

1999 DRAFTING REQUEST

**Bill**

Received: **02/02/2000**

Received By: **malaigm**

Wanted: **Soon**

Identical to LRB:

For: **Health and Family Services 6-9622**

By/Representing: **Secretary Joe Leean**

This file may be shown to any legislator: NO

Drafter: **malaigm**

May Contact: **Fredi Bove**  
**6-2907**

Alt. Drafters: **isagerro**  
**kenneda**

Subject: **Children - abuse and neglect**  
**Children - miscellaneous**  
**Children - out-of-home placement**  
**Children - TPR and adoption**

Extra Copies:

**Pre Topic:**

No specific pre topic given

**Topic:**

DHFS health and children's programs

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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	isagerro 02/03/2000			_____			
	kenneda 02/07/2000			_____			
	malaigm 02/07/2000			_____			
	kenneda 03/02/2000			_____			

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/2	kenneda 03/07/2000 isagerro 03/08/2000	gilfokm 03/08/2000	jfrantze 03/08/2000 _____ _____ _____		lrb_docadmin 03/08/2000	lrb-docadmin 03/13/2000	

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Extra Copies: *Emailed to*  
*6-3262 Kennedy's*  
*SHFS 3/3/00*

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#### Topic:

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	isagerro 02/03/2000	<i>102-3-8-2000</i> <i>Kmgy</i>		_____			
	kenneda 02/07/2000			_____			
	malaigm 02/07/2000			_____			
	kenneda 03/02/2000			_____			
			<i>To 3/8</i>	<i>J. H. L.</i> <i>3/8</i>			

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03/03/2000 \_\_\_\_\_

lrb\_docadmin  
03/03/2000

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Extra Copies:

*emailed to  
Kevin Lewis*

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**Topic:**

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1?	malaigm	<i>1-3-2-2000 Kmg.</i>	<i>ch 3-3</i>	<i>ch 3-3 JK</i>			

FE Sent For:

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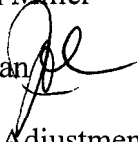


State of Wisconsin  
**Department of Health and Family Services**

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Tommy G. Thompson, Governor  
Joe Leean, Secretary

January 27, 2000

TO: Stephen Miller  
FROM: Joe Leean   
SUBJ: Budget Adjustment Bill for DHFS

Based on discussions among DHFS, DOA, and the Governor's Office, the Administration has concluded that it is important to seek legislative approval of a bill during this legislative session to address a number of items related to DHFS programs. We would appreciate the assistance of your agency in preparing a draft of the bill. Attached are drafting instructions for items identified to date to be included in the bill. DHFS and DOA are still completing analysis and discussing three additional items for possible inclusion in the bill. We will forward any additional items to you as soon as we conclude whether they are appropriate for inclusion.

We would be happy to meet and discuss these items with your staff to facilitate the drafting process. Please contact Fredi Bove, DHFS Budget Director, at 266-2907, if you are interested in having us set up such a meeting. Thank you for your assistance.

Attachment

cc: George Lightbourn  
Rick Chandler  
John Montgomery  
Sue Jablonsky  
Dick Lorang  
John Kiesow  
OSF Budget Staff



## Malaise. Gordon

---

**From:** Malaise, Gordon  
**Sent:** Wednesday, February 02, 2000 11:21 AM  
**To:** Bove, Fredi-Ellen  
**cc:** Kennedy, Debora; Sager-Rosenthal, Ivy; Miller, Steve  
**Subject:** DHFS Budget Adjustment Bill

Fredi-Ellen:

The Secretary's January 27, 2000, memorandum to Stephen Miller, which was received by our office yesterday, has been referred to me for attention and response. I will be drafting the items relating to children's programs, specifically, the items relating to compliance with CAPTA, adoptive placements, foster parent records and tribal and brighter futures funding. Debora Kennedy and Ivy Sager-Rosenthal will draft the remaining items relating to health programs. Any future additions to the draft, which has been assigned LRB number 4465, may be directed either to myself or, if the item relates to health care programming, directly to Debora.

Thank you for your offer to meet with us to discuss the drafting of the items in your drafting request. At this point I do not believe that a meeting is necessary with respect to the children's programming items. Debora and Ivy, however, may wish to met with you to discuss the health items.

Gordon M. Malaise  
Senior Legislative Attorney  
Legislative Reference Bureau  
Phone: (608) 266-9738

## Kennedy, Debora

---

**From:** Bove, Fredi-Ellen  
**Sent:** Thursday, February 03, 2000 8:44 AM  
**To:** Malaise, Gordon  
**cc:** Kennedy, Debora; Sager-Rosenthal, Ivy  
**Subject:** Re: DHFS Budget Adjustment Bill

Thank you for following up so quickly on the package of material. Please contact the DHFS contact person listed on each item (or myself, if you have trouble reaching the contact person) if you have questions as you proceed with the drafting. Debora and Ivy--as noted in the cover memo, we are available to meet at any time if that would be helpful to you. We look forward to seeing your drafts when they are ready and will seek to provide comments and answers to your questions on these drafts promptly.

>>> Malaise, Gordon 02/02/00 11:20AM >>>  
Fredi-Ellen:

The Secretary's January 27, 2000, memorandum to Stephen Miller, which was received by our office yesterday, has been referred to me for attention and response. I will be drafting the items relating to children's programs, specifically, the items relating to compliance with CAPTA, adoptive placements, foster parent records and tribal and brighter futures funding. Debora Kennedy and Ivy Sager-Rosenthal will draft the remaining items relating to health programs. Any future additions to the draft, which has been assigned LRB number 4465, may be directed either to myself or, if the item relates to health care programming, directly to Debora.

Thank you for your offer to meet with us to discuss the drafting of the items in your drafting request. At this point I do not believe that a meeting is **necessary** with respect to the children's programming items. Debora and Ivy, however, may wish to meet with you to discuss the health items.

Gordon M. Malaise  
Senior Legislative Attorney  
Legislative Reference Bureau  
Phone: (608) 266-9738



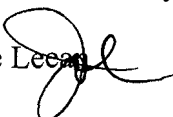
State of Wisconsin  
**Department of Health and Family Services**

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Tommy G. Thompson, Governor  
Joe Leean, Secretary

February 11, 2000

TO: Gordon Malaise  
Debora Kennedy

FROM: Joe Leean 

SUBJ: Additional Items for DHFS Budget Adjustment Bill

This memo follows up on my January 27 memo to Stephen Miller. Based on further discussions, DOA and DHFS have concluded that it is appropriate to include the following two additional items in the DHFS Budget Adjustment bill:

HIV Surveillance Guidelines  
Increased Staffing at Mental Health Institutes to Meet HCFA Requirements

I would appreciate your assistance in preparing a draft of these items and including them in the DHFS Budget Adjustment Bill (LRB 4465). Attached are drafting instructions for the two items. Please contact the DHFS contact person listed on each of these items if you have questions. Thank you for your assistance.

cc: Stephen Miller  
George Lightbourn  
Rick Chandler  
John Montgomery  
Sue Jablonsky  
Dick Lorang  
John Kiesow  
Kevin Lewis  
OSF Budget Staff

ITEMS SUBMITTED BY THE DHFS AS  
ANNUAL BUDGET ITEM  
February 1, 2000

DAK/ISR BadgerCare *Done*

GMM Compliance with CAPTA ✓

GMM Adoptive Placements ✓

GMM Foster Parent Records ✓

DAK/ISR Family Care: Eligibility Issues ✓

DAK/ISR Family Care Facility Referrals ✓

DAK/ISR COP-Waiver/CIP II Funding of CBRFs ✓

DAK/ISR Collection of Health Care Information ✓

GMM Tribal Funding and Brighter Futures ✓

ISR DAK/ISR Indian Health Programs Funding ✓

DAK/ISR Facility Size for AODA Residential Care ✓



ISR HIV Surveillance Guidelines ✓

DAK Increased Staffing at MHIs to meet HCFA requirements ✓

DIVISION OF CHILDREN AND FAMILY SERVICES

DATE: February 7, 2000

TO: Gordon Malaise  
LRB

FROM: Therese Durkin, OLC/DHFS (267-9722) (via Kevin Lewis)   
Mary Dibble, DCFS (267-2073) 

- ~~1.~~ We are proposing that the information be released to the “public”, rather than to “any member of the general public”, because otherwise county agencies and the state agency could be caught up in repeatedly releasing the same information any time they get a phone call. Also, we propose removing the language referencing how quickly the information must be disclosed, as the county agency has no timeframe for releasing information to any of the other entities under s.48.981(7). An AG opinion states that information must be released under s.48.981(7) upon request and as quickly as is practical. This opinion would pertain to public disclosure as referenced in this legislation.
- ~~2.~~ We included reference to a “suspected maltreater” in addition to a child and the child’s family, as child abuse and neglect records pertain to persons outside of a child’s family who abused the child, in addition to intra-family abuse.
- ~~3.~~ We tried for parallel language in sections pertaining to what information can be released.
- ~~4.~~ We added language to recognize that in some cases information should not be released if an appeal hearing is pending or a CHIPS hearing or some other civil proceeding.
- ~~5.~~ We wanted to assure that all records regulated under different statutes that were confidential continued to be confidential and made changes to achieve that. *“from its records”*
- ~~6.~~ @We removed language to assure that cases under investigation, **once completed**, were handled the same way as cases where the investigation was already completed.
- ~~7.~~ We removed some language that could be misinterpreted to say that no information from the county child abuse/neglect record could be released.
- ~~8.~~ We removed the section that said the results of the reviews of various teams or agencies would be released, since s.48.981(7) deals only with the release of the county DSS/HSD child abuse and neglect records (and parallel BMCW records), not records originated and controlled by other agencies.

