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ANNUAL ELDER ABUSE BUDGET REQUEST

Elder Abuse Direct Services	$2,451,000
Public Awareness and Professional Education	$500,000
Two (2) FTE employees at $60,000 each.	$120,000
Total	$3,071,000

APPROACH

Direct Services:

A. The 1998 National Elder Abuse Incidence Study estimates that abuse in domestic settings (not institutions) involves approximately 1.3% of the nation's elderly per year. There are approximately 880,000 elderly residing in Wisconsin.

Therefore, approximately 11,440 older people in Wisconsin are likely affected by elder abuse (888,000 x 1.3% = 11,440).

B. According to a 1990 Bureau of Aging and Long Term Care Resources (BALTCR) study, the average cost per elder abuse case in Wisconsin is $3,000 (amount is adjusted for inflation).

Therefore, the real cost of elder abuse in Wisconsin is approximately $34,320,000 (11,440 x $3,000 = $34,320,000).

C. 1999 data includes 3266 reports of elder abuse in Wisconsin.

D. 11,440 (from A) minus 3266 = 8174 possible cases not reported.

E. If increased public awareness results in 10% of cases being reported that were previously not reported $2,451,000 would be needed annually. (8174 x 10% = 817 x $3000 = $2,451,000)

Public Awareness and Professional Education:

A. In 1997 the Wisconsin Coalition Against Sexual Assault was awarded $500,000 to conduct a statewide public awareness campaign.

B. Milwaukee Women's Center, a domestic abuse program, conducted a nationally recognized, award-winning public awareness campaign valued at $500,000.

C. $40,000 would be needed to provide training for professionals in order to make training available in all areas of the state.

DHFS Support:

Two state level FTE's funded at Range 15 Civil Service Classification, plus position authority. Major responsibilities to include: management of the Wisconsin Guardianship Grant; training and technical assistance to professionals including individuals who work in the criminal justice system, the health care industry, domestic abuse and/or sexual assault victim services, or, in social service or aging agencies; oversight and evaluation of a statewide public awareness campaign; resource development including identification and implementation of best practices; and, development of outcome measures (performance standards).

AARP

AGEADVANTAGE

AREA AGENCY ON AGING OF DANE COUNTY *

BADGER STATE SHERIFFS ASSOCIATION

BAY AREA AGENCY ON AGING

BOARD ON AGING & LONG TERM CARE *

COALITION OF WISCONSIN AGING GROUPS *

MENTAL HEALTH ASSOCIATION OF MILWAUKEE COUNTY

MILWAUKEE COUNTY DEPARTMENT ON AGING *

NORTHERN AREA AGENCY ON AGING *

OFFICE OF CRIME VICTIMS SERVICES

SOUTHEASTERN AREA AGENCY ON AGING *

WISCONSIN ASSOCIATION OF AGING UNIT DIRECTORS

WISCONSIN ASSOCIATION OF BENEFIT SPECIALISTS *

WISCONSIN ASSOCIAION OF COUNTY CORPORATION COUNSEL

WISCONSIN ASSOCIATION OF NUTRITION DIRECTORS

WISCONSIN ASSOCIATION OF SENIOR CENTERS

WISCONSIN CHIEFS OF POLICE ASSOCIATION

WISCONSIN COALITION AGAINST DOMESTIC VIOLENCE

WISCONSIN COALITION AGAINST SEXUAL ASSAULT

WISCONSIN COALITION FOR ADVOCACY

WISCONSIN COUNCIL OF SENIOR CITIZENS

WISCONSIN COUNTIES ASSOCIATION

WISCONSIN CRIME VICTIMS COUNCIL

WISCONSIN DISTRICT ATTORNEYS ASSOCIATION

WISCONSIN HUMAN SERVICES ASSOCIATION

WISCONSIN RETIRED EDUCATORS ASSOCIATION

WISCONSIN SHERIFFS AND DEPUTY SHERIFFS ASSOCIATION

WISCONSIN SOCIAL SERVICES ASSOCIATION

The Coalition of Wisconsin Aging Groups urges:

REPEAL THE RECENTLY ENACTED EXPANSION OF THE MEDICAL ASSISTANCE ESTATE RECOVERY AND LIEN LAW

What the Provisions Have Done:

- Expanded the reach of these laws again, going still further than federal law requires.
- Expanded the lien and estate recovery to allow recovery of personal care services while the recipient was receiving care in the community.
- Made the cost of Community-based services subject to the lien.
- Allowed liens to be placed on the homes of hospital patients.
- Required courts to put liens on homes passed by recipients to surviving children or surviving spouses who are still living in them when the estate is settled through summary proceedings.
- Allowed the state to hire private attorneys to turn the heat up on its already aggressive collection efforts.

