwelling as the child who is the subject of the report or any other person.

2. The district attorney determines that disclosure of the information would jeopardize any ongoing or future criminal investigation or prosecution or would jeopardize a defendant's right to a fair trial.

3. The agency determines that disclosure of the information would jeopardize any ongoing or future civil investigation or proceeding or would jeopardize the fairness of such a proceeding.

4. Disclosure of the information is not authorized by state law or rule or federal law or regulation.

5. The investigation of the abuse or neglect report has not been completed, in which case the agency may only disclose that the report is under investigation.

6. Disclosure of the information would reveal the identity of the child who is the subject of the report, the child's siblings, the child's parent, guardian or legal custodian or any other person residing in the same dwelling as the child, and information that would reveal the identity of those persons has not previously been disclosed to the public.

7. Disclosure of the information would reveal the identity of the person who reported the suspected abuse or neglect or any other person who provides information relating to the suspected abuse or neglect of the child.

The information from an agency's records that may be disclosed in the case of a child fatality or near fatality is as follows:

1. A description of any investigation made by the agency in response to the report of suspected abuse or neglect, a statement of the determination of the agency as to whether abuse or neglect occurred and the basis for that determination, a statement of whether any services were offered or provided to the child, the child's family or the person suspected of the abuse or neglect and a statement of whether any other action was taken by the agency to protect the child or any other child residing in the child's dwelling.

2. Whether any previous report of suspected or threatened abuse or neglect of the child has been made to the agency and the date of that report, a statement of the

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determination of the agency as to whether abuse or neglect occurred and the basis for that determination, a statement of whether any services were offered or provided to the child, the child's family or the person suspected of the abuse or neglect and a statement of whether any other action was taken by the agency to protect the child or any other child residing in the child's dwelling.

3. Whether the child or the child's family has received any child welfare services prior to the report of the suspected abuse or neglect that caused the child fatality or near fatality or prior to any previous report of suspected or threatened abuse or neglect.

Citizen review panel access to child abuse and neglect reports and records

Finally, the bill conforms state law to CAPTA by permitting a citizen review panel established or designated by DHFS or a county department to have access to otherwise confidential child abuse and neglect reports and records.

Jurisdictional barriers to adoption

Under current law, DHFS, a county department or a child welfare agency may place a child for adoption in a licensed foster home without a court order if DHFS, the county department or the child welfare agency is the guardian of the child or makes the placement at the request of another agency that is the guardian of the child. Current law requires DHFS, a county department or a child welfare agency, before placing a child for adoption, to consider the availability of a placement for adoption with a relative of the child. This bill prohibits DHFS, a county department or a child welfare agency from denying or delaying the placement of a child for adoption when a family that has been approved as an adoptive placement for the child is available outside the county where the child is located.

Substitute care parent record confidentiality

Under current law, subject to certain exceptions, DHFS, the department of corrections (DOC), a county department or a child welfare agency may not make available for inspection or disclose the contents of any record kept or information received about an individual in the care or legal custody of DHFS, DOC, the county department or the child welfare agency except by order of the court assigned to exercise jurisdiction under the children's code and the juvenile justice code (juvenile court). Current law, however, is silent as to the confidentiality of records kept and information received relating to a foster parent, treatment foster parent or family-operated group home parent (substitute care parent). This bill prohibits DHFS, DOC, a county department or a child welfare agency from making available for inspection or disclosing the contents of any record kept or information received relating to a substitute care parent or a family member of a substitute care parent without first receiving the written permission of the substitute care parent, except by order of the juvenile court. The bill, however, does not apply to the confidential exchange of information between DHFS, DOC, a county department or a child welfare agency and another social welfare agency, a law enforcement agency, a public school, a private school, the victim-witness coordinator or a fire investigator regarding an individual in the care or legal custody of DHFS, DOC, the county department or the child welfare agency. The bill also does not prohibit DHFS, DOC, a county department or a child welfare agency from making available for inspection

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or disclosing the contents of a record as permitted under the child abuse and neglect reporting law, from disclosing to the child's parent, guardian or legal custodian the name and address of the substitute care parent or from including the location of the child's placement in the child's permanency plan.

Tribal adolescent services program and brighter futures initiative

Under current law, DHFS may provide a grant in the amount of \$30,000 annually to an American Indian tribe or band for the provision of information to the members of the tribe or band in order to increase community knowledge about the problems of adolescents and the provision of information to, and activities for, adolescents, particularly female adolescents, in order to enable the adolescents to develop skills relating to reducing adolescent pregnancy and high school dropout rates; increasing economic self-sufficiency and expanding career options; enhancing self-esteem, interpersonal skills and responsible decision-making; and neutralizing sex-role stereotyping and bias (tribal adolescent services). Also under current law, DHFS is required to distribute \$1,229,300 in each fiscal year to applying county departments operating in counties other than Milwaukee County to provide programs to prevent and reduce the incidence of youth violence and other delinquent behaviors, prevent and reduce the incidence of youth alcohol and other drug abuse, prevent and reduce the incidence of child abuse and neglect and increase adolescent self-sufficiency by encouraging high school graduation, vocational preparedness, improved social and other interpersonal skills and responsible decision-making (brighter futures initiative). This bill reduces the amount that DHFS is required to distribute in each fiscal year to county departments operating in counties other than Milwaukee County under the brighter futures initiative by \$30,000 and increases the amount that DHFS may distribute for tribal adolescent services by \$30,000.