## ASSEMBLY BILL

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

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

1           SECTION 1. 48.981 (3) (c) 5m. of the statutes is created to read:

2           48.981 (3) (c) 5m. If the county department or, in a county having a population  
3 of 500,000 or more, the department or a licensed child welfare agency under contract  
4 with the department determines under subd. 4. that a specific person has abused or  
5 neglected a child, the county department, department or licensed child welfare  
6 agency, within 15 days after the date of the determination, shall notify the person in  
7 writing of the determination, the person's right to appeal the determination and the  
8 procedure by which the person may appeal the determination, and the person may  
9 appeal the determination in accordance with the procedures established by the  
10 department under this subdivision. The department shall establish procedures for  
11 conducting an appeal under this subdivision. Those procedures shall include a  
12 procedure permitting an appeal under this subdivision to be held in abeyance  
13 pending the outcome of any criminal proceedings or any proceedings under s. 48.13  
14 based on the alleged abuse or neglect or the outcome of any investigation that may  
15 lead to the filing of a criminal complaint or a petition under s. 48.13 based on the  
16 alleged abuse or neglect. Those procedures need not be promulgated as rules.

17           SECTION 2. 48.981 (3) (cm) of the statutes is amended to read:

18           48.981 (3) (cm) ***Contract with licensed child welfare agencies.*** A county  
19 department may contract with a licensed child welfare agency to fulfill the county  
20 department's duties specified under par. (c) 1., 2. b., 2m. b., 5., 6., 6m. and 8. The  
21 department may contract with a licensed child welfare agency to fulfill the

ASSEMBLY BILL

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

5 **SECTION 3.** 48.981 (7) (a) 15g. of the statutes is created to read:

6 48.981 (7) (a) 15g. A citizen review panel established or designated by the  
7 department or a county department

8 **SECTION 4.** 48.981 (7) (cm) of the statutes is amended to read:

9 48.981 (7) (cm) An Notwithstanding par. (a). an agency may disclose  
10 information from its records for use in proceedings under s. 48.25 (6), 813.122 or  
11 813.125.

12 **SECTION 5.** 48.981 (7) (cr) of the statutes is created to read:

*the letter*

NEW {  
13 V  
14

13 48.981(7)cr) 1. Notwithstanding par. (a) and subject to subs. 3. and 4., an agency  
14 may disclose to the public a written summary of the information specified in

16 subd. 2. relating to any child who has died or been placed in serious or critical  
17 condition, as determined by a physician, as a result of any suspected abuse or neglect  
18 that has been reported under this section if any of the following circumstances apply:

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

24 b. A judge, district attorney, law enforcement officer, law enforcement agency  
25 or any other officer or agency whose official duties include the investigation or

**ASSEMBLY BILL**

1 prosecution of crime has previously disclosed to the public, in the performance of the  
2 official duties of the officer or agency, that the suspected abuse or neglect of the child  
3 has been investigated under sub. (3) or that child welfare services have been  
4 provided to the child or the child's family under this chapter.

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

8 2. If an agency is required to disclose information under subd. 1. relating to a  
9 child who has died or been placed in serious or critical condition as a result of any  
10 suspected abuse or neglect that has been reported under this section, the agency  
11 shall disclose all of the following information *from its records.*

12 ✓ a. A description of any investigation made, a statement of the determination made by  
13 the agency under sub. (3) (c) 4. and the basis for that determination, whether services were  
14 offered or provided to the child, the child's family or a suspected maltreater and any other  
15 action taken by the agency to protect the child or any other child residing in the same  
16 dwelling as the child in response to the report of the suspected abuse or neglect.

17 ✓ b. Whether any previous report of suspected or threatened abuse or neglect of the  
18 child has been made to the agency, the date of the previous report and a statement of the  
19 determination made by the agency under sub. (3) (c) 4. and the basis for that determination  
20 and whether any services were offered or provided to the child, the child's family or a  
21 suspected maltreater and any other action taken by the agency to protect the child or any  
22 other child residing in the same dwelling as the child.

*juv* u



**ASSEMBLY BILL**

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1 ~~c~~. Whether the child or the child's family has received any services under this  
2 chapter prior to the report of suspected abuse or neglect that caused the child's death  
3 or serious or critical condition or any previous report of suspected or threatened  
4 abuse or neglect.

5 ✓ ~~d~~. The results of any re- a t -  
6 ~~child abuse and neglect team, a child fatality review team, a citizen review panel, a~~  
7 ~~court-appointed special advocate program or any other agency relating to the death~~  
8 ~~or serious or critical condition of the child.~~

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

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

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

NEW:

21 /c. Disclosure of the information would jeopardize any civil investigation or  
22 proceeding or would jeopardize the fairness of a proceeding.

23 ✓ ~~d~~. Disclosure of the information is not authorized by state or federal law or  
24 regulation.

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

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

8        ~~/~~. The information would reveal the identity of a reporter or any other person who  
9 provides information relating to the suspected abuse or neglect of the child.

→ 17        5. ~~Any~~ person whose request for information under subd. 1. is denied may  
18 petition the court to order the disclosure of the information specified in subd. 2. On  
19 receiving a petition under this subdivision, the court shall notify the agency, the  
20 district attorney, the child and the child's parent, guardian or legal custodian of the  
21 petition. If any person notified objects to the disclosure, the court may hold a hearing  
22 to take evidence and hear argument relating to the disclosure of the information.  
23 The court shall make an in camera inspection of the information sought to be  
24 disclosed and shall order disclosure of the information, unless the court finds that  
25 any of the circumstances specified in subd. 3. apply.



## Topic: BadgerCare

### Summary of Program

**BadgerCare** ensures access to health care for uninsured children and parents with income at or below 185% of the federal poverty level (FPL). Once enrolled, families may remain in BadgerCare until family income exceeds 200% of the FPL. No asset test is required.

**BadgerCare** is intended to fill gaps between Medicaid and private health insurance without supplanting or “crowding out” private insurance. BadgerCare extends health care coverage to low-income families with children through a Medicaid expansion under Titles XIX and XXI. As allowed under federal law, if BadgerCare enrollment is projected to exceed budgeted enrollment levels, a new enrollment income threshold will be established for new applicants.

### Problem Description

BadgerCare is budgeted to cover 61,535 uninsured, low-income Wisconsin residents in FY 00, including 22,585 children and 38,950 parents. In FY 01, the total budgeted enrollment is 67,535, which includes 24,787 children and 42,748 parents. The total amount of funding budgeted for BadgerCare is \$63.6 million (\$40 million FED, \$22.4 million GPR, and \$1.2 million PR) in FY 00 and \$97.6 million (\$61.8 million FED, \$34.2 million GPR and \$1.6 million PR) in FY 01. Current projections indicate that actual enrollment levels will be higher than budgeted enrollment.

### Background

1. **BadgerCare** is under the budgeted levels for both expenditures and enrollment through December, 1999.
2. Enrollment data indicate that CARES-related BadgerCare cases are enrolling at a slower pace than was anticipated. As of early January, there were still an estimated 14,100 potential **BadgerCare** eligible cases who were-active on CARES.
3. The percentage of BadgerCare enrollees who are new to the CARES system is higher than anticipated.

4. Using actual data through mid-January as the basis for projections, DHFS estimates that there will be 76,050 persons enrolled in BadgerCare as of 6/30/00, compared to the budgeted level of 61,535 and 86,008 persons enrolled as of 6/30/01, compared to the budgeted level of 67,535.
5. Without additional funds, the Department anticipates the need to enact the enrollment trigger to stop BadgerCare enrollment in early 2000.
6. In his January 26 State of the State address, Governor Thompson supported an additional \$11 million of GPR funding for BadgerCare.
7. Immediately following the State of the State address, the Department of Administration submitted to LRB a drafting request to provide the \$11 million additional BadgerCare funding. Since that time, the Governor's office has directed that the BadgerCare funding provision be included in the DHFS budget adjustment bill rather than proceed as separate legislation.

### **Recommendation**

Increase funding for **BadgerCare** by \$11 million GPR.

## Changes Required for Compliance with CAPTA

### Current Language

Current Wisconsin child welfare law does not meet the requirements set forth by the federal Child Abuse Prevention and Treatment Act (CAPTA) in regards to three key areas: (1) appeals of substantiated abuse or neglect findings; (2) disclosure of abuse and neglect information to child abuse citizen review panels; and (3) public disclosure of abuse and neglect information.

### Proposed Changes

1. Create section 48.981(3)(e) to permit an appeal of the finding of abuse or neglect in accordance with standards established by the Department.
2. Create section 48.981(7)(a)15g. to read:  
15g. A citizen review panel recognized by the county department or the department if necessary to carryout its functions.
3. Amend section 48.981(7)(b) to state, in cases of the death or near death of a child caused by abuse or neglect that a county agency or, in a county having a population of 500,000 or more, the Department, may disclose to the media or the general public certain information from its records, pursuant to policies established by the Department.

### Effect of the Changes

The changes will bring Wisconsin into compliance with CAPTA.

### Rationale for the Changes

A state applying for a grant award under CAPTA must provide the federal government with assurances that it is in compliance the Act's eligibility requirements. These requirements stipulate that states must have laws in effect which: (1) implement a formal appeals process by which individuals who disagree with an official finding of abuse or neglect can appeal that decision; (2) grant child abuse citizen review panels access to case information necessary for

them to review child fatalities and near-fatalities; and (3) provide for public disclosure of findings or information about cases of child abuse or neglect which have resulted in a child fatality or near fatality. Pursuant to Wisconsin's FFY 1999 CAPTA grant application, the Governor provided the assurance that the state would be in compliance with the federal requirements by June 30, 1999. Nonetheless, the statutory changes necessary bring Wisconsin into compliance with CAPTA were never made.

So long as the state remains in violation of CAPTA, it risks losing eligibility for CAPTA funding. Wisconsin receives approximately \$400,000 in CAPTA funding annually. The proposed changes will bring Wisconsin into compliance with federal requirements.

Attached is the current LRB draft <sup>2801/2</sup> for these provisions, based on discussions between LRB and DHFS staff. DHFS supports the use of this draft.