Why these Provisions are Bad Public Policy and Should be Repealed:

- These provisions are having a serious chilling effect on proven cost-effective community-based care. The fear of estate recovery and/or the liens have resulted in significant self-denials of care, resulting, ironically and tragically, in premature and/or totally unnecessary and expensive institutionalizations. During 1999 in Milwaukee County alone, 224 people declined community based services because of estate recovery.
- The provisions make the lien *retroactive*; it places a lien on the homes of individuals for services received **BEFORE** they enter nursing homes, thus penalizing individuals and their families for having tried to remain in cost-effective community-based care for as long as possible.
- These provisions represent at least the fifth change in program laws since initial enactment in 1991. Consumers need stability in laws.
- The provisions are particularly ill-timed. Wisconsin has just embarked on a complete overhaul of Wisconsin's long-term care system, creating incentives for more cost-effective community-based care. The estate recovery changes provisions have created more disincentives for same.
- Federal law requires only a very minimal estate recovery law. Wisconsin has consistently expanded the reach far beyond what is required.
- Wisconsin already has one of the more aggressive and insensitive estate recovery/lien laws in the country. The recent expansions make a bad law worse.
- Medicaid, COP and Disease Aids are now the *only* government entitlement that beneficiaries are required to **pay back**. These programs are now a "loan" rather than an entitlement, despite the fact that beneficiaries have paid taxes to support others for years. The state has become the "grim reaper."
- The provisions only affect individuals who did NOT try to game the system by engaging in sophisticated estate planning. Those who play by the rules, lose.

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MA Estate Recovery
(DIN 5404)

The Department requests a decrease of $68,500 GPR and $95,600 FED and an increase of $165,100 PR in FY 02 and a decrease of $481,600 GPR and $702,900 FED and an increase of 1.0 GPR FTE, 1.0 FED FTE, and $1,302,300 PR in FY 03 to support expansion of Medicaid estate recovery provisions. The federal government mandates that states establish estate recovery programs to recover services for institutionalized persons residing in medical institutions and certain services for recipients age 55 and older who were participating in a home and community-based waiver program. In addition, states have the option to recover any service provided under the MA state plan to recipients age 55 and older.

This request expands Medicaid Estate Recovery provisions to include:

- All remaining benefits not currently covered by estate recovery provisions. Currently in Wisconsin, only certain Medicaid services related to long-term or home care are subject to estate recovery.
- The full capitation payment for the Pace and Partnership Programs. Currently these programs are excluded from estate recovery activities.
- All real property, in which a recipient has an ownership interest, as subject to a lien under certain conditions. Currently real property other than a home is not subject to placement of a lien by the Medicaid program.

Fiscal Effect Summary

Source of Funds	FY 2002		FY 2003		Biennial Total	
	Dollars	FTE	Dollars	FTE	Dollars	FTE
GPR	$ (68,500)	-	$ (481,600)	1.00	$ (550,100)	1.00
PRF	$ (95,600)	-	$ (702,900)	1.00	$ (798,500)	1.00
PR	$ 165,100	-	$ 1,302,300	-	$ 1,467,400	-
SEG	$ -	-	$ -	-	$ -	-
Total	$ 1,000	-	$ 117,800	2.00	$ 118,800	2.00

MA Contracts Re-estimate
(DIN 5406)

The Department requests $3,535,800 GPR and $7,124,000 FED in FY 02 and $4,577,600 GPR and $8,781,100 FED in FY 03 and a decrease of $300,000 PR in each year of the biennium for continued support of the Medicaid Administration Contracts funding. Currently, the Wisconsin Medicaid Program uses numerous contracts and agreements for the administration of the Medicaid program. As is the case with the Medicaid program reimbursement to providers, funding for these contracts are from GPR and Medicaid federal funding sources. The rate of federal match differs between contracts and is contingent upon the type of service that the contract provides.

"Estate Recovery" at odds with Estate Tax Cut plan

"The rich and the poor get the same amount of ice," the late Rep. Harvey Dueholm used to growl on the Assembly floor.

"Except the poor get theirs in the winter," the old Danish farmer-philosopher from Luck would add with a chuckle to make his point about the disparity of treatment between classes.

Capitol Watch

By Neil H. Shively

When Dueholm got up for one of his barnyard stem-winders, people emerged from the shadows and flocked to the doorways of the chamber. He would have been right at home with today's subject — how the push for federal estate tax cuts that will mostly benefit the rich and, indeed, the super rich, mocks another government "efficiency" program that nails the estates of "poor" people after they are gone.

The latter is called "estate recovery." It is the code word for getting back the money paid out for nursing home and even home care of people whose assets are depleted to the point they qualify for Medicaid coverage.

The government pays their care bill. As long as they are alive.

But when the inevitable takes them, the government can come in and take what's left.

The irony of that program, adopted in Wisconsin in 1991 at federal insistence, is that at the same time the rich howl in Washington for further reductions in estate taxes. That irony is not lost on one of our state's finest champions of the aging.

Thomas Frazier, executive director of the Coalition of Wisconsin Aging Groups, believes the estate recovery program needs to be tempered.

"At a minimum, the state ought to roll it back to minimum federal requirements," said Frazier. He said he would seek repeal of recent expansion of the Medicaid estate recovery and lien law.

Recent changes to make the reach of estate recovery to include non-institutional benefits received by people over 55. This, says Frazier, after outgoing Gov. Tommy G. Thompson promised in 1995 that "this very unpopular program would go no further than was absolutely required by federal law."

"Of the seven changes affecting the Estate Recovery and Lien laws, five will make this draconian program even worse, one will hopefully lessen its negative impact and one will merely change the law to comport with a 1995 court case," says the CWAG appeal for change.

This comes at a time when Wisconsin is embarking on an overhaul of its long-term care system, creating through Family Care incentives for cost-effective community-based care, says Frazier.

"It seems to me, with the Family Care initiative — the state then turns around and says — We want you to stay at home, but we're going to take a lien on your home to take it back after you die." Frazier said.

"And the irony is, at the Congressional level they are leaving us with "estate recovery" law for low and moderate income people at the same time they want to eliminate the estate tax."