PUBLIC HEALTH***Reporting an individual's positive HIV test***

Under current law, a health care provider, blood bank, blood center or plasma center that obtains a positive result from a test given to an individual for the presence of the immunodeficiency virus (HIV) is required to report the positive test results to the state epidemiologist. The report made to the state epidemiologist must include the name, address, telephone number, age or date of birth, race or ethnicity, sex and county of residence of the test subject, if known, the date of the test and the test results. The report may not, however, contain any information with respect to the sexual orientation of the test subject or the identity of individuals with whom the test subject may have had sexual contact.

This bill eliminates the prohibition against reporting the sexual orientation of an individual who tests positive for HIV to the state epidemiologist and requires the report to include information regarding an individual's sexual orientation.

Funding for relief block grants to tribes

Under 1999 Wisconsin Act 9 (the biennial budget act), the tribal medical relief block grant program and the cooperative American Indian health projects grant program are funded with moneys received pursuant to Indian gaming compacts. This bill makes various technical changes to the funding provisions.

ASSEMBLY BILL 895**LONG-TERM CARE*****Family care eligibility and referral***

The biennial budget act created numerous provisions related to establishment of family care, a program of financial assistance in providing long-term care and support items. Under the program, persons are entitled to and may receive the family care benefit if they are at least 18 years of age, have a physical disability or infirmities of aging, meet financial criteria, and fulfill any applicable cost-sharing requirements. They must also meet any of several functionality criteria and criteria related to eligibility for medical assistance, being in need of protective services or protective placement or having chronic or terminal conditions. Other persons may be eligible for, but are not necessarily entitled to, the family care benefit if they are at least 18 years of age, have a physical disability or infirmities of aging, meet financial criteria, fulfill any applicable cost-sharing requirements and meet any of several criteria relating to functionality. Persons with developmental disability in an initial family care county are both eligible and entitled. One of the criteria for functionality for both entitled and eligible persons is that the person must have a condition that is expected to last at least 90 days or result in death within 12 months after the date of application and, on the date that the family care benefit became available in the person's county of residence, the person was a nursing home resident or had been receiving care under long-term medical assistance, the Alzheimer's family caregiver support program, community aids, or county funding. This bill changes that criterion to apply it to persons who *do not meet* other functionality criteria and requires that persons seeking a determination of functional eligibility under the criterion first apply for eligibility for the family care benefit within 36 months after the date on which the family care benefit is initially available in the person's county of residence. Further, for persons who are entitled to the family care benefit, the bill creates a criterion that is similar but under which a person qualifies only if he or she *does meet* another specific functionality criterion. The bill clarifies that a person who is 18 years of age, has a primary disabling condition of developmental disability and meets financial and functionality criteria is both eligible for and entitled to the family care benefit, if the person is a resident of an initial family care county.

Under the family care provisions, if the secretary of health and family services has certified that a resource center is available, adult family homes, residential care apartment complexes, community-based residential facilities (C-BRFs), hospitals and nursing homes must, unless certain exceptions apply, refer persons who are aged at least 65 or have a physical disability that is expected to last at least 90 days to the resource center for services and determinations of eligibility for the family care benefit and for other programs. In addition, nursing homes and hospitals must so refer persons with developmental disability. This bill clarifies that referral by adult family homes, residential care apartment complexes and C-BRFs must also be made for persons with developmental disability.

ASSEMBLY BILL 895***Use of community options program waiver and community integration program funds in a community-based residential facility***

Under current law, COP provides assessments of functionality and home and community-based care to, among others, elderly and disabled persons as an alternative to institutionalized care; one part of COP (commonly referred to as “COP-Regular”) is funded by state moneys and the other part (commonly referred to as “COP-Waiver”) is funded under a joint federal-state program under a waiver of federal medicaid laws. A community integration program (commonly referred to as CIP II) provides home and community-based services and continuity of care for persons who meet medical assistance eligibility requirements and are relocated from certain institutions or meet requirements for medical assistance reimbursement in nursing homes. Use of COP-Regular funds to provide services in C-BRFs is restricted to eight-bed facilities, unless DHFS approves service provision in a C-BRF licensed on July 29, 1995, that meets certain standards, in a C-BRF that entirely consists of independent apartments or in a C-BRF licensed after July 29, 1995, that is licensed for 20 or fewer beds and that meets certain standards. Use of COP-Waiver and CIP II funds to provide services in C-BRFs is restricted to four-bed facilities, unless DHFS approves service provision in a C-BRF of up to eight beds or that entirely consists of independent apartments. This bill changes the standard for use of COP-Waiver and CIP II funds to provide services in a C-BRF to the standard that exists in current law for use of COP-Regular funds to provide services in a C-BRF.