<b>Desired Effective Date:</b>	Passage of bill
<b>Agency:</b>	DHFS
<b>Agency Contact:</b>	Jason Witt
<b>Phone:</b>	266-9364

## Adoptive Placements: Prohibiting Jurisdictional Barriers

### Current Language

None

### Proposed Change

*that has been approved as an adoptive placement*

*that is responsible*

*AM  
48.833*

Renumber s. 48.833 as s. 48.833(1) and create s. 48.833(2) to read:

~~“The department, a county department under s. 48.57(1)(c) or (h) or a child welfare agency licensed under s. 48.60 may not deny or delay the placement of a child for adoption when an approved family is available outside of the jurisdiction with responsibility for handling the case of the child.”~~

*county residence where the child is located.*

*interstate or intercounty*

### Effect of the Change

Codifies the provision of the Adoption and Safe Families Act of 1997 (ASFA) which forbids states from allowing jurisdictional barriers to interfere with a child’s adoptive placement. *p2 105-89*

### Rationale for the Change

ASFA prohibits states from allowing jurisdictional barriers to interfere with a child’s adoptive placement. Specifically, it stipulates that states may not “deny or delay” a child’s adoptive placement “when an approved family is available outside the jurisdiction which is responsible for the child’s case.” States violating the provision lose their eligibility for federal IV-E funding. During the 1998-99 fiscal year, Wisconsin received over \$40 million IV-E dollars.

*h0359*

The 1999-01 biennial budget contained a provision which severely limited the circumstances under which an adoption placing agency could consider the location of a proposed adoptive parent’s residence when placing a special needs child. The Governor vetoed the provision on the basis that it was inconsistent with ASFA and, consequently, could result in the loss of IV-E revenue. For example, the provision applied only to adoptive placements of special needs children, whereas ASFA applies to all adoptive placements. The provision also would have allowed placing agencies to deny placements based on jurisdiction under exceptions which are not recognized by ASFA.



In his veto message, the Governor stated that he ‘would support legislation that would “add the federal jurisdiction provisions. ” This is exactly what the proposed language would accomplish.

**Desired Effective Date:** Passage of bill  
**Agency:** DHFS  
**Agency Contact:** Jason Witt  
**Phone:** 6-9364

## Foster Parent Records

### Current Language

Currently, there is no language related to the confidentiality (or lack of confidentiality) of information contained in foster parent records.

### Proposed Change

(2803/1)

Adopt the attached language ~~clarifying~~ when information contained in foster parent records may or may not be disclosed. The language would forbid the disclosure of such information without the foster parent's consent except as otherwise specifically provided by statute or order of the court.

### Effect of the Change

The change will assure that Wisconsin is in compliance with Title IV-E of the federal Social Security Act.

### Rationale for the Change

Title IV-E requires that states provide safeguards which restrict "the use of or disclosure of information concerning individuals assisted" by the state's foster care program. The provision clearly applies to children within a state's foster care system, but may also extend to foster parents. Language protecting the confidentiality of information contained in foster parent records is absent from current law. If the federal Department of Health and Human Services interprets this as a violation of IV-E, the \$40 million in IV-E funding which Wisconsin receives each year would be in jeopardy. Adopting the proposed language would assure that Wisconsin is in compliance with the federal requirement.

Adopting the language also promotes the state's goal of expanding the pool of foster parents in the state. The lack of confidentiality provisions may deter individuals from applying for foster-parent licenses, thereby harming the state's foster-parent requirement effort. When foster care placements are not available to child protective services agencies, they are forced to find other, more costly and less appropriate placements.

Attached is the current LRB draft for this provision. DHFS supports the use of this draft.

**Desired Effective Date:** Passage of the bill  
**Agency:** DHFS  
**Agency Contact:** Jason Witt  
**Phone:** 266-9364



## 1999 BILL

1 **AN ACT to create** 48.78 (3) and 938.78 (4) of the statutes; **relating to:** the  
2 disclosure of records relating to a substitute care parent.

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### ***Analysis by the Legislative Reference Bureau***

Under current law, subject to certain exceptions, the department of health and family services, the department of corrections, a county department of human services or social services or a licensed child welfare agency (collectively "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 the 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 an 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 an agency and another social welfare agency. The bill also does not prohibit an agency from making available for inspection 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

**BILL**

address of the substitute care parent or from including the location of the child's placement in the child's permanency plan.

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

1           **SECTION 1.** 48.78 (3) of the statutes is created to read:

2           48.78 (3) (a) Except as provided under pars. (b) to (d) or by order of the court,  
3 no agency may make available for inspection or disclose the contents of any record  
4 kept or information received relating to a foster parent, treatment foster parent or  
5 family-operated group home, as defined in s. 48.627 (1), parent or a family member  
6 of a foster parent, treatment foster parent or family-operated group home parent  
7 without first receiving the written permission of the foster parent, treatment foster  
8 parent or family-operated group home parent.

9           (b) Paragraph (a) does not apply to the confidential exchange of information  
10 between an agency and another social welfare agency. A social welfare agency that  
11 obtains information under this paragraph shall keep the information confidential as  
12 required under this section and s. 938.78.

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

15           (d) Paragraph (a) does not prohibit an agency from disclosing the name and  
16 address of a foster parent, treatment foster parent or family-operated group home  
17 parent under s. 48.20 (8), 48.227 (2), 48.33 (5), 48.355 (2) (b) 2., 48.357 (1) or (2m) or  
18 **48.38 (4)** (c).

19           **SECTION 2.** 938.78 (4) of the statutes is created to read:

20           938.78 (4) (a) Except as provided under pars. (b) and (c) or by order of the court,  
21 no agency may make available for inspection or disclose the contents of any record

**BILL**

1 kept or information received relating to a foster parent, treatment foster parent or  
2 family-operated group home, as defined in s. 48.627 (1), parent or a family member  
3 of a foster parent, treatment foster parent or family-operated group home parent  
4 without first receiving the written permission of the foster parent, treatment foster  
5 parent or family-operated group home parent.

6 (b) Paragraph (a) does not apply to the confidential exchange of information  
7 between an agency and another social welfare agency. A social welfare agency that  
8 obtains information under this paragraph shall keep the information confidential as  
9 required under this section and s. 48.78.

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

16

**(END)**

## Title: Family Care corrections - eligibility issues

### Current Language

**46.286 Family care benefit.** (1) ELIGIBILITY. Except as provided in sub. (1m), a person is eligible for, but not necessarily entitled to, the family care benefit if the person is at least 18 years of age; has a physical disability, as defined in s. 15.197 (4) (a) 2., or infirmities of aging, as defined in s. 55.01 (3); and meets all of the following criteria:

(a) *Functional eligibility.* A person is functionally eligible if any of the following applies, as determined by the department or its designee:

1. The person's functional capacity is at either of the following levels:

a. The comprehensive level, if the person has a long-term or irreversible condition, expected to last at least 90 days or result in death within one year of the date of application, and requires ongoing care, assistance or supervision.

b. The intermediate level, if the person has a condition that is expected to last at least 90 days or result in death within 12 months after the date of application, and is at risk of losing his or her independence or functional capacity unless he or she receives assistance from others.

2. The person has 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 resident in a nursing home or had been receiving for at least 60 days, under a written plan of care, long-term care services, as specified by the department, which were funded under any of the following:

a. The long-term support community options program under s. 46.27.

b. Home and community-based waiver programs under 42 USC 1396n (c), including community integration program under s. 46.275, 46.277 or 46.278.

c. The Alzheimer's family caregiver support program under s. 46.87.

d. Community aids under s. 46.40, if documented by the county under a method prescribed by the department.

e. County funding, if documented by the county under a method prescribed by the department.

(1m) ELIGIBILITY EXCEPTION. A person whose primary disabling condition is developmental disability is eligible for the family care benefit if the person is a resident of a county or is a member of a tribe or band that has operated, before July 1, 2001, a care management organization under s. 46.281 (1) (d) and meets all other eligibility criteria under this subsection.

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

1. Is functionally eligible at the comprehensive level.
2. Is functionally eligible at the intermediate level and is eligible under sub. (1) (b) 1.

b.

3. Is functionally eligible at the intermediate level and is determined by an agency under s. 46.90 (2) or specified in s. 55.05 (1 t) to be in need of protective services under s. 55.05 or protective placement under s. 55.06.

4. Is functionally eligible under sub. (1) (a) 2.
5. Is eligible under sub. (1m).

### Proposed Change

46.286 (1) (a) 2. is amended to read:

2. ~~The~~ If the condition under subd. 3. is met, the person has a condition that is expected to last at least 90 days or result in death within 12 months after the date of application but does not meet either the comprehensive or the intermediate level of eligibility, and, on the date that the family care benefit became available in the person's county of residence, the person was a resident in a nursing home or had been receiving for at least 60 days, under a written plan of care, long-term care services, as specified by the department, which were funded under any of the following:

46.286 (1) (a) 3. is created to read:

3. Initial eligibility for a person who meets the conditions of subd. 2. must be exercised within 36 months of the date on which the family care benefit became available in the person's county of residence.

46.286 (3) (a) 6. of the statutes is created to read:

6. Is functionally eligible at the intermediate level and:

a. On the date that the family care benefit became available in the person's county of residence, the person was a resident in a nursing home or had been receiving for at least 60 days, under a written plan of care, long-term care services, as specified by the department, which were funded under any of the programs specified under sub. (1) (a) 2. a. to e.

b. The person exercises his or her right to enroll, within 36 months of the date on which the family care benefit became available ~~in the person's~~ county of residence.

46.286 (1m) is amended to read:

46.286 (1m) **ELIGIBILITY EXCEPTION.** A person whose primary disabling condition is developmental disability is eligible for the family care benefit if the person is a resident of a county or is a member of a tribe or band that has operated, before July 1, 2001, a care



de management organization under s. 46.281 (1) (d) and meets all other eligibility criteria under this ~~subsection~~ section.

### **Effect of the Change**

The proposed amendments are meant to clarify that:

A person who will be “grandfathered” into eligibility is one who does not otherwise meet normal functional eligibility criteria.