Frazier said he has seen figures showing that just 43,000 people paid estate tax in 1997, while 300,000 Medicaid recipients were subjected to losing their assets to become poor enough to qualify for Medicaid. Then they face having their remaining assets taken after they die.

He correctly states that the estate tax has been slimmed down so that couples with estates of $1.35 million can easily avoid any federal tax with a relatively simple "A-B bypass" trust mechanism.

Richer than that, however, and people face tax rates of 37% to 50+% on their estates.

Some states, such as Texas, home of our new president, George W. Bush, and Michigan have not even implemented the Estate Recovery law, Frazier said.

"If they eliminate the estate tax, they should eliminate the Estate Recovery law," said Frazier.

Medicaid, the Community Options Program for in-home care, and disease aids, are the only government programs where recipients are required to "pay back" their support costs. That, says CWAG, "makes them a loan, not an entitlement. The state has become the 'grim reaper.'"

Neil Shively is the retired Madison Bureau chief for the former Milwaukee Sentinel. His e-mail address is nshively@smallbytes.net.

CWAG

Elder Law Center

Coalition of Wisconsin Aging Groups

Estate Recovery and Lien Law Changes in Biennial Budget Secs. 46.496, 46.27 and 49.687, Wis. Stats., Effective October 29, 1999

A. History of the Laws

Portions of the Estate Recovery and Lien laws first became effective in Wisconsin in 1991. CWAG was concerned then, and still is, about the chilling effect that this law has on the use of community-based long-term care. Put simply, there was ample evidence in1991 of individuals dropping from, or not enrolling in, critically-needed community-based long-term care programs for fear of the dreaded lien or estate recovery. Indeed, it was due to this phenomenon that the legislature ultimately repealed the laws as they impacted on any care other than that received in nursing homes.

In 1995, however, the estate recovery program was expanded to include recovery of a variety of Medical Assistance payments made for certain non-institutional benefits for recipients over age 55. When CWAG objected to its expansion, Governor Thompson assured us that this very unpopular law would go no further than was absolutely required by federal law. Despite this assurance, however, the legislature and Governor have continued to expand the reach of these laws well beyond anything required by the federal government; Wisconsin now recovers funds for a wide variety of Medical Assistance benefits (including Medicaid waiver programs), regular (GPR-funded) Community Options Program and Disease Aids.

B. The Changes

Of the seven changes affecting the Estate Recovery and Lien laws, five will make this draconian program even worse, one will hopefully lessen its negative impact and one will merely change the law to comport with a 1995 court case. They are as follows:

(1) **Lien Applies to Previously-Received Benefits in the Community.** Sec. 1445 of the budget permits recovery of all eligible MA benefits by expanding the amount of the *lien* that can be placed on a MA recipient's home, while the recipient is in a nursing home or hospital, to include all MA benefits received October 29, 1999 or later that are recoverable. For example, if an individual had been receiving COP-waiver benefits in the community for a few years and then later enters a nursing home, *all the benefits* that she received (previously) in the community, since October 29, 1999, will immediately

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become subject to the lien on her house. Thus, benefits that previously would not have been recoverable until after a recipient died would instead become immediately subject to the dreaded lien.
IMPACT: This will seriously affect individuals' willingness to accept critically needed services and represents a giant step backward in this state's attempt to encourage people to utilize cost-effective long-term care services.

(2) **Estate Recovery Now Covers Personal Care.** Sec. 1454 of the budget will also expand the Estate Recovery program, this time by including MA personal care services. The law already covered all MA nursing services, certain inpatient services, and for individuals on waiver programs over age 55, home health care, community-based waiver services, hospital and drug services.
IMPACT: Again, this will be a major disincentive to participate in MA non-institutionalized programs.

(3) **Liens to Cover Certain Hospital Services.** Secs. 1445-1450 of the budget will also expand the Lien, this time by including in liens the home of any recipient who is residing in a hospital under certain circumstances.
IMPACT: Anything that risks individuals self-denying needed care is dangerous and bad public policy.

(4) **Use of Summary Orders to Get Liens on Homes.** Secs. 1051, 1052, 1458 and 1459 of the budget expands the reach of the state through use of probate courts' Summary Orders. While previous law prohibited recovery from a recipient's estate where there was a surviving child or surviving spouse, the change allows the state to instead assign the interest in the bequeathed home to a lien for the state.
IMPACT: This therefore tremendously undercuts the "surviving child/spouse exception" in estate recovery because it allows the state to get through a *lien* what it could not get through estate recovery. Grieving widows and widowers would now face liens on the very homes they live in.

(5) **Use of Private Attorneys to Pursue Estate Recovery.** Secs. 1053 and 1460 of the budget authorizes DHFS, without approval from the Governor, to contract with private attorneys to pursue estate recovery.
IMPACT: Given the recent controversy in Wisconsin about hiring private attorneys for the tobacco litigation, it would seem imprudent to have created an even simpler method for hiring private attorneys. More importantly, this provision appears to have been sought by the Department solely to be able to step up the onerous harassment of grieving family members so that the Department can "pick the bones of the poor" faster.

(6) **Increasing Exemption Amounts.** Sections 1049, 1050, 1455 and 1456 of the budget are actually an improvement. These provisions increase the amount of personal property that is exempted from estate recovery claims by the state for COP, MA and Disease Aids. These provisions will increase the exemptions from the previous limit of $3,000 to $5,000 for all personal property and from $1,000 to $3,000 for tangible personal property

not used in business other than wearing apparel and jewelry held for personal use and household furniture, furnishings and appliances.
♦*IMPACT*♦: This is a small positive humane step in the right direction.