PUBLIC ASSISTANCE***Medical assistance alcohol and other drug abuse services; size of facility***

The biennial budget act creates a medical assistance benefit related to alcohol and other drug abuse residential treatment services in facilities with fewer than 16 beds that is available if a county, city, town or village agrees to pay the state share of the benefit. Current federal law, however, prohibits medical assistance payment for alcohol and other drug abuse treatment in facilities with *more than* 16 beds and thus permits the benefit in facilities with *only* 16 beds. This bill changes to 16 beds the size of a residential facility in which a medical assistance recipient may obtain alcohol and drug abuse treatment services if a county, city, village or town agrees to pay the state share of that medical assistance benefit.

OTHER HEALTH AND MENTAL HEALTH***Use of seclusion or restraints in state-operated mental health institutes***

Under current law, the Mendota Mental Health Institute and the Winnebago Mental Health Institute provide mental health treatment services to persons with mental illness or drug dependency. Current federal regulations permit the use of seclusion or restraint of patients in psychiatric hospitals that participate in the medicare program only when less restrictive measures have been found to be ineffective to protect the patient or others from harm. This bill increases general purpose revenues to provide increased services and care in the state-operated mental health institutes that will permit alternatives to the use of restraint and

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seclusion for patients, in order to comply with standards specified in federal regulations.

Collection of health care information

Under the biennial budget act, health care providers that are not hospitals and ambulatory surgery centers are required to submit certain data to DHFS for partial release as reports and prohibited from submitting certain other data, including the patient's account number. However, under the biennial budget act, DHFS is also required to receive a patient account number and, after verification of the information, to remove and destroy the patient's account number. This bill clarifies that DHFS may receive a patient's account number, but must destroy the number after information verification.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.435 (4) (bs) of the statutes, as affected by 1999 Wisconsin Act 9,
2 section 421, is renumbered 20.435 (4) (kb) and amended to read:

3 20.435 **(4)** (kb) *Relief block grants to tribal governing bodies.* The amounts in
4 the schedule for relief block grants under s. 49.029 to tribal governing bodies. All
5 moneys transferred from the appropriation account under s. 20.505 (8) (hm) 18. shall
6 be credited to this appropriation account.

7 **SECTION 2.** 46.27 (11) (c) 5m. (intro.) of the statutes is amended to read:

8 46.27 **(11)** (c) 5m. (intro.) No county may use funds received under this
9 subsection to provide services to a person who does not live in his or her own home
10 or apartment unless, subject to the limitations under subds. 6., 6g. 7. and 8., one of
11 the following applies:

12 **SECTION 3.** 46.27 (11) (c) 5n. (intro.) of the statutes is amended to read:

13 46.27 **(11)** (c) 5n. (intro.) A county may also use funds received under this
14 subsection, subject to the limitations under subds. 6., 6g. 7. and 8., to provide

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1 services to a person who does not live in his or her own home or apartment if the
2 services are provided to the person in a community-based residential facility and the
3 county department or aging unit has determined that all of the following conditions
4 have been met:

5 **SECTION 4.** 46.27 (11) (c) 6. (intro.) of the statutes is amended to read:

6 46.27 (11) (c) 6. (intro.) No county, private nonprofit agency or aging unit may
7 use funds received under this subsection to provide residential services in any
8 community-based residential facility, as defined in s. 50.01 (1g), ~~or group home, as~~
9 ~~defined in s. 48.02 (7), that has more than 4 beds,~~ unless one of the following applies:

10 **SECTION 5.** 46.27 (11) (c) 6. a. of the statutes is repealed and recreated to read:

11 46.27 (11) (c) 6. a. The requirements of sub. (7) (cm) 1. a. or c. are met.

12 **SECTION 6.** 46.27 (11) (c) 6g. of the statutes is created to read:

13 46.27 (11) (c) 6g. No county, private nonprofit agency or aging unit may use
14 funds received under this subsection to provide residential services in a group home,
15 as defined in s. 48.02 (7), that has more than 5 beds, unless the department approves
16 the provision of services in a group home that has 6 to 8 beds.