A person in the “grandfathered” category must take advantage of the opportunity to enroll within 36 months of its being available. (Once enrolled, the person cannot be disenrolled except under narrowly defined circumstances.)

A person who is at the intermediate level of functional eligibility and has been receiving services from the county at the time of transition to Family Care is entitled.

A person who is eligible in a pilot county by virtue of having a developmental disability must meet all other eligibility criteria in s. 46.286.

### **Rationale for the Change**

1. The Department’s original intent in proposing to entitle “grandfathered” individuals to Family Care was to assure that in the transition to Family Care, no current county clients would be left without services when funds were transferred from Community Aids, Community Options Program, Home and Community-Based Waivers, or county funded programs used as match for **Community Aids**. The goal was to ensure that even if one of these clients did not meet either the comprehensive or intermediate level of functional eligibility, he or she would be entitled to enroll in Family Care.

As enacted, however, the entitlement language “grandfathers” all individuals who, on the date that Family Care became available, were in a nursing home or had been receiving certain LTC services through the county, whether or not they meet the comprehensive or intermediate levels of care. An additional problem with the language is that it has no end date; anyone who meets the specified criteria related to having previously received nursing home or county-administered LTC services would still have an entitlement to family care many years later.

Together, these two problems impose an enormous administrative burden, without providing significant benefit to those whom the language was intended to protect. In order to protect a possible future entitlement, the department would have to gather and retain for many years, the names of all nursing home residents and all county clients of LTC programs, as of a certain date, which will vary depending on when a CM0 starts in a given county. Moreover, as drafted, -this protection goes far beyond what was intended; there is no rationale for one person having an entitlement to initial enrollment years after the transition to Family Care takes place, while another person with similar needs does not have such an entitlement.

2. As enacted, the requirement in sub. (1m) ‘that a person with a developmental disability meet “all other eligibility criteria” is meaningless, since the reference within subsection (1m) is to itself. The “other eligibility criteria” are in other subsections within s. 46.286. Correcting this error is important, since one of the entitlement provisions (46.286 (3)(a) 5.) refers back to this subsection. Unless corrected, these provisions could be construed to mean that every developmentally disabled person in a pilot county is entitled to Family Care, whether or not they meet financial, non-financial, grandfathering or other criteria.

**Desired Effective Date:** Upon enactment  
**Agency:** DHFS  
**Agency Contact:** Lorraine Barniskis  
**Phone:** 267-5267

# DHFS

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**Department of Health and Family Services**  
**1999-2001 Biennial Budget Statutory Language Request**

November 23, 1999

Title: Family Care - Corrections related to facility referrals

## Current Language

50.033 (2s) **REQUIRED REFERRAL**. Subject to sub. (2t), an adult family home shall, within the time period prescribed by the department by rule, refer to a resource center under s. 46.283 a person who is seeking admission, who is at least 65 years of age or has a physical disability and whose disability or condition is expected to last at least 90 days, unless any of the following applies:

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

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

## Proposed Change

50.033 (2s) of the statutes is amended to read:

50.033 (2s) **REQUIRED REFERRAL**. Subject to sub. (2t), an adult family home shall, within the time period prescribed by the department by rule, refer to a resource center under s. 46.283 a person who is seeking admission, who is at least 65 years of age or has a physical or a developmental disability and whose disability or condition is expected to last at least 90 days, unless any of the following applies:

50.034 (5n) of the statutes is amended to read:

50.034 (**5n**) **REQUIRED REFERRAL**. Subject to sub. (5p), a residential care apartment complex shall, within the time period prescribed by the department by rule, refer to a resource center under s. 46.283 a person who is seeking admission, who is at least 65 years of age or has a

physical or a developmental disability and whose disability or condition is expected to last at least 90 days, unless any of the following applies:

50.035 (4n) of the statutes is amended to read:

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

### **Effect of the Change**

To correct an oversight in the facility referral requirements for Family Care.

### **Rationale for the Change**

As enacted, these requirements for referral to the Aging and Disability Resource Center by certain facilities do not include people with developmental disabilities. Similar requirements for hospitals and nursing homes do include this group. It was an error not to include them also in the above provisions. Without the correction, the department cannot require adult family homes, RCACs and CBRFs to refer prospective residents with developmental disabilities to the Resource Center.

<b>Desired Effective Date:</b>	Upon enactment
<b>Agency:</b>	DHFS
<b>Agency Contact:</b>	Lorraine Barniskis
<b>Phone:</b>	267-5267

## Topic: COP-Waiver-LIP II Funding of CBRFs

### Current Language

Under current law, a county may use COP regular (COP-R) funding to provide services in a CBRF with 8 or fewer beds. A county may request a variance from the Department to provide services in any CBRF that has 20 or fewer beds, per statutory guidelines. COP-W and COP II funding is limited to facilities up to four beds, but can be increased up to eight beds with Department approval. Under the current federal waiver, counties are not able to use COP-W or CIP II funding in CBRFs that have more than 8 beds.

### Proposed Change

Modify s.46.27 (11)<sup>c. 6.</sup>~~(b)(6)~~ and s.46.277 (5)(d) to increase the CBRF bed limit for COP-W and CIP II from CBRFs with 8 or fewer beds to CBRFs with 20 or fewer beds.

### Effect of the Change

This change would allow counties to provide services with COP-W and CIP II funding in a CBRF that has 20 or fewer beds.

### Rationale for the Change

1. In changing the size limit in statute, counties would be able to use COP-W and CIP II funding in CBRFs with 20 or fewer beds thereby giving counties greater flexibility in their use of COP funds.
2. The proposed statutory change would make COP-W and CIP II consistent with COP-R statutes. In addition, the Department has requested federal approval to use COP-W and CIP II funds in facilities with 20 or fewer beds. The federal government is expected to approve this change.
3. The Department plans to issue administrative guidelines to all counties advising them that they need not apply to the Department for approval for use of COP-R funds in CBRFs with 20 or fewer beds, if they meet the statutory requirements under s. 46.27 (7) (cm). This will have the effect of implementing on a statewide basis the policy of allowing the use of COP-R funds for the elderly and physically disabled in a CBRF having 20 or fewer beds.

Statutory Language Change Requested

COP-Waiver s. 46.27 (11) (b) <sup>(c)</sup> 6.

- 6. No county, private nonprofit agency or aging unit may use funds received under this subsection to provide residential services in any community-based residential facility, as defined in s. 50.01 (1g), or group home, as defined in s. 48.02 (7), that has more than 4 <sup>(5)</sup> beds, unless one of the following applies:
  - a. The department approves the provision of services in a community-based residential facility or group home that has 5 to 8 20 beds, in accordance with sub (7) (cm).

CIP II s. 46.277 (5) (d)

- 2. No county may use funds received under this section to provide residential services in any community-based residential facility as defined in s. 50.01 (1g); or group home, as defined in s. 48.02 (7), that has more than 4 beds, unless one of the following applies:
  - a. The department approves the provision of services in a community-based residential facility or group home that has 5 to 8 20 beds, in accordance with s. 46.27 (7) (cm).

*1.c. but not a.b*

- ① Includes expansion of group home ?? **(No)**
- ② Reference to (7)(cm) doesn't work bec. of (7)(cm)(intro.); have to refer to conditions under (7)(cm) 1. a. to e. and 2. to 4.
- ③ Leave 46.27 (11) (c) Sp. a. alone? **(Yes)**
- ④ ~~Intent to expand COP for CARES + group home~~

*Janis Smith 6-7872*

**Desired Effective Date:** Upon Passage of Bill  
**Agency:** DHFS  
**Agency Contact:** Lisa Kelly  
**Phone:** 266-5362

## **Collection of Health Care Information**

### **Current Language**

Under section 2280q of the 1999-2001 Biennial Budget Act, a health care provider that is not a hospital or ambulatory surgery center may not submit data elements specified under chapter 153.50 (3) (b).

### **Proposed Changes**

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

### **Effect and Rationale for Change**

Wisconsin Statutes Chapter 153, noted as “implement the collection, analysis, and dissemination of physician encounter data,” includes an unintended conflict in the statutory language. The intent of the statute was to allow the department to collect a patient account number in order to communicate data errors to the provider who was submitting the data. Following the data cleaning process the department would destroy the patient account number. This intent is clarified in Chapter 153.50 (3) **(b) 7**, which directs the Department to destroy the data element of “the patient’s account number, after use only as verification of data by the department.”

However, a provision that was added in the 1999-01 Biennial Budget Act stating that a health care provider who is not a hospital or ambulatory surgery center may not submit a list of data elements that includes this “account number.” The proposed correction will permit the Department to collect the necessary data and carry out the intent of the legislation.

**Desired Effective Date:** Upon Passage  
**Agency:** DHFS  
**Agency Contact:** Richard T. Chao  
**Phone:** 267-0356



# DHFS

Department of Health and Family Services  
2000-01 Annual Budget Statutory Language Request  
December 22, 1999

Title: Tribal Funding and Brighter Futures

0277  
60526

7/1/00

## Current Language

- 46.99 (2) specifies the amounts to be awarded for services in Milwaukee County and other counties in the state.
- 46.995 (1m) specifies the allocation to the Tribes for Tribal Adolescent Services. --
- 46.995 (4m) specifies the allocation to the Tribes for adolescent services.

## Proposed Change

- 46.99 (2) <sup>(a) (Intro.) CR Act 9</sup> Change the allocation to non Milwaukee counties from \$1,229,300 to \$1,199,300. - 30,000
- 46.995 (1m) <sup>(eg) (km) (nl) CR Act 9 (km)</sup> Change the allocation to the Tribes from \$172,500 from appropriation (3)(km) to \$195,000. Change the allocation to the Tribes from \$7,500 from appropriation (3)(eg) to \$15,000. <sup>(b) (Intro.) ASF Act 9</sup> 22,503  
15,000
- 46.995 (4m) <sup>Tribal Adolescent Services</sup> Change the amount allocated to the Tribes from \$30,000 to \$60,000. <sup>RN Cr. 46,997</sup> + 30,000

## Effect of the Change

These changes will increase the allocation to the Tribes by \$30,000 and decrease the allocation to non Milwaukee counties by the same amount.