(7) **Deletion of Provision Permitting Recovery from Surviving Spouses Under MA.** The final provision, section 1451 of the budget bill, deletes the department's authority to pursue an estate recovery claim against the estate of the surviving spouse of an MA recipient. The Department lost its authority to pursue these claims against surviving spouses in 1995 when the Court of Appeals ruled against the department in *In the Matter of the Estate of Paul Budney, Deceased: State of Wisconsin, Department of Health and Social Services, v. Estate of Paul Budney, 197 Wis. 2d 948, 541 N.W.2d 245 (Ct. App. 1995).*
♦*IMPACT*♦: The change merely amends the statute to comport with the court decision. It was passed so that the statute books can accurately reflect the state of the law. Unfortunately, the "surviving spouse" recovery still exists for the COP Classic and Disease Aid programs. CWAG believes the programs should be consistent. Authority to recover COP Classic and Disease Aid payments from the estates of surviving spouses should be removed.

C. CWAG Elder Law Center Position

CWAG continues to have two major objections to these laws, one philosophical and one practical. First, we note that Medical Assistance (as well as the MA Waivers, COP and Disease Aids) benefits that are recovered under these laws are the *only* government entitlement that beneficiaries are asked to **pay back**. Wisconsin and U.S. citizens receive a host of government benefits (e.g., police protection, use of roads and highways, access to state and national parks, public education for their children, Medicare, Social Security, garbage collection, etc.), but it is only these health care programs for the poor that the government has chosen to recoup through liens and estate recovery. It is no wonder that the American Bar Association has criticized these laws as "picking the bones of the poor."

Second, the laws' growing expansion into community-based care is having a serious chilling effect on the use of community-based care programs. These highly popular and cost-effective programs have proven to be very successful at keeping people in their own homes longer, paying taxes, and using less care dollars for their health and long-term care needs than they would if they were in institutions. In other words, the laws are having an unintended effect of turning people *away* from cost-effective care, resulting in their getting sicker and, ironically, entering nursing homes where their costs are greater.

From our discussions with advocates from other states, it is clear that Wisconsin already has one of the most aggressive and insensitive estate recovery and lien law programs. The changes passed in the biennial budget make these bad laws still worse. They will further cause individuals to self-deny needed community-based care, resulting in premature and/or unnecessary institutionalizations, ironically costing the state even more. This is particularly ill-timed; the legislature and the Governor just passed a comprehensive redesign of Wisconsin's long-term care programs to combine funding sources and shift the emphasis away from nursing

homes to a more balanced approach to both community-based and institutional care. Expanding estate recovery and lien laws at this juncture was therefore not only cruel; it was foolish.

The Wisconsin Estate Recovery and Lien laws are mean-spirited ill-conceived laws that go much further and deeper than anything required by federal law. They convert an entitlement program to a temporary loan, with the state becoming a different sort of "grim reaper," seizing the estates and placing liens at an extremely sensitive time. Ironically, they only affect individuals who did *not* try to "game the system" by engaging in sophisticated estate planning. Instead, individuals who for years dutifully paid taxes to support these very programs for other beneficiaries, suddenly discover at the time they are sick and have spent all of their life's savings, that using any of these programs will now result in liens on their homes and/or recovery from their estates. At the same time, we permit individuals to die with large estates and pass on over $650,000 without paying any inheritance taxes. This is hypocrisy and unconscionable.

November 1999

Ombudsman Office
Grievance Division
Board on Aging and Long Term Care
214 N. Hamilton St.
Madison, WI 53703

DAVID
FYI

RE: Ladysmith Nursing Home
Patient: Walter & Beverly Gerber
Incident: Patient Transfer/Treatment April 2001

Dear Sir/Madame:

We are writing to express our concerns surrounding the treatment of our family and the transfer of our parents, Walter and Beverly Gerber from the Ladysmith Nursing Home on April 24, 2001.

My father, Walter Gerber, has had a history of aggressive verbal behavior. The positive part of this dementia behavior has been that by all accounts, he was easily redirected. Since Oct. 1999 when my parents entered the nursing home, I would get periodic reports that my father would be verbally aggressive followed by reports that he had periods of very good behavior. In fact, December of 2000, I was told at a care plan meeting that he was "the model nursing home patient". I believed that my father's confusion was manageable. A major source of his aggression has always been the perceived protection of his wife of 52 years, Beverly Gerber, our mother who shared a room with him in the nursing home.

The nightmare for my family began late in the evening of April 22, 2001. I received a call from Nurse Cheryl Lybert-Roth who said that my dad had struck the judge's mother and "was in big trouble now". I was horrified and wanted to know the details of the event. She could not tell me the exact details because a staff member did not witness it but the judge's mother reported that Dad had struck her. Nurse Lybert-Roth said that she was going to speak with Dr. Vasadeva, the psychiatrist, because she wanted to give my father Haldol. I was told that Dr. Vasadeva would contact me in the morning. I expressed my concern about the severity of Haldol but was told that his behavior was out of control and something needed to be done. I did not receive that phone call from the psychiatrist but I did receive a call at 11:30a.m. on April 23 at my office from 3 Ladysmith Nursing Home staff members who were on a speaker phone – the director of nursing, the social worker, and a nurse. They informed me that I had two options for my father. One was to send him to Chippewa Falls to the Lakeside Alzheimer's ward or the second option was to send my father to the psychiatric ward at Sacred Heart Hospital in Eau Claire. I questioned these options and was told that the involuntary commitment to Eau Claire was "by police who would handcuff my father and place him in a ward with younger, more violent patients". I asked if I could have time to check out Lakeside in Chippewa Falls. I was told no, that the transfer would happen that day as Lakeside had