17 **SECTION 7.** 46.277 (5) (d) 1m. (intro.) of the statutes is amended to read:

18 46.277 (5) (d) 1m. (intro.) No county may use funds received under this section
19 to provide services to a person who does not live in his or her own home or apartment
20 unless, subject to the limitations under subds. 2. ~~and~~ 3. and 4. and par. (e), one of
21 the following applies:

22 **SECTION 8.** 46.277 (5) (d) 1n. (intro.) of the statutes is amended to read:

23 46.277 (5) (d) 1n. (intro.) A county may also use funds received under this
24 section, subject to the limitations under subds. 2. ~~and~~ 3. and 4. and par. (e), to provide
25 services to a person who does not live in his or her own home or apartment if the

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1 services are provided to the person in a community-based residential facility and the
2 county department or aging unit has determined that all of the following conditions
3 have been met:

4 **SECTION 9.** 46.277 (5) (d) 2. (intro.) of the statutes is amended to read:

5 46.277 (5) (d) 2. (intro.) No county may use funds received under this section
6 to provide residential services in any community-based residential facility, as
7 defined in s. 50.01 (1g), ~~or group home, as defined in s. 48.02 (7), that has more than~~
8 ~~4 beds,~~ unless one of the following applies:

9 **SECTION 10.** 46.277 (5) (d) 2. a. of the statutes is repealed and recreated to read:

10 46.277 (5) (d) 2. a. The requirements of s. 46.27 (7) (cm) 1. a. or c. are met.

11 **SECTION 11.** 46.277 (5) (d) 4. of the statutes is created to read:

12 46.277 (5) (d) 4. No county may use funds received under this section to provide
13 residential services in a group home, as defined in s. 48.02 (7), that has more than
14 5 beds, unless the department approves the provision of services in a group home that
15 has 6 to 8 beds.

16 **SECTION 12.** 46.286 (1) (a) 2. (intro.) of the statutes, as created by 1999
17 Wisconsin Act 9, is amended to read:

18 46.286 (1) (a) 2. (intro.) The person has a condition that is expected to last at
19 least 90 days or result in death within 12 months after the date of application but that
20 does not meet the level specified under subd. 1. a. or b.; the person first applies for
21 eligibility for the family care benefit within 36 months after the date on which the
22 family care benefit is initially available in the person's county of residence; and, on
23 the date that the family care benefit became available in the person's county of
24 residence, the person was a resident in a nursing home or had been receiving for at

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1 least 60 days, under a written plan of care, long-term care services, as specified by
2 the department, which were funded under any of the following:

3 **SECTION 13.** 46.286 (1m) of the statutes, as created by 1999 Wisconsin Act 9,
4 is amended to read:

5 46.286 **(1m)** ELIGIBILITY EXCEPTION. A person whose primary disabling
6 condition is developmental disability is eligible for the family care benefit if the
7 person is a resident of a county or is a member of a tribe or band that has operated,
8 before July 1, 2001, a care management organization under s. 46.281 (1) (d), is at
9 least 18 years of age and meets all other eligibility criteria under this subsection sub.
10 (1) (a) and (b).

11 **SECTION 14.** 46.286 (3) (a) (intro.) of the statutes, as created by 1999 Wisconsin
12 Act 9, is amended to read:

13 46.286 **(3)** (a) (intro.) Subject to pars. (c) and (d), a person is entitled to and may
14 receive the family care benefit through enrollment in a care management
15 organization if he or she meets the requirements of sub. (1) (intro.), except as
16 provided in subd. 5., is financially eligible, fulfills any applicable cost-sharing
17 requirements and meets any of the following criteria:

18 **SECTION 15.** 46.286 (3) (a) 6. of the statutes is created to read:

19 46.286 **(3)** (a) 6. Is functionally eligible at the intermediate level and meets all
20 of the following criteria:

21 a. On the date on which the family care benefit is initially available in the
22 person's county of residence, is a resident in a nursing home or has been receiving
23 for at least 60 days, under a written plan of care, long-term care services, as specified
24 by the department, which are funded as specified under sub. (1) (a) 2. a., b., c., d. or
25 e.

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1 b. Enrolls within 36 months after the date on which the family care benefit is
2 initially available in the person's county of residence.

3 **SECTION 16.** 46.289 of the statutes, as created by 1999 Wisconsin Act 9, is
4 amended to read:

5 **46.289 Transition.** In order to facilitate the transition to the long-term care
6 system specified in ss. 46.2805 to 46.2895, within the limits of applicable federal
7 statutes and regulations and if the secretary of health and family services finds it
8 necessary, he or she may grant a county limited waivers to or exemptions from ss.
9 46.27 (3) (e) (intro.), 1. and 2. and (f), (5) (d) and (e), (6) (a) 1., 2. and 3. and (b) (intro.),
10 1. and 2., (6r) (c), (7) (b), (c) and (cm) and (11) (c) 5m. (intro.) ~~and~~ 6. and 6g. and
11 46.277 (3) (a), (4) (a) and (5) (d) 1m., 1n. ~~and~~ 2. and 4. and rules promulgated under
12 those provisions.