## Rationale for the Change

The Brighter Futures initiative consolidated numerous categorical programs and placed the funding for those programs in three appropriations to reflect the federal and state funds that will support the initiative. The level of funding remains the same as it was when the categorical programs were funded. Brighter Futures does specify the amount of funding to be allocated to programs for services in Milwaukee County, services in the other counties and services provided by the Tribes. The amounts specified for each of these three groups reflects the amounts that had been spent prior to the Brighter Futures initiative. Since passage of the 1999 - 2001 biennial budget, it was determined that the Department had inadvertently included \$30,000 in the non Milwaukee counties allocation that had been allocated to the Tribes. The proposed change increases the allocation to the Tribes by \$30,000 and reduces the allocation to non Milwaukee counties by the same amount. Both the increase and reduction are split to provide 25 % GPR and 75 % federal funding (\$7,500 GPR and \$22,500 PRS/TANF), the same funding split used in the 1999 - 2001 biennial budget.

Desired Effective Date:

January 1, 2001

Agency:

DHFS

Agency Contact:

Sherwood Seigel

Phone:

267-7805

# DHFS

Department of Health and Family Services  
2000-01 Annual Budget Issue Paper  
December 3, 1999

## Topic: Indian Health Programs Funding

### Summary of Program

1999 Wisconsin Act 9 changes the funding for two Tribal programs within DHFS from GPR to Indian Gaming Funds. The two programs are the Tribal Medical Relief Block Grant Program and the Cooperative American Indian Health Projects. Two annual, GPR appropriations used to support these programs were converted to PR appropriations and funds will be transferred from the DOA Indian gaming receipts appropriation in the Department of Administration to these new appropriations.

### Problem Description

As noted in the Legislative Fiscal Bureau summary, although the bill would delete the GPR funding for these two programs beginning in 1999-00, the effective date for the change in the appropriations and the transfer of funds from DOA is July 1, 2000. A technical change to this effective date is required to meet the Governor's intent. If the effective date language under Section 9423 (7) and (8) is deleted, the new appropriations and the funding for them becomes effective upon passage of the bill which is consistent with the Governor's intent and the file maintenance to Chapter 20.

### Recommendation

OSF recommends deletion of section 9423 (7) and (8).

**7. ORGAN DONOR PROCUREMENT**

**Governor/Joint Finance:** Provide \$60,800 (\$12,200 GPR, \$18,200 FED and \$30,400 PR) in 2000-01 to support 1.0 nurse consultant position, (0.2 GPR position, 0.3 FED position and 0.5 PR position), beginning in 2000-01, to develop and administer a donor procurement program and coordinate activities between state agencies, hospitals and the donor procurement organizations. In addition, provide \$35,000 GPR in 2000-01 to support organ donor procurement program activities, such as a media campaign, travel-related expenses and the development and distribution of educational materials. The state has two organ procurement organizations, University Hospital in the City of Madison and the Wisconsin Donor Network in the City of Milwaukee. These organizations have committed to funding a portion of the total costs of the organ donor procurement program, including a portion of the program staff costs. Federal support for the position would be provided from MA administrative funds.

	Funding Positions	
GPR	\$47,200	0.20
FED	18,200	0.50
PR	<u>30,400</u>	<u>0.30</u>
Total	\$95,800	1.00

**8. INDIAN HEALTH PROGRAMS FUNDING [LFB Paper 163]**

	Governor (Chg. to Base)	Jt. Finance (Chg. to Gov)	Net Change
GPR	-\$1,840,000	-\$1,650,000	-\$3,490,000
PR	<u>1,840,000</u>	<u>2,078,700</u>	<u>3,918,700</u>
Total	\$0	\$428,700	\$428,700

**Governor:** Delete \$920,000 GPR annually and provide \$920,000 PR annually to transfer support for the tribal medical relief block grant program and cooperative American Indian health projects from GPR to Indian gaming receipts. Convert two annual, GPR appropriations currently used to support these programs to PR appropriations and direct the transfer of funding from the DOA Indian gaming receipts appropriation to these new appropriations in an amount equal to the amounts budgeted for tribal medical relief block grants (\$800,000 PR annually) and cooperative American Indian health projects (\$120,000 PR annually). Although the bill would delete GPR funding for these two programs beginning in 1999-00, the effective date for the change in the appropriations and the transfer of funds from DOA is July 1, 2000. Consequently, a technical change to this effective date is required to meet the Governor's intent.

In addition, direct DOA to transfer \$2,055,000 PR in 1999-00 and \$2,115,000 PR in 2000-01 from the Indian gaming receipts appropriation to the Division of Public Health to support: (a) tribal MA outreach positions (\$240,000 in 1999-00 and \$300,000 in 2000-01); (b) federally qualified health centers (\$825,000 annually); and (c) a BadgerCare premium contingency fund for Native American families (\$990,000 annually). A technical modification to the bill is required because funding for these purposes is not included in the DHFS budget. Additional information on the Governor's proposed use of gaming revenues is summarized in "Administration -- Division of Gaming."

**Joint Finance:** Modify the Governor's recommendations as follows: (a) provide \$183,700 PR in 1999-00 and \$245,000 PR in 2000-01 to be used as the state match to support MA-funded tribal outreach activities; (b) provide \$300,000 PR in 1999-00 and \$400,000 PR in 2000-01 in the Committee's supplemental appropriation as a contingency fund for BadgerCare premiums and require DHFS to submit a request for the release of these funds, under a 14-day passive review process once DHFS receives a written decision from the federal Department of Health and Human Services on whether Native Americans would be required to pay premiums under the Badger Care program; and (c) provide \$825,000 PR annually as the state match for MA services provided by tribal federally qualified health centers (FQHCs) and delete a corresponding amount from the GPR MA benefits appropriation. Specify that if the federal Department of Health and Human Services notifies the state that Native Americans cannot be required to pay BadgerCare premiums, DHFS could not require Native Americans to contribute to the cost of health care coverage under BadgerCare.

In addition, provide \$450,000 PR annually in the Committee's supplemental appropriation to support a new tribal grant program. Direct DHFS to establish criteria for distributing grants to tribal health clinics and to take into account each tribe's financial need, available resources and other demographic health status indicators in developing a distribution formula. Specify that these grants would support health care services of tribal members that are purchased or provided by the tribal health clinics. Require DHFS to submit a request for the release of this funding that specifies that distribution formula that would be used for awarding these grants, under 14-day passive review by September 1, 1999.

**9. LEAD CERTIFICATION STAFF**

**Governor/Joint Finance:** Provide \$100,000 (\$251,300 PR and -\$151,300 FED) annually and convert 3.0 FED positions to PR positions, supported with lead abatement certification fees, beginning in 1999-00, to support the lead training and certification program. Persons who conduct lead hazard reduction or lead management activities must meet specific training requirements and be certified by DHFS. The current grant agreement between the Environmental Protection Agency and DHFS requires the state to expend program revenues to fund program costs and reduce reliance on the federal grant that is currently used to support the program.

	Funding Positions	
PR	\$502,600	3.00
FED	<u>-302,600</u>	<u>-3.00</u>
Total	\$200,000	0.00

**10. REGULATION OF RADIOACTIVE MATERIAL**

**Governor/Joint Finance:** Provide \$184,600 and 2.0 positions in 1999-00 and \$297,900 and 3.5 positions in 2000-01 to support a new state administered program for the regulation of radioactive materials.

	Funding Positions	
PR	\$482,500	3.50

## Title: Facility Size for AODA Residential Treatment

### Current Language

The 1999-2001 biennial budget created a new AODA residential treatment benefit in Medical Assistance under s. 49.45(46), which is available to individuals if a county or other local government agrees to pay the state portion of the benefit. Reimbursement, however, can be provided only for treatment provided in residential facilities with fewer than 16 beds.

### Proposed Change

Allow reimbursement for treatment in facilities with fewer than 17 beds, rather than fewer--than 16 beds.

### Effect of the Change

The change would make state statutes fully consistent with federal regulations. The change would have no fiscal effect.

### Rationale for the Change

1. Language in the 1999-2001 budget includes a limit on the size of the residential facility in order to comply with federal statutes and rules regarding Institutions for Mental Diseases (IMDs). Federal rules define an IMD as an “. . . institution of more than 16 beds that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases.” (42 CFR 1009). “Mental Diseases” in this case would include substance abuse problems. Federal rules prohibit federal Medicaid reimbursement for treatment in IMDs for individuals who are 21 years or older but under age 65.
2. To be fully consistent with federal IMD rules, state statutes should authorize the AODA residential treatment benefit in facilities with fewer than 17 beds.

**Desired Effective Date:** Upon passage  
**Agency:** DHFS  
**Agency Contact:** Andy Forsaith  
**Phone:** 266-7684

## Title: HIV Surveillance Guidelines

### **Current Language**

s.252.15 (7) (c) 1 forbids physicians from reporting information on the sexual orientation of people treated for HIV infection.

### **Proposed Change**

Repeal s.252.15 (7) (c) 1.

### **Effect of the Change**

The state will be able to collect information on sexual orientation of individuals with HIV infection.

### **Rationale for the Change**

As of December 1999, the Center for Disease Control and Prevention (CDC) will require HIV surveillance grant recipients to collect complete exposure category (risk) information on reported patients with HIV. Wisconsin's current statutory language does not permit reports to the state epidemiologist to include information with respect to the sexual orientation of patients who have positive HIV tests, although data on the sexual orientation of the case may be legally reported for AIDS cases.

CDC has informed states that in evaluating state grant proposals for HIV surveillance and prevention, new performance standards will apply to local surveillance systems. One of the required performance standards is the collection of complete risk information. With the existing language in s. 252.15, Wisconsin cannot meet this performance standard and funding may be jeopardized.