been already contacted and they had an opening for both of my parents. Given these options, I felt that I had no choice. I did not know if Lakeside was an elderly jail or a nursing home. I was told that it would be a locked ward. I contacted Chippewa Falls Lakeside and was told that they would not be ready to take my father and my mother until the next day. I live 2 hours from Chippewa Falls and was to meet my parents there and admit them as I have their power of attorney. I arrived at Chippewa Falls Lakeside at 10:00 a.m. on April 24. I was an emotional wreck. When I arrived at Chippewa Falls Lakeside, I was told that "Ladysmith must have really wanted to move my parents bad" as Ladysmith had my mom and dad and all their possessions loaded on a van and off by 8:30a.m. that morning. I cannot describe the horror of meeting my 86 year old father and my 76 year old wheelchair ridden mother coming out of the elevator looking lost and disheveled with all their earthly possessions in boxes on a cart. My dad appeared to be so drugged and out of it that he moved and responded like a zombie. I hope that you can understand how confusing it is to think that my 140# 5'5" frail father can be such a threat that I could not have time to search out an appropriate nursing home near my home. It had been less than 24 hours since I was told of the transfer.

The records show that my father started having intermittent behaviors in February and March due to my mother's declining health but was easily redirected. The first of April Lorazapam and Risperidol were prescribed. His behavior escalated dramatically and the medications were increased and his behavior increased. Although the nurse threatened Haldol , there are no records that show that this drug was in fact given. When my father arrived at Chippewa Falls Lakeside they immediately took away the Risperidol and the Lorazapam. His behaviors returned again to the occasional verbal outbursts that were easily redirected.

My mother passed away July 23. The tragedy is that family and friends visited my parents while they were in Ladysmith on a regular basis. Dad's sister and brother visited weekly and a dear family friend visited twice a week. Chippewa Falls Lakeside is 1-2 hours away from family and friends and my dad is isolated. If we had been given the choice and time to move my parents to an Alzheimer's unit by one of the family, Mom would not have suffered and died alone and Dad would be receiving emotional support. I have tried to get him transferred back to Ladysmith at the Rusk County Memorial Nursing Home. A review found that my father had occasions of verbal aggression and he was denied. Now that he has a "label" as a behaviorally disturbed nursing home patient, everything is different. Our family's fear is that Dad's life has become one with no choices in a restrictive environment far from the comfort of family and friends. We feel helpless against an institutional system that has taken away all of my father's rights.

We as a family were not advised of the grievance policies of the State of Wisconsin, nor did we have the opportunity to file this grievance prior to this date as we had to help in the transition of our parents and subsequent death of our mother. After considerable research, we feel the Ladysmith Nursing Home violated several of our parent's rights under the State of Wisconsin statutes: Patient Rights definitions section 51.61 section (1)- namely subsections: (e), (fm), (g), (h), (m), (n), and (x). Also under the State of Wisconsin Department of Health and Family Services, Division of Supportive Living

Bureau of Quality Assurance section PSL-2032 (rev9-99), the right to be given advance notice of transfer or discharge and to be advised of your appeal rights under Wisconsin Law was not afforded to us. Finally, under the Wisconsin Administrative Code: Treatment and Related Rights, the patient must be treated in the least restrictive manner and setting necessary to achieve the purposes of administration to the program, within the limits of available funding.

We continue to search for a local nursing home that will take dad. If you could just spend time with him, I believe that you would see a man with noble intentions who responds warmly to family and friends. After years of hard work on a family farm in Rusk County, Wisconsin, I believe Dad deserves the proximity of his family who loves him.

Sincerely,

Marie A. Vitcenda

Marie A. Vitcenda, Power of Attorney for Walter Gerber
N3914 Cleaver Road
Elroy, WI 53929

608-462-5724

cc:
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Madison, WI 53707-7882

Northern
AREA AGENCY
ON AGING

P.O. BOX 1028
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RICHARD SICCHIO
EXECUTIVE DIRECTOR
715-365-2525

BILL SCHELL
PRESIDENT

TO: Health & Human Services Committee Members

FROM: Richard Sicchio RS

DATE: April 30, 2001

RE: Elder Abuse Proposal

There was a page missing from the proposal I presented to the Health & Human Services Committee last week. Enclosed please find a copy of the entire proposal.

Thank you for providing me the opportunity to testify on the critical issue of elder abuse. I hope that I gave you information that you will find useful as you deliberate your responsibilities to the older people of Wisconsin.

RS/e

Enclosure

WISCONSIN ASSOCIATION OF AREA AGENCIES ON AGING

THE NEED FOR ELDER ABUSE STATUTORY REFORM AND FUNDING: 2001-2003 BIENNIAL BUDGET PROPOSAL

1. **Elder Abuse is a serious and growing problem.**
   Since Wisconsin began to fully operate the elder abuse reporting system in 1986, there has been an increase of 139% in the number of cases reported. And because Wisconsin is experiencing an even more dramatic increase in the number of elders than the nation as a whole, the state will most likely see in the next decade a similar increase in the number of reports of elder neglect or physical, financial, emotional and sexual abuse as well as self-neglect.