13 **SECTION 17.** 46.99 (2) (a) (intro.) of the statutes, as created by 1999 Wisconsin
14 Act 9, is amended to read:

15 46.99 **(2)** (a) (intro.) From the appropriations under s. 20.435 (3) (eg), (km) and
16 (nL), the department, beginning on January 1, 2001, shall distribute \$2,125,200 in
17 each fiscal year to applying nonprofit corporations and public agencies operating in
18 a county having a population of 500,000 or more and ~~\$1,229,300~~ \$1,199,300 in each
19 fiscal year to applying county departments under s. 46.22, 46.23, 51.42 or 51.437
20 operating in counties other than a county having a population of 500,000 or more to
21 provide programs to accomplish all of the following:

22 **SECTION 18.** 46.995 (1m) of the statutes, as created by 1999 Wisconsin Act 9,
23 is amended to read:

24 46.995 **(1m)** TRIBAL ADOLESCENT SERVICES ALLOCATIONS. From the appropriation
25 account under s. 20.435 (3) (km), the department may allocate ~~\$172,500~~ \$195,000 in

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1 each fiscal year and, from the appropriation account under s. 20.435 (3) (eg), the
2 department may allocate ~~\$7,500~~ \$15,000 in each fiscal year to provide the grants
3 specified in subs. (2), (3) (b) and (4m) (b).

4 **SECTION 19.** 46.995 (4m) (b) (intro.) of the statutes, as affected by 1999
5 Wisconsin Act 9, is amended to read:

6 46.995 **(4m)** (b) (intro.) From the allocations under sub. (1m), the department
7 may provide a grant annually in the amount of ~~\$30,000~~ \$60,000 to the elected
8 governing body of a federally recognized American Indian tribe or band for the
9 provision of information to members of the tribe or band in order to increase
10 community knowledge about problems of adolescents and information to and
11 activities for adolescents, particularly female adolescents, in order to enable the
12 adolescents to develop skills with respect to all of the following:

13 **SECTION 20.** 48.78 (3) of the statutes is created to read:

14 48.78 **(3)** (a) Except as provided in pars. (b) to (d) or by order of the court, no
15 agency may make available for inspection or disclose the contents of any record kept
16 or information received relating to a foster parent, treatment foster parent or
17 family-operated group home, as defined in s. 48.627 (1), parent or a family member
18 of a foster parent, treatment foster parent or family-operated group home parent
19 without first receiving the written permission of the foster parent, treatment foster
20 parent or family-operated group home parent.

21 (bm) Paragraph (a) does not apply to the confidential exchange of information
22 between an agency and another social welfare agency, a law enforcement agency, a
23 public school or a private school regarding an individual in the care or legal custody
24 of the agency. A social welfare agency that obtains information under this paragraph
25 shall keep the information confidential as required under this section and s. 938.78.

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1 A law enforcement agency that obtains information under this paragraph shall keep
2 the information confidential as required under ss. 48.396 (1) and 938.396 (1). A
3 public school that obtains information under this paragraph shall keep the
4 information confidential as required under s. 118.125 and a private school that
5 obtains information under this paragraph shall keep the information confidential in
6 the same manner as is required of a public school under s. 118.125.

7 (c) Paragraph (a) does not prohibit an agency from making available for
8 inspection or disclosing the contents of a record under s. 48.981 (7).

9 (d) Paragraph (a) does not prohibit an agency from disclosing the name and
10 address of a foster parent, treatment foster parent or family-operated group home
11 parent under s. 48.20 (8), 48.227 (2), 48.33 (5), 48.355 (2) (b) 2., 48.357 (1) or (2m) or
12 48.38 (4) (c).

13 **SECTION 21.** 48.833 of the statutes is amended to read:

14 **48.833 Placement of children for adoption by the department, county**
15 **departments and child welfare agencies.** The department, a county department
16 under s. 48.57 (1) (e) or (hm) or a child welfare agency licensed under s. 48.60 may
17 place a child for adoption in a licensed foster home or a licensed treatment foster
18 home without a court order if the department, county department under s. 48.57 (1)
19 (e) or (hm) or the child welfare agency is the guardian of the child or makes the
20 placement at the request of another agency which is the guardian of the child. Before
21 placing a child for adoption under this section, the department, county department
22 or child welfare agency making the placement shall consider the availability of a
23 placement for adoption with a relative of the child who is identified in the child's
24 permanency plan under s. 48.38 or 938.38 or who is otherwise known by the
25 department, county department or child welfare agency. The department, county

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1 department or child welfare agency may not deny or delay the placement of a child
2 for adoption when a family that has been approved as an adoptive placement for the
3 child is available outside of the county where the child is located. When a child is
4 placed under this section in a licensed foster home or a licensed treatment foster
5 home for adoption, the department, county department or child welfare agency
6 making the placement shall enter into a written agreement with the adoptive parent,
7 which shall state the date on which the child is placed in the licensed foster home or
8 licensed treatment foster home for adoption by the adoptive parent.

9 **SECTION 22.** 48.981 (3) (c) 5m. of the statutes is created to read:

10 48.981 (3) (c) 5m. If the county department or, in a county having a population
11 of 500,000 or more, the department or a licensed child welfare agency under contract
12 with the department determines under subd. 4. that a specific person has abused or
13 neglected a child, the county department, department or licensed child welfare
14 agency, within 15 days after the date of the determination, shall notify the person in
15 writing of the determination, the person's right to appeal the determination and the
16 procedure by which the person may appeal the determination, and the person may
17 appeal the determination in accordance with the procedures established by the
18 department under this subdivision. The department shall establish procedures for
19 conducting an appeal under this subdivision. Those procedures shall include a
20 procedure permitting an appeal under this subdivision to be held in abeyance
21 pending the outcome of any criminal proceedings or any proceedings under s. 48.13
22 based on the alleged abuse or neglect or the outcome of any investigation that may
23 lead to the filing of a criminal complaint or a petition under s. 48.13 based on the
24 alleged abuse or neglect. Those procedures need not be promulgated as rules.