Wisconsin is the only state in the nation that prohibits clinicians from reporting sexual orientation data for individuals with HIV. This in turn impairs the state's ability to collect epidemiologically valid information for the purpose of HIV prevention, including community planning, program planning, fiscal projections, trend analysis and interstate data comparison. As a result, the Wisconsin statistics included in the National AIDS/HIV Surveillance Summary issued biannually by CDC are inaccurate.

The recent advent of new HIV antiretroviral drugs has changed the nature of the epidemic. Individuals with HIV infection are being treated with drug combinations that dramatically slow the progression of the disease. Because fewer patients are advancing to AIDS and dying, the number of persons living with HIV infection has increased. Wisconsin has statutorily required HIV reporting since 1985. However, because clinicians are unable to report risk information with regard to the sexual orientation of the patient, we cannot provide necessary information to our HIV Community Prevention Planning Council, AIDS service organizations and community based organizations to focus prevention on high risk populations.

There will be no changes to confidentiality practices as a result of this statutory language change. Individual identities will remain confidential. Failure to change the language will jeopardize the federal funding received by the Department.

**Desired Effective Date:** Upon passage of the Budget Bill  
**Agency:** DHFS  
**Agency Contact:** Ellen Hadidian  
**Phone:** 266-8 155



## Topic: Increased Staffing at MHIs to Meet HCFA Requirements

### Summary of Program

Mendota Mental Health Institute (MMHI) and Winnebago Mental Health Institute (WMHI) provide mental health treatment services to individuals who are mentally ill, emotionally disturbed or chemically dependent.

### Problem Description

42 CFR  
482.13

The Health Care Financing Administration (HCFA) has recently promulgated new rules governing the use of restraint and seclusion in hospitals. Under these new regulations, restraint and seclusion will be a much more tightly regulated activity. Underlying these new rules is a fundamental policy perspective that views restraint and seclusion as a highly intrusive, high-risk intervention with patients that may be used only as a last resort.

In order to meet these new guidelines, the Department requests \$633,200 GPR and 17.6 GPR FTE in appropriation 20.435 (2) (a) [numeric app. 201] and \$1,174,200 PR and the transfer of 34.15 PR FTE from numeric appropriation 228 to appropriation 229 within s.20.435 (2) (gk) over the 1999-2001 biennium. The Department also requests \$242,600 GPR in appropriation 20.435 (4) (b) [numeric app.4041 for Medical Assistance costs associated with this request.

### Background

1. In July HCFA issued new rules governing patients' rights, including the use of restraint and seclusion. These regulations took effect in August 1999. The HCFA regulations are a part of a national movement on the issue of restraint and seclusion. The Joint Commission for the Accreditation of Health Care Organizations (JCAHO), the mental health hospital accrediting organization, is developing standards for restraint and seclusion which are expected to be similar to HCFA standards. These new regulations reflect the increasing effort to involve mental health consumers in their own treatment and also reflect an emerging professional standard of practice for mental health clinicians.

2. Under the new federal regulations, restraint and seclusion may be used only when "less restrictive measures have been found to be ineffective to protect the patient or others from harm." It is current practice at the MHIs to use seclusion or restraint only as a last resort and to work towards the elimination of these techniques as much as possible. If restraint and

seclusion are used, current guidelines specify that they may be used only for the shortest time possible.

3. To meet their guidelines, the MHIs employ a number of measures, such as one-on-one staffing for a patient, team intervention to prevent crises and active treatment, which are alternatives to restraint and seclusion. These measures have been judged to be legally sound and protect the rights of patients and staff as well as assuring their safety. However, current staffing levels at the Institutes will not allow the MHIs to rely solely on these alternative measures.

4. Increasing staff will allow the Institutes to rely more exclusively on team intervention and one-on-one staffing, with restraint and seclusion used only when all other methods have been exhausted. In addition, the Institutes have found that the preferable practice for defusing potentially difficult situations is to engage patients in activities that reduce the noise level and divert their attention from each other. Such activities provide positive treatment options to patients. Occupational Therapist Assistants (OTAs) have primary responsibility for organizing and staffing this type of activity.

5. State statutes give MHIs the authority to lock maximum security forensic patients in their rooms over night. One staff person can supervise a unit under such a system. As the new regulations were originally interpreted, locking patients in their rooms overnight would not be allowed as standard practice. However, in recent discussions with agencies in other states, the Department has learned that there is some debate over the interpretation of the new rules regarding night shifts. As a result, it may not be necessary to add significantly to the night shift staff until the Institutes undergo a federal review and get direction at that time about this issue. The Department requests the addition of only one post for the night shift to provide additional coverage to two units at MMHI, the geriatric and adult civil units, where patients tend to be most active during the night.

6. The new regulations require a face-to-face evaluation for restraint or seclusion by a “licensed independent practitioner” within one hour after the start of this intervention. A “licensed independent practitioner” can be a doctor or advanced practice nurse provider. MMHI has sufficient medical staff to be able to meet this requirement, because MMHI has resident interns from UW that assist in the evening and night coverage. Winnebago has no such coverage. At WMHI, currently only a physician may authorize the emergency use of restraint and seclusion.

7. Even under the current system, with its less restrictive use of restraint and seclusion, there have been a significant number of aggressive incidents against both staff and other patients at the Institutes. During FY 99, there were 330 incidents at MMHI involving patient aggressive or assaultive behavior directed toward the staff. Of these, 57 required medical expenses or at least three days of work missed. There were 90 incidents of patient-to-patient aggression, of which 48 required some sort of treatment. At WMHI during the same period, there were 402 incidents involving patient aggressive/assaultive behavior directed toward staff and 228 of patient-to-patient aggressive/assaultive behavior. There were 135 recorded staff injuries at WMHI with medical expense or absence from work for at least three days. The Department

believes that under the new regulations these numbers will increase significantly, unless there is an increase in staff to handle these situations.

8. The Department's request is primarily for increased RCT/PCT and RN posts. Both types of positions are essential for the provision of appropriate services at the Institutions. Depending on the unit, RNs may provide a greater assessment capability than technicians. This assessment is critical for the treatment of a patient, especially in understanding and controlling the patient's behavior. The RN can also administer medication and provide basic medical care.

9. The Department estimates that it will need 51.75 FTE to meet the new federal standards. Of these, 34.15 would be program revenue (PR) funded. Rather than requesting new PR positions, the Department requests the reallocation to the MHIs of PR positions from the Centers for the Developmentally Disabled that are vacant because of CIP reductions. As residents are transferred from the DD Centers to community placement, the budget for the Centers is reduced by a fixed amount per day. The budget reduction is met primarily by holding staff vacancies at the Centers and eliminating the vacant positions at the end of each biennium. As a result, there will be at least 35 vacant PR positions by the end of FY 00 which could be transferred to the MHIs, thus reducing the Department's request for new position authority. Both Center and MHI PR funding is in the same alpha appropriation, but different numeric appropriations (app. 228 and 229, respectively).

10. Program revenue costs at the MHIs are paid in part by the Medical Assistance program. Approximately 50% of MHI program revenue costs are charged back to Medicaid. If this request is approved, therefore, it will be necessary to increase Medicaid GPR funding by \$242,600 in FY 01.

### Mendota

Mendota's adult units are staffed by four to five PCT or RCT posts at each of the AM and PM shifts, with the exception of the ITU (medium forensic unit), which is staffed by seven posts over the two shifts. The units are also staffed by one to two RN posts on each shift. Adolescent units are staffed by seven RCT posts over the AM/PM shifts and one RN post on each shift. The Department proposes to add one to two additional RN/PCT/RCT posts for each adult unit and one additional post for each adolescent unit during the daytime shifts. The addition of 11 posts would increase the number of staff on duty during the day by 18.15 FTE. The Department also proposes to add one post (1.65 FTE) at night, to be split between the Geriatric and the Adult Civil unit.

The Department requested both RNs and institutional aides for these units. The decision to request nurses rather than aides is based on the characteristics of the unit. In some units, RNs are requested because they can provide a greater assessment capability than an aide. This assessment may be critical to understanding and controlling the patient's behavior. The RN can also distribute medication which may help control behavior and can provide basic medical coverage.

Occupational Therapist Assistants (OTAs): There are currently 3.5 OTAs at MMHI who work on the units under review. The Department requests an additional 3.0 OTA positions to provide more extensive active treatment, especially on the PM shift. The addition of such staff is believed to be helpful in defusing the acuity of a unit and heading off trouble before it begins. By providing structured activity, the OTAs help to engage individuals in activities that will keep them occupied. It is especially helpful to have an early evening program.

Winnebago

Winnebago's two largest forensic units are staffed with four RCT posts and one to two RN posts on each of the AM and the PM shifts. The remaining three adult units for which additional staff are requested are currently staffed with three to four RCT posts on the AM shift, three to four RCT posts on the PM shift and one to two RN posts on each shift. The two adolescent units are staffed with two RCT posts on the AM shift, two RCT posts on the PM shift and one to two RN posts on each shift. The Department proposes to add one to two additional RCT posts and additional RN posts to each of the seven units during the AM/PM shifts, increasing the staff present during the day by 26.45 FTE.

Other Staff: To meet the requirement concerning face-to-face assessments, the Department requests an additional 2.50 advanced practice nurse providers (the state classification nurse practitioner will meet this requirement) to ensure that there will be sufficient staff to conduct these assessments in the time required.

**Recommendation**

Request \$875,800 GPR and \$1,174,200 PR in FY 01 for the annual costs of the staff, including the Medical Assistance portion of PR costs. In addition, request 17.6 GPR FTE and the transfer of 34.15 PR FTE from appropriation 228 to 229 in FY 00 to provide sufficient staff to the mental health institutes to enable them to meet the new federal restraint and seclusion requirements.

2000-01

20.435(a)                      \$633,200      + 17.6 GPR FTE

20.435 (a)(b)                      \$242,600

Are they transferring local FTE + PR from approp 228 to 229?  
 If so, there would be no statutory change, bec  
 approp 228 + 229 are both in 20.435(a)(gk) —  
 have to get permission for this transfer from DOA

## **MMHI Units**

Secure Assessment and Treatment Unit (SATU) - SATU is the primary admission unit for court-ordered forensic patients. SATU provides assessment of patients' competency to stand trial. Other functions include the initial observation period for assessment, diagnosis, and treatment for patients who require a high level of security.