2. **Counties and Tribes need staff to address elder abuse reports.**
   County boards are required by state statute to designate a county "lead elder abuse agency" to receive and investigate elder abuse reports. Although this statute was passed into law in 1985, there have been only limited legislative appropriations to carry out the assigned duties. As a result, the great majority of counties report serious staffing problems for this growing need and critical function.

3. **The need for public awareness is growing as the seriousness of this problem increases.**
   While public awareness is high for other types of family violence (e.g., child abuse and domestic violence), the public's understanding of the growing and shocking problem of elder abuse lags behind. Public awareness is needed to demonstrate to the public the systems in place and resources available to help with victim safety and to hold abusers accountable.

4. **Training of professionals is crucial to addressing elder abuse issues.**
   Elder abuse is a complex issue that requires sensitive and competent staff who understand the interrelationship between the civil and criminal laws, the dynamics of domestic violence, the dynamics of sexual assault/abuse, working with clients who may have compromised competency, family issues and/or long-term care concerns. Sophisticated, regular training for law enforcement, domestic violence and sexual assault service providers, county social service staff, attorneys, financial institutions, health care professionals, clergy and others is badly needed.

5. **More direct service funds are needed for health and social services.**
   Current state spending for Elder Abuse Direct Services is $625,000 per year. This is less than one dollar per older person in Wisconsin. The lack of funds for services such as assessment and case management, in-home care, respite, emergency shelter, legal assistance and remedies to counter financial exploitation may force elders to remain in extremely dangerous situations and/or lead to unnecessary expensive institutionalization. Lack of direct service funds jeopardizes the health and safety of Wisconsin's elderly.

6. **Elder abuse professionals need the necessary tools to do their job.**
Elder abuse investigators and service providers need special equipment such as cameras and film to record evidence of abuse and property damage, cellular phones for both staff and victims to obtain emergency assistance, locks and outside nightlights to safeguard homes, lock-boxes for securing personal items, cleaning services including dumpster rentals, and access to "lending closets" (where emergency items such as blankets, air conditioners, tarps, medical equipment, etc. are stored).

7. **Professional services are needed to remedy financial exploitation.**
Remedying the fast-growing and complex area of financial exploitation requires the purchase of services from financial and legal professionals (e.g. accountants, financial planners, representative payees and lawyers). Counties and Tribes have no special funds to address this problem.

8. **Education for prevention can minimize abuse and neglect.**
Communities need to be more aware of all types of elder abuse, warning signs, where to call for help and what services are available. Early identification and preventive measures should be employed so that abuse, neglect and exploitation can be avoided or minimized, thereby reducing the need for more expensive interventions. The elderly, especially the isolated and homebound, need to know that they have options for safe living environments in their later years.

9. **State staffing is inadequate to meet current elder abuse programming demands.**
Funds are needed for the Department of Health and Family Services to expand its leadership and coordination of the elder abuse and adult protective services systems. There is a high demand from lead elder abuse and domestic violence agencies for model program information, a statewide public awareness campaign, technical assistance in numerous areas including service development, alcohol abuse, development of elder abuse interdisciplinary teams, individual case consultations, and both statewide and regional training on elder abuse. Currently, DHFS has only one employee to respond to all of the above requests.

10. **Numerous statutory language changes are needed to enable investigators, law enforcement and others to better protect vulnerable adults.**
After over 15 years of elder abuse experience in Wisconsin, there is a significant number of statutory language changes needed to correct problems that inhibit lead elder abuse agencies and law enforcement agencies from performing their jobs efficiently and effectively. As we continue to expand Family Care it becomes even more important to have a cogent, comprehensive and well-coordinated system in place for all areas of adult protective services.

January 11, 2001

ANNUAL ELDER ABUSE BUDGET REQUEST

Elder Abuse Direct Services	$2,451,000
Public Awareness and Professional Education	$500,000
Two (2) FTE employees at $60,000 each.	$120,000
Total	$3,071,000

APPROACH

Direct Services:

A. The 1998 National Elder Abuse Incidence Study estimates that abuse in domestic settings (not institutions) involves approximately 1.3% of the nation's elderly per year. There are approximately 880,000 elderly residing in Wisconsin.

Therefore, approximately 11,440 older people in Wisconsin are likely affected by elder abuse (888,000 x 1.3% = 11,440).

B. According to a 1990 Bureau of Aging and Long Term Care Resources (BALTCR) study, the average cost per elder abuse case in Wisconsin is $3,000 (amount is adjusted for inflation).

Therefore, the real cost of elder abuse in Wisconsin is approximately $34,320,000 (11,440 x $3,000 = $34,320,000).

C. 1999 data includes 3266 reports of elder abuse in Wisconsin.

D. 11,440 (from A) minus 3266 = 8174 possible cases not reported.

E. If increased public awareness results in 10% of cases being reported that were previously not reported $2,451,000 would be needed annually. (8174 x 10% = 817 x $3000 = $2,451,000)

Public Awareness and Professional Education:

A. In 1997 the Wisconsin Coalition Against Sexual Assault was awarded $500,000 to conduct a statewide public awareness campaign.

B. Milwaukee Women's Center, a domestic abuse program, conducted a nationally recognized, award-winning public awareness campaign valued at $500,000.

C. $40,000 would be needed to provide training for professionals in order to make training available in all areas of the state.