25 **SECTION 23.** 48.981 (3) (cm) of the statutes is amended to read:

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1 48.981 (3) (cm) *Contract with licensed child welfare agencies.* A county
2 department may contract with a licensed child welfare agency to fulfill the county
3 department's duties specified under par. (c) 1., 2. b., 2m. b., 5., 6., 6m. and 8. The
4 department may contract with a licensed child welfare agency to fulfill the
5 department's duties specified under par. (c) 1., 2. a., 2m. b., 3., 4., 5., 5m., 6., 6m., 7.,
6 8. and 9. in a county having a population of 500,000 or more. The confidentiality
7 provisions specified in sub. (7) shall apply to any licensed child welfare agency with
8 which a county department or the department contracts.

9 **SECTION 24.** 48.981 (7) (a) 15g. of the statutes is created to read:

10 48.981 (7) (a) 15g. A citizen review panel established or designated by the
11 department or a county department.

12 **SECTION 25.** 48.981 (7) (cm) of the statutes is amended to read:

13 48.981 (7) (cm) An Notwithstanding par. (a), an agency may disclose
14 information from its records for use in proceedings under s. 48.25 (6), 813.122 or
15 813.125.

16 **SECTION 26.** 48.981 (7) (cr) of the statutes is created to read:

17 48.981 (7) (cr) 1. Notwithstanding par. (a) and subject to subd. 3., an agency
18 may disclose to the public a written summary of the information specified in subd.
19 2. relating to any child who has died or been placed in serious or critical condition,
20 as determined by a physician, as a result of any suspected abuse or neglect that has
21 been reported under this section if any of the following circumstances applies:

22 a. A person has been charged with a crime for causing the death or serious or
23 critical condition of the child as a result of the suspected abuse or neglect, or the
24 district attorney indicates that a person who is deceased would have been charged

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1 with a crime for causing the death or serious or critical condition of the child as a
2 result of the suspected abuse or neglect, but for the fact that the person is deceased.

3 b. A judge, district attorney, law enforcement officer, law enforcement agency
4 or any other officer or agency whose official duties include the investigation or
5 prosecution of crime has previously disclosed to the public, in the performance of the
6 official duties of the officer or agency, that the suspected abuse or neglect of the child
7 has been investigated under sub. (3) or that child welfare services have been
8 provided to the child or the child's family under this chapter.

9 c. A parent, guardian or legal custodian of the child or the child, if 14 years of
10 age or over, has previously disclosed or authorized the disclosure of the information
11 specified in subd. 2.

12 2. If an agency is permitted to disclose information under subd. 1. relating to
13 a child who has died or been placed in serious or critical condition as a result of any
14 suspected abuse or neglect that has been reported under this section, the agency may
15 disclose all of the following information from its records:

16 a. A description of any investigation made by the agency in response to the
17 report of the suspected abuse or neglect, a statement of the determination made by
18 the agency under sub. (3) (c) 4. with respect to the report and the basis for that
19 determination, a statement of whether any services were offered or provided to the
20 child, the child's family or the person suspected of the abuse or neglect and a
21 statement of whether any other action was taken by the agency to protect the child
22 who is the subject of the report or any other child residing in the same dwelling as
23 the child who is the subject of the report.

24 b. Whether any previous report of suspected or threatened abuse or neglect of
25 the child has been made to the agency and the date of the report, a statement of the

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1 determination made by the agency under sub. (3) (c) 4. with respect to the report and
2 the basis for that determination, a statement of whether any services were offered
3 or provided to the child, the child's family or the person suspected of the abuse or
4 neglect and a statement of whether any other action was taken by the agency to
5 protect the child who is the subject of the report or any other child residing in the
6 same dwelling as the child who is the subject of the report.

7 c. Whether the child or the child's family has received any services under this
8 chapter prior to the report of suspected abuse or neglect that caused the child's death
9 or serious or critical condition or any previous report of suspected or threatened
10 abuse or neglect.

11 3. An agency may not disclose any of the information described in subd. 2. if
12 any of the following applies:

13 a. The agency determines that disclosure of the information would be contrary
14 to the best interests of the child who is the subject of the report, the child's siblings
15 or any other child residing in the same dwelling as the child who is the subject of the
16 report or that disclosure of the information is likely to cause mental, emotional or
17 physical harm or danger to the child who is the subject of the report, the child's
18 siblings, any other child residing in the same dwelling as the child who is the subject
19 of the report or any other person.