Management and Treatment Unit (MTU) - MTU provides a specialized program for the management and treatment of acutely aggressive patients.

Adult Assessment and Treatment Unit (AATU) - AATU is a coed treatment unit for civil patients who are admitted either voluntarily or involuntarily. Services on AATU include assessment, brief treatment for stabilization of acute psychiatric disturbance, and individualized behavioral treatment services.

Geropsychiatric Treatment Unit (GTU) - GTU is a coed treatment unit for elderly patients needing specialized psychiatric evaluation and treatment, including assessment of interacting physical and emotional problems of aging. A multidisciplinary approach emphasizes supportive interventions, daily living **skills**, personal relationships and care of concurrent medical problems.

Adolescent Male and Female Treatment Units - These units are admission and treatment units for male and female adolescents from counties and juvenile correctional institutions. Admissions to these units require diagnosis of a psychiatric disorder and a need for inpatient treatment.

Intensive Treatment Unit (ITU) - Civil and forensic patients who require intensive psychiatric intervention in a medium security setting are admitted to ITU.

## **WMHI Units**

SH3 (STEP) - The STEP unit is a specialized locked adult treatment unit, utilizing a behavior modification approach in an attempt to treat those patients who present such significant management problems that they are not candidates for other available treatment or who have tried other treatment but were unsuccessful.

SH4 (AWARE) - The AWARE unit provides proactive treatment to adult patients who are diagnosed as being both developmentally disabled and mentally ill and seeks to return the patient to the least restrictive environment consistent with the patient's needs. The treatment focus is to work towards the patient's being able to function in a more independent environment.

SH7 (CHALLENGES) - The CHALLENGES unit functions as an admissions unit for civil adults and a structured program with a behavioral component. The unit serves adults who are unable to be maintained in the community due to acts or threats of acts of harm to themselves or others. Treatment includes individual and group psychotherapy, occupational and recreational therapy, social skills training, vocational assessment and training, medical and diet services and educational programming.

SH6 (Adolescent Treatment Unit) - The Adolescent Treatment Unit is a unit for adolescents who have both psychiatric and behavioral problems that exceed the resources of community programs. The unit provides assessment, treatment and recommendations for continued care after discharge to the families and community agencies.

PHN and PHS - Petershik Hall North (PHN) and Petershik Hall South (PHS) are medium security forensic units that provides evaluation and treatment within a secure setting for adult psychiatric patients. The forensic service provides comprehensive assessment and treatment of psychiatric disorders to patients who have been referred by the Wisconsin court system after being charged with a crime.

SH8 - Sherman Hall 8 functions as the admission and general psychiatric treatment unit for adolescents. The unit provides evaluation, diagnosis and general treatment. The unit provides initial evaluation and treatment for AODA clients who may transfer to Anchorage for more intense AODA services.



DRot

; reporting an individual's positive HIV test to the state epidemiologist; family care eligibility and referral; use of community options program and community integration program funds in a community-based residential facility; medical assistance alcohol and other drug abuse services in a facility; use of seclusion or restraints in state-operated mental health institutes; collection of health care information;

- 1 AN ACT <sup>Gen. Cat.</sup> relating to: appeals of substantiated child abuse or neglect findings;
- 2 public disclosure of certain child abuse and neglect information when there is
- 3 a child fatality or near fatality; access to child abuse and neglect information
- 4 by a citizen review panel established or designated by the department of health
- 5 and family services or a county department of human services or social services;
- 6 the disclosure of records relating to a substitute care parent, the placement of
- 7 a child for adoption outside of the county where the child is located, the
- 8 allocation of funding for tribal adolescent services and the brighter futures
- 9 initiative; funding for the badger care health care program; and making
- 10 appropriations.

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

The effective date for appropriations for relief block grants to tribes;

**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 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 for 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 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 apply:

the child is state child

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 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.

delete space

or

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 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

a law enforcement agency, a public school, a private school, the victim-witness coordinator or fire investigator regarding an individual in the care or legal custody of DHFS, DOC, the County department or the child welfare agency

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. The bill also does not prohibit DHFS, DOC, a county department or a child welfare agency from making available for inspection 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.

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

Handwritten notes in a box:   
 TRAIL-ISR1  
 Insert ISR2  
 INSERT ANAL DAK

WPO: before FE par. add component "anal:space".

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

SECTION 1

Insert 6-1A  
1  
INSERT 6-1B  
2

SECTION 1. 46.99 (2) (a) (intro.) of the statutes, as created by 1999 Wisconsin Act 9, is amended to read:

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

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7-11-2000

History: 1999 a. 9.

SECTION 2. 46.995 (1m) of the statutes, as created by 1999 Wisconsin Act 9, is amended to read:

**46.995 (1m) TRIBAL ADOLESCENT SERVICES ALLOCATIONS.** From the appropriation account under s. 20.435 (3) (km), the department may allocate ~~\$172,500~~ \$195,000 in each fiscal year and, from the appropriation account under s. 20.435 (3) (eg), the department may allocate ~~\$7,500~~ \$15,000 in each fiscal year to provide the grants specified in subs. (2), (3) (b) and (4m) (b).

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7-11-2000

History: 1987 a. 27; 1989 a. 31; 1991 a. 39; 1995 a. 27,289; 1999 a. 9 ss. 1123d to 1125r, 1128d to 1128k, 1129g to 1129r.

SECTION 3. 46.995 (4m) (b) (intro.) of the statutes, as affected by 1999 Wisconsin Act 9, ~~section 1125g,~~ is amended to read:

46.995 (4m) (b) (intro.) From the allocations under sub. (1m), the department may provide a grant annually in the amount of ~~\$30,000~~ \$60,000 to the elected governing body of a federally recognized American Indian tribe or band for the provision of information to members of the tribe or band in order to increase community knowledge about problems of adolescents and information to and

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7-11-2000

1 activities for adolescents, particularly female adolescents, in order to enable the  
2 adolescents to develop skills with respect to all of the following:

3 History: 1987 a. 27; 1989 a. 31; 1991 a. 39; 1995 a. 27,289; 1999 a. 9 ss. 1123d to 1125r, 1128d to 1128k, 1129g, to 1129r.

SECTION 4. 48.78 (3) of the statutes is created to read:

4 48.78 (3) (a) Except as provided ~~under pars.~~ (b) to (d) or by order of the court,  
5 no agency may make available for inspection or disclose the contents of any record  
6 kept or information received relating to a foster parent, treatment foster parent or  
7 family-operated group home, as defined in s. 48.627 (1), parent or a family member  
8 of a foster parent, treatment foster parent or family-operated group home parent  
9 without first receiving the written permission of the foster parent, treatment foster  
10 parent or family-operated group home parent.

11 ~~(b) Paragraph (a) does not apply to the confidential exchange of information~~  
12 ~~between an agency and another social welfare agency. A social welfare agency that~~  
13 ~~obtains information under this paragraph shall keep the information confidential as~~  
14 ~~required under this section and s. 938.78.~~

Inert  
7-114

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

17 (d) Paragraph (a) does not prohibit an agency from disclosing the name and  
18 address of a foster parent, treatment foster parent or family-operated group home  
19 parent under s. 48.20 (8), 48.227 (2), 48.33 (5), 48.355 (2) (b) 2., 48.357 (1) or (2m) or  
20 48.38 (4) (c).

21 SECTION 5. 48.833 of the statutes is amended to read:

22 48.833 **Placement of children for adoption by the department, county**  
23 **departments and child welfare agencies.** The department, a county department  
24 under s. 48.57 (1) (e) or (hm) or a child welfare agency licensed under s. 48.60 may

1 place a child for adoption in a licensed foster home or a licensed treatment foster  
2 home without a court order if the department, county department under s. 48.57 (1)  
3 (e) or (hm) or the child welfare agency is the guardian of the child or makes the  
4 placement at the request of another agency which is the guardian of the child. Before  
5 placing a child for adoption under this section, the department, county department  
6 or child welfare agency making the placement shall consider the availability of a  
7 placement for adoption with a relative of the child who is identified in the child's  
8 permanency plan under s. 48.38 or 938.38 or who is otherwise known by the  
9 department, county department or child welfare agency. The department, county  
10 department or child welfare agency may not deny or delay the placement of a child  
11 for adoption when a family that has been approved as an adoptive placement for the  
12 child is available outside of the county where the child is located. When a child is  
13 placed under this section in a licensed foster home or a licensed treatment foster  
14 home for adoption, the department, county department or child welfare agency  
15 making the placement shall enter into a written agreement with the adoptive parent,  
16 which shall state the date on which the child is placed in the licensed foster home or  
17 licensed treatment foster home for adoption by the adoptive parent.

History: 1981 e. 81,384; 1985 a. 176; 1989 a. 336; 1993 a. 446; 1995 a. 275.

18 **SECTION 6. 48.981 (3)(c) 5m.** of the statutes is created to read:

19 **48.981 (3) (c) 5m.** If the county department or, in a county having a population  
20 of 500,000 or more, the department or a licensed child welfare agency under contract  
21 with the department determines under subd. 4. that a specific person has abused or  
22 neglected a child, the county department, department or licensed child welfare  
23 agency, within 15 days after the date of the determination, shall notify the person in  
24 writing of the determination, the person's right to appeal the determination and the

1 procedure by which the person may appeal the determination, and the person may  
 2 appeal the determination in accordance with the procedures established by the  
 3 department under this subdivision. The department shall establish procedures for  
 4 conducting an appeal under this subdivision. Those procedures shall include a  
 5 procedure permitting an appeal under this subdivision to be held in abeyance  
 6 pending the outcome of any criminal proceedings or any proceedings under s. 48.13  
 7 based on the alleged abuse or neglect or the outcome of any investigation that may  
 8 lead to the filing of a criminal complaint or a petition under s. 48.13 based on the  
 9 alleged abuse or neglect. Those procedures need not be promulgated as rules.