DHFS Support:

Two state level FTE's funded at Range 15 Civil Service Classification, plus position authority. Major responsibilities to include: management of the Wisconsin Guardianship Grant; training and technical assistance to professionals including individuals who work in the criminal justice system, the health care industry, domestic abuse and/or sexual assault victim services, or, in social service or aging agencies; oversight and evaluation of a statewide public awareness campaign; resource development including identification and implementation of best practices; and, development of outcome measures (performance standards).

ENDORSEMENTS FOR ELDER ABUSE STATUTORY REFORM AND FUNDING 2001-2003 BIENNEAL BUDGET PROPOSAL.

WISCONSIN COALITION AGAINST DOMESTIC VIOLENCE

BOARD ON AGING AND LONG TERM CARE

AGEADVANTAGE, INC.

ELDERLY SERVICES NETWORK OF DANE COUNTY

AARP WISCONSIN

WISCONSIN ASSOCIATION OF NUTRITION DIRECTORS

WISCONSIN ASSOCIATION OF BENEFIT SPECIALISTS

COALITION OF WISCONSIN AGING GROUPS

AREA AGENCY ON AGING OF DANE COUNTY

MILWAUKEE COUNTY DEPARTMENT ON AGING

SOUTHEASTERN WISCONSIN AREA AGENCY ON AGING

WISCONSIN ASSOCIATION OF AGING UNIT DIRECTORS

NORTHERN AREA AGENCY ON AGING

WISCONSIN COUNTY HUMAN SERVICES ASSOCIATION

WISCONSIN COALITION FOR ADVOCACY

OFFICE OF CRIME VICTIMS SERVICES

WISCONSIN INDIAN ELDERS ASSOCIATION

PORTAGE COUNTY DEPARTMENT ON AGING

VILAS COUNTY COMMISSION ON AGING

OCONTO COUNTY COMMISSION ON AGING

AGING & DISABILITIES RESOURCE CENTER OF MARATHON CO.

Legislative Fiscal Bureau
One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

April 25, 2001

TO: Senator Judy Robson
Room 15 South, State Capitol

FROM: Bob Lang, Director

SUBJECT: Governor's 2001-03 Budget Recommendations: Selected DHFS Items

In response to your request, the attachment to this memorandum provides summaries of items in the Governor's 2001-03 budget bill that relate to the operation of the state Centers for the Developmentally Disabled, Family Care, the community option program (COP) and medical assistance (MA) home- and community-based waiver programs [COP-W and the community integration programs (CIP IA, CIP IB and CIP II)].

BL/CM/sas
Attachment

ATTACHMENT

State Centers for the Developmentally Disabled

1. STATE CENTERS -- CIP IA BUDGET REDUCTIONS

	Funding	Positions
PR	- $12,385,000	- 92.24

Governor: Delete $6,192,500 annually and 92.24 positions, beginning in 2001-02, to reflect the relocation of residents from the Centers for the Developmentally Disabled into community settings under the community integration program (CIP IA) during the 1999-01 biennium. The following annual adjustments would be made at each Center: (a) Central Center, -$1,432,300 and -30.18 positions; (b) Northern Center, -$2,585,000 and -23.71 positions; and (c) Southern Center, -$2,175,400 and -38.35 positions. Reductions in funding and staff are due to the relocation of 54 residents from the Centers during 1999-00 and a projected 37 residents that will be placed during the 2000-01 fiscal year.

Increase the current statutory amounts by which the budgets of the state Centers are reduced following a CIP IA placement to $200 per day, beginning on July 1, 2001, and to $225 per day, beginning on July 1, 2002.

[Bill Section: 1767]

2. EXPAND INTENSIVE TREATMENT SERVICES AT THE CENTERS

	Funding	Positions
PR	$1,124,000	20.00

Governor: Provide $483,000 in 2001-02 and $641,000 in 2002-03 and 20.0 positions, beginning in 2001-02, to expand the number of intensive treatment beds at the state Centers for the Developmentally Disabled by 14 beds, from 36 beds to 50 beds. The funding and positions would be divided between Northern and Southern Centers. Intensive treatment beds are used to provide short-term care to individuals with developmental disabilities who have behavior or psychiatric crises. Counties pay the nonfederal costs of care for individuals who receive intensive treatment. Consequently, the source of the program revenue would be federal MA funds transferred from the MA benefits appropriation and county payments.

[Bill Sections: 1492, 1789, 1962 and 1972]

3. STATE CENTERS -- EXPANDED SERVICES

PR	$51,000

Governor: Provide $25,500 annually and transfer $2,023,200 and 25.0 positions in 2001-02 and $2,024,700 and 25.0 positions in 2002-03 from the Division of Care and Treatment Facilities PR general program operations appropriation to a new PR appropriation that would fund

expanded services provided by the Mental Health Institutes and the Centers for the Developmentally Disabled.

Authorize the Centers to offer short-term residential services, dental and mental health services, physical therapy, psychiatric and psychological services, general medical services, pharmacy services and orthotics when DHFS determines that community services need to be supplemented. Specify that these expanded services may only be provided under a contract between DHFS and a public or private entity within the state for persons referred from those entities.

Require DHFS to charge the referring entity all costs associated with providing the services and to credit these revenues to the new PR appropriation. Prohibit DHFS from directly providing services to individuals without a referral and imposing a charge for services to the person receiving the services or the person's family members. Specify that DHFS could not be required, by court order or otherwise, to offer expanded services.

Specify that the expanded services would be subject to the laws and regulations related to a private entity that would provide those services and by the terms of the contract, except that, in the event of a conflict between the contractual terms and the related rules and regulations, the services must comply with the provisions that are most protective of the recipient's welfare or rights.