20 b. The district attorney determines that disclosure of the information would
21 jeopardize any ongoing or future criminal investigation or prosecution or would
22 jeopardize a defendant's right to a fair trial.

23 c. The agency determines that disclosure of the information would jeopardize
24 any ongoing or future civil investigation or proceeding or would jeopardize the
25 fairness of such a proceeding.

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1 d. Disclosure of the information is not authorized by state law or rule or federal
2 law or regulation.

3 e. The investigation under sub. (3) of the report of the suspected abuse or
4 neglect has not been completed, in which case the agency may only disclose that the
5 report is under investigation.

6 f. Disclosure of the information would reveal the identity of the child who is the
7 subject of the report, the child's siblings, the child's parent, guardian or legal
8 custodian or any other person residing in the same dwelling as the child, and
9 information that would reveal the identity of those persons has not previously been
10 disclosed to the public.

11 g. Disclosure of the information would reveal the identity of a reporter or any
12 other person who provides information relating to the suspected abuse or neglect of
13 the child.

14 4. Any person who requests the information specified in subd. 2. under the
15 circumstances specified in subd. 1. whose request is denied may petition the court
16 to order the disclosure of that information. On receiving a petition under this
17 subdivision, the court shall notify the agency, the district attorney, the child and the
18 child's parent, guardian or legal custodian of the petition. If any person notified
19 objects to the disclosure, the court may hold a hearing to take evidence and hear
20 arguments relating to the disclosure of the information. The court shall make an in
21 camera inspection of the information sought to be disclosed and shall order
22 disclosure of the information, unless the court finds that any of the circumstances
23 specified in subd. 3. applies.

24 5. Any person acting in good faith in disclosing or refusing to disclose the
25 information specified in subd. 2. under the circumstances specified in subd. 1. is

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1 immune from any civil or criminal liability that may result by reason of that
2 disclosure or nondisclosure. For purposes of any civil or criminal proceeding, the
3 good faith of a person in disclosing or refusing to disclose the information specified
4 in subd. 2. under the circumstances specified in subd. 1. shall be presumed.

5 **SECTION 27.** 48.981 (7) (d) of the statutes is amended to read:

6 48.981 (7) (d) The Notwithstanding par. (a), the department may have access
7 to any report or record maintained by an agency under this section.

8 **SECTION 28.** 49.45 (46) (a) of the statutes, as created by 1999 Wisconsin Act 9,
9 is amended to read:

10 49.45 (46) (a) If a county, city, town or village elects to become certified as a
11 provider of alcohol and other drug abuse residential treatment services or to contract
12 with a certified provider to provide the services, the county, city, town or village may
13 provide directly or under contract alcohol and other drug abuse residential
14 treatment services in facilities with fewer than ~~16~~ 17 beds under this subsection in
15 the county, city, town or village to medical assistance recipients through the medical
16 assistance program. A county, city, town or village that elects to provide or to contract
17 for the services shall pay the amount of the allowable charges for the services under
18 the medical assistance program that is not provided by the federal government. The
19 department shall reimburse the county, city, town or village under this subsection
20 only for the amount of the allowable charges for those services under the medical
21 assistance program that is provided by the federal government.

22 **SECTION 29.** 50.033 (2s) (intro.) of the statutes, as created by 1999 Wisconsin
23 Act 9, is amended to read:

24 50.033 (2s) REQUIRED REFERRAL. (intro.) Subject to sub. (2t), an adult family
25 home shall, within the time period prescribed by the department by rule, refer to a

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1 resource center under s. 46.283 a person who is seeking admission, who is at least
2 65 years of age or has a developmental disability or physical disability and whose
3 disability or condition is expected to last at least 90 days, unless any of the following
4 applies:

5 **SECTION 30.** 50.034 (5n) (intro.) of the statutes, as created by 1999 Wisconsin
6 Act 9, is amended to read:

7 50.034 (5n) REQUIRED REFERRAL. (intro.) Subject to sub. (5p), a residential care
8 apartment complex shall, within the time period prescribed by the department by
9 rule, refer to a resource center under s. 46.283 a person who is seeking admission,
10 who is at least 65 years of age or has a developmental disability or physical disability
11 and whose disability or condition is expected to last at least 90 days, unless any of
12 the following applies:

13 **SECTION 31.** 50.035 (4n) (intro.) of the statutes, as created by 1999 Wisconsin
14 Act 9, is amended to read:

15 50.035 (4n) REQUIRED REFERRAL. (intro.) Subject to sub. (4p), a
16 community-based residential facility shall, within the time period prescribed by the
17 department by rule, refer to a resource center under s. 46.283 a person who is seeking
18 admission, who is at least 65 years of age or has a developmental disability or
19 physical disability and whose disability or condition is expected to last at least 90
20 days, unless any of the following applies:

21 **SECTION 32.** 153.50 (6) (c) 1. of the statutes, as created by 1999 Wisconsin Act
22 9, is amended to read:

23 153.50 (6) (c) 1. The data elements specified under sub. (3) (b) 1. to 6.