10 **SECTION 7.** 48.981 (3) (cm) of the statutes is amended to read:

11 48.981 (3) (cm) *Contract with licensed child welfare agencies.* A county  
 12 department may contract with a licensed child welfare agency to fulfill the county  
 13 department's duties specified under par. (c) 1., 2. b., 2m. b.<sup>✓</sup>, 5.<sup>✓</sup>, 6.<sup>✓</sup>, 6m. and 8. The  
 14 department may contract with a licensed child welfare agency to fulfill the  
 15 department's duties specified under par. (c) 1., 2. a., 2m. b.<sup>✓</sup>, 3.<sup>✓</sup>, 4.<sup>✓</sup>, 5.<sup>✓</sup>, 5m.<sup>✓</sup>, 6.<sup>✓</sup>, 6m., 7.,  
 16 8. and 9. in a county having a population of 500,000 or more. The confidentiality  
 17 provisions specified in sub. (7) shall apply to any licensed child welfare agency with  
 18 which a county department or the department contracts.

19 **SECTION 8.** 48.981 (7) (a) 15g. of the statutes is created to read:

20 48.981 (7) (a) 15g. A citizen review panel established or designated by the  
 21 department or a county department.

22 **SECTION 9.** 48.981 (7) (cm) of the statutes is amended to read:

23 48.981 (7) (cm) ~~An~~ Notwithstanding par. (a).<sup>✓</sup> ~~an~~ agency may disclose  
 24 information from its records for use in proceedings under s. 48.25 (6), 813.122 or  
 25 813.125.

SECTION 10

to the public

1 SECTION 10. 48.981 (7) (cr) of the statutes is created to read:

2 48.981 (7) (cr) 1. Notwithstanding par. (a) and subject to subd. 3., an agency

3 may disclose a written summary of the information specified in subd. 2. relating to

4 any child who has died or been placed in serious or critical condition, as determined

5 by a physician, as a result of any suspected abuse or neglect that has been reported

6 under this section if any of the following circumstances apply: <sup>✓</sup> - ips

7 a. A person has been charged with a crime for causing the death or serious or

8 critical condition of the child as a result of the suspected abuse or neglect, or the

9 district attorney indicates that a person who is deceased would have been charged

10 with a crime for causing the death or serious or critical condition of the child as a

11 result of the suspected abuse or neglect, but for the fact that the person is deceased.

12 b. A judge, district attorney, law enforcement officer, law enforcement agency

13 or any other officer or agency whose official duties include the investigation or

14 prosecution of crime has previously disclosed to the public, in the performance of the

15 official duties of the officer or agency, that the suspected abuse or neglect of the child

16 has been investigated under sub. (3) or that child welfare services have been

17 provided to the child or the child's family under this chapter.

18 c. A parent, guardian or legal custodian of the child or the child, if 14 years of

19 age or <sup>stat</sup> ~~lower~~ <sup>has</sup> has previously disclosed or authorized the disclosure of the information

20 specified in subd. 2.

21 2. If an agency is permitted to disclose information under subd. 1. relating to

22 a child who has died or been placed in serious or critical condition as a result of any

23 suspected abuse or neglect that has been reported under this section, the agency may

24 disclose all of the following information from its records:

the child is



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

9 b. Whether any previous report of suspected or threatened abuse or neglect of  
10 the child has been made to the agency and the date of the report, a statement of the  
11 determination made by the agency under sub. (3) (c) 4. with respect to <sup>the</sup> ~~that~~ report and  
12 the basis for that determination, a statement of whether any services were offered  
13 or provided to the child, the child's family or the person suspected of the abuse or  
14 neglect and a statement of whether any other action was taken by the agency to  
15 protect the child who is the subject of the report or any other child residing in the  
16 same dwelling as the child who is the subject of the report.

17 c. Whether the child or the child's family has received any services under this  
18 chapter prior to the report of suspected abuse or neglect that caused the child's death  
19 or serious or critical condition or any previous report of suspected or threatened  
20 abuse or neglect.

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

23 a. The agency determines that disclosure of the information would be contrary  
24 to the best interests of the child who is the subject of the report, the child's siblings  
25 or any other child residing in the same dwelling as the child who is the subject of the

SECTION 10

1 report or that disclosure of the information is likely to cause mental, emotional or  
2 physical harm or danger to the child who is the subject of the report, the child's  
3 siblings, any other child residing in the same dwelling as the child who is the subject  
4 of the report or any other person.

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

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

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

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

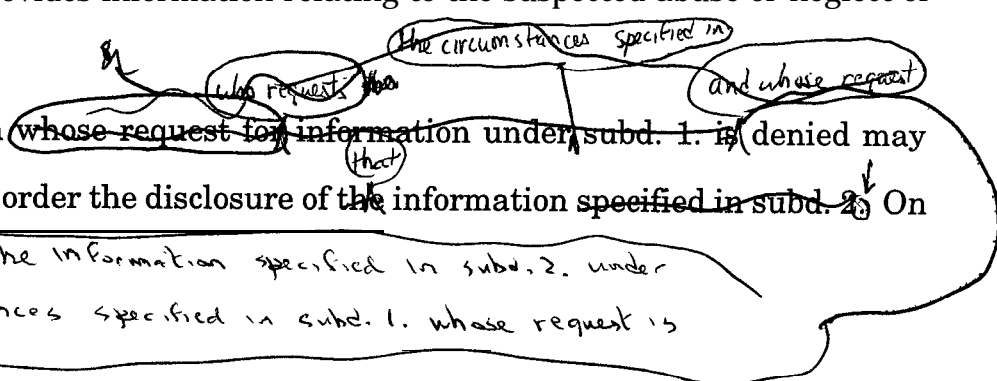
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16 f. Disclosure of the information would reveal the identity of the child who is the  
17 subject of the report, the child's siblings, the child's parent, guardian or legal  
18 custodian or any other person residing in the same dwelling as the child,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

21 g. Disclosure of the information would reveal the identity of a reporter or any  
22 other person who provides information relating to the suspected abuse or neglect of  
23 the child.

24 4. Any person whose request for information under subd. 1. is denied may  
25 petition the court to order the disclosure of the information specified in subd. 2. On

who requests the information specified in subd. 2. under  
the circumstances specified in subd. 1. whose request is



*under the circumstances specified in subd. 1.*

1 receiving a petition under this subdivision, the court shall notify the agency, the  
2 district attorney, the child and the child's parent, guardian or legal custodian of the  
3 petition. If any person notified objects to the disclosure, the court may hold a hearing  
4 to take evidence and hear argument relating to the disclosure of the information.  
5 The court shall make an in camera inspection of the information sought to be  
6 disclosed and shall order disclosure of the information, unless the court finds that  
7 any of the circumstances specified in subd. 3. apply. *applies*

8 5. Any person acting in good faith in disclosing or refusing to disclose the  
9 information specified in subd. 2. ~~in response to a request for that information under~~  
10 ~~subd. 1~~ is immune from any liability, civil or criminal, that may result by reason of  
11 that disclosure or nondisclosure. For purposes of any proceeding, civil or criminal  
12 the good faith of a person in disclosing or refusing to disclose the information  
13 specified in subd. 2. ~~in response to a request for that information under subd. 1~~ shall  
14 be presumed.

15 SECTION 11. 48.981 (7) (d) of the statutes is amended to read:

16 48.981 (7) (d) ~~The Notwithstanding par. (a), the~~ department may have access  
17 to any report or record maintained by an agency under this section.

18 SECTION 12. 938.78 (4) of the statutes is created to read:

19 938.78 (4) (a) Except as provided ~~in~~ *in* pars. (b) and (c) or by order of the court,  
20 no agency may make available for inspection or disclose the contents of any record  
21 kept or information received relating to a foster parent, treatment foster parent or  
22 family-operated group home, as defined in s. 48.627 (1), parent or a family member  
23 of a foster parent, treatment foster parent or family-operated group home parent  
24 without first receiving the written permission of the foster parent, treatment foster  
25 parent or family-operated group home parent.

INSERT  
13-17A  
INSERT  
13-17B

SECTION 12

1 (b) Paragraph (a) does not apply to the confidential exchange of information  
 2 between an agency and another social welfare agency. A social welfare agency that  
 3 obtains information under this paragraph shall ~~keep the information confidential as~~  
 4 ~~required under this section and s. 48.78.~~

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

11 ~~SECTION 9323. Initial applicability, health and family services.~~

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

*This act takes effect on the day after publication, except as follows:*

15 ~~SECTION 9423. Effective dates, health and family services.~~

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

18 (END)

D-NOTE

Insert 14-4

Insert 14-10

Insert 14-10A2

INSERT 14-10B

INSERT 14-17



State of Wisconsin  
1999 - 2000 LEGISLATURE

Insert 7-14 ✓

LRB 1 05/??

GM .....

**SENATE AMENDMENT ,  
TO 1999 SENATE BILL 339**

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At the locations indicated, amend the bill as follows:

~~1. Page 2, line 9: delete lines 9 to 12 and substitute:~~

(bm) Paragraph (a) does not apply to the confidential exchange of information between an agency and another social welfare agency, a law enforcement agency, a public school or a private school regarding an individual in the care or legal custody of the agency. A social welfare agency that obtains information under this paragraph shall keep the information confidential as required under this section and s. 938.78. A law enforcement agency that obtains information under this paragraph shall keep the information confidential as required under ss. 48.396 (1) and 938.396 (1). A public school that obtains information under this paragraph shall keep the information confidential as required under s. ~~118.125~~<sup>118.125</sup> and a private school that obtains information under this paragraph shall keep the information confidential in the same manner as is required of a public school under s. 118.125.

(end of insert)

Insert 14-4 ✓

1

~~2. Page 3, line 6. delete lines 6 to 9 and substitute:~~

②

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

③

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(END)

(End of insert)