24 **SECTION 33.** 252.15 (7) (c) (intro.) of the statutes is renumbered 252.15 (7) (c)
25 and amended to read:

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1 252.15 (7) (c) Except as provided in sub. (7m), a report made under par. (b) may
2 not include any of the following: the identity of persons with whom the test subject
3 may have had sexual contact.

4 **SECTION 34.** 252.15 (7) (c) 1. of the statutes is renumbered 252.15 (7) (b) 5m.

5 **SECTION 35.** 252.15 (7) (c) 2. of the statutes is repealed.

6 **SECTION 36.** 938.78 (4) of the statutes is created to read:

7 938.78 (4) (a) Except as provided in pars. (b) and (c) or by order of the court,
8 no agency may make available for inspection or disclose the contents of any record
9 kept or information received relating to a foster parent, treatment foster parent or
10 family-operated group home, as defined in s. 48.627 (1), parent or a family member
11 of a foster parent, treatment foster parent or family-operated group home parent
12 without first receiving the written permission of the foster parent, treatment foster
13 parent or family-operated group home parent.

14 (bm) Paragraph (a) does not apply to the confidential exchange of information
15 between an agency and another social welfare agency, a law enforcement agency, the
16 victim-witness coordinator, a fire investigator under s. 165.55 (15), a public school
17 or a private school regarding an individual in the care or legal custody of the agency.
18 A social welfare agency that obtains information under this paragraph shall keep the
19 information confidential as required under this section and s. 48.78. A law
20 enforcement agency that obtains information under this paragraph shall keep the
21 information confidential as required under ss. 48.396 (1) and 938.396 (1). A public
22 school that obtains information under this paragraph shall keep the information
23 confidential as required under s. 118.125 and a private school that obtains
24 information under this paragraph shall keep the information confidential in the
25 same manner as is required of a public school under s. 118.125.

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1 (c) Paragraph (a) does not prohibit an agency from disclosing the name and
2 address of a foster parent, treatment foster parent or family-operated group home
3 parent under s. 938.20 (8), 938.33 (5), 938.355 (2) (b) 2., 938.357 (1), (2m) or (4) (a)
4 or (c) 3. or 938.38 (4) (c) or from disclosing to the parent, guardian or legal custodian
5 of a juvenile the location of an alternate placement of the juvenile under s. 938.538
6 (3) (a) 1p.

7 **SECTION 37.** 1999 Wisconsin Act 9, section 402 is repealed.

8 **SECTION 38.** 1999 Wisconsin Act 9, section 9423 (7) is repealed.

9 **SECTION 39.** 1999 Wisconsin Act 9, section 9423 (8) is repealed.

10 **SECTION 40. Appropriation changes.**

11 (1) **MENTAL HEALTH INSTITUTES STAFFING.** In the schedule under section 20.005
12 (3) of the statutes for the appropriation to the department of health and family
13 services under section 20.435 (2) (a) of the statutes, as affected by the acts of 1999,
14 the dollar amount is increased by \$633,200 for fiscal year 2000–01 to increase the
15 authorized FTE positions for the department by 17.6 GPR positions on July 1, 2000,
16 to provide services and care in the Mendota Mental Health Institute and the
17 Winnebago Mental Health Institute.

18 (2) **CARE IN MENTAL HEALTH INSTITUTES.** In the schedule under section 20.005 (3)
19 of the statutes for the appropriation to the department of health and family services
20 under section 20.435 (4) (b) of the statutes, as affected by the acts of 1999, the dollar
21 amount is increased by \$242,600 for fiscal year 2000–01 to provide increased care
22 under medical assistance to individuals in the Mendota Mental Health Institute or
23 the Winnebago Mental Health Institute.

24 (3) **MENTAL HEALTH INSTITUTES STAFF FUNDING.** In the schedule under section
25 20.005 (3) of the statutes for the appropriation to the department of health and family

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1 services under section 20.435 (2) (gk) of the statutes, as affected by the acts of 1999,
2 the dollar amount is increased by \$1,174,200 for fiscal year 2000–01 to increase
3 funding for increased staff of the Mendota Mental Health Institute and the
4 Winnebago Mental Health Institute.

5 **SECTION 41. Initial applicability.**

6 (1) JURISDICTIONAL BARRIERS TO ADOPTION. The treatment of section 48.833 of the
7 statutes first applies to children who are placed for adoption on the effective date of
8 this subsection.

9 **SECTION 42. Effective dates.** This act takes effect on the day after publication,
10 except as follows:

11 (1) TRIBAL ADOLESCENT SERVICES. The treatment of sections 46.99 (2) (a) (intro.)
12 and 46.995 (1m) and (4m) (b) (intro.) of the statutes takes effect on January 1, 2001.

13 (2) FUNDING FOR RELIEF BLOCK GRANTS TO TRIBAL GOVERNING BODIES. The
14 treatment of section 20.435 (4) (bs) of the statutes takes effect retroactively to
15 October 29, 1999.

16 (END)