Exempt contracted services from zoning or other ordinances or regulations of the county, city, town or village in which the services are provided or the facility is located. Exempt contracted services from certain statutory provisions that would restrict the ability of an entity to contract directly with DHFS. Specify that a residential facility operated by a Center to provide expanded services may not be considered to be a hospital, an inpatient facility, a state treatment facility or a treatment facility.

1999 Wisconsin Act 9 authorized the Mental Health Institutes to offer expanded services under conditions similar to those proposed for the Centers.

[Bill Sections: 699, 700, 1490, 1961, 1963 and 1964]

Family Care

1. FAMILY CARE -- FUNDING

GPR	$4,470,900
FED	1,159,400
PR	- 16,171,300
Total	- $10,541,000

Governor: Delete $4,508,500 ($2,179,200 GPR, $1,432,000 FED, and -$8,119,700 PR) in 2001-02 and delete $6,032,500 ($2,291,700 GPR, -$272,600 FED and -$8,051,600 PR) in 2002-03 to reflect the net fiscal effect of funding: (a) costs to operate resource centers at all sites; and (b) costs of state oversight, including information technology. Most of the GPR funding increase ($2,164,300 in 2001-02 and $2,759,400 in 2002-03) would support costs relating to the resource centers. The bill would provide additional funding to fund service costs of Family Care enrollees who are not eligible for medical assistance (MA) in the current care management organization (CMO) pilot sites by increasing the amount of funding that would be transferred from the community options program (COP) and community aids programs to Family Care.

This item excludes funding to support increases in the cost of providing services to MA clients in the current CMO pilot sites. Funding for this purpose ($1,898,900 GPR and $10,686,300 FED in 2001-02 and $4,472,100 GPR and $13,210,100 FED in 2002-03) is included in the MA base reestimate item. In total, the bill would increase GPR funding by $4,078,100 GPR in 2001-02 and $6,763,800 GPR in 2002-03 to support the costs of Family Care in the 2001-03 biennium.

The following table summarizes the Governor's recommendations relating to funding for Family Care in the 2001-03 biennium, including the MA base reestimate and other items, by program component and funding source. The table shows that much of the funding for Family Care would be budgeted from transfers from MA, COP and community aids to reflect that services formerly supported by these programs would instead be funded under Family Care.

2001-03 Family Care Funding Summary
Governor's Recommendations

	Fiscal Year 2001-02				Fiscal Year 2002-03			
	GPR	FED	PR	Total	GPR	FED	PR	Total
I. BASE								
Net Total Funding After Transfers	$7,283,500	$14,777,100	$11,162,200	$33,222,800	$7,283,500	$14,777,100	$11,162,200	$33,222,800
II. RECOMMENDED CHANGES TO BASE								
Family Care Program								
CMO Contract Payments	$22,536,800	$23,306,000	-$8,476,700	$37,366,100	$36,618,900	$39,506,700	-$8,476,700	$67,648,900
Resource Center Contract Payments	2,164,300	207,300	0	2,371,600	2,759,400	207,300	0	2,966,700
IT Costs & Other State Administration	14,900	1,432,000	0	1,446,900	127,500	1,738,300	0	1,865,800
SSI Caretaker Supplement	0	0	0	0	0	0	0	0
Total Family Care Program	$24,716,000	$24,945,300	-$8,476,700	$41,184,600	$39,505,800	$41,452,300	-$8,476,700	$72,481,400
Transfer from Other Appropriation								
Medical Assistance	-$8,966,700	-$12,619,700	$0	-$21,586,400	-$18,765,900	-$28,307,500	$0	-$47,073,400
Community Aids	-1,273,400	-207,300	0	-1,480,700	-1,273,400	-207,300	0	-1,480,700
Community Options Program	-10,397,800	0	0	-10,397,800	-12,702,700	0	0	-12,702,700
Total Transfers	-$20,637,900	-$12,827,000	$0	-$33,464,900	-$32,742,000	-$28,514,800	$0	-$61,256,800
Net Funding Change After Transfers	$4,078,100	$12,118,300	-$8,476,700	$7,719,700	$6,763,800	$12,937,500	-$8,476,700	$11,224,600
III. TOTAL FUNDING (BASE PLUS CHANGES)								
Family Care Program								
CMO Contract Payments	$44,843,900	$56,523,900	$0	$101,367,800	$58,926,000	$72,724,600	$0	$131,650,600
Resource Center Payments	5,440,800	1,849,600	0	7,290,400	6,035,900	1,849,600	0	7,885,500
IT Costs & Other State Administration	1,541,300	3,099,100	0	4,640,400	1,653,900	3,405,400	0	5,059,300
SSI Caretaker Supplement	0	0	2,685,500	2,685,500	0	0	2,685,500	2,685,500
Total Family Care Program	$51,826,000	$61,472,600	$2,685,500	$115,984,100	$66,615,800	$77,979,600	$2,685,500	$147,280,900
Transfer from Other Appropriations								
Medical Assistance	-$17,605,500	-$33,896,600	$0	-$51,502,100	-$27,404,700	-$49,584,400	$0	-$76,989,100
Community Aids	-4,180,800	-680,600	0	-4,861,400	-4,180,800	-680,600	0	-4,861,400
Community Options Program	-18,678,100	0	0	-18,678,100	-20,983,000	0	0	-20,983,000
Total Transfers	-$40,464,400	-$34,577,200	$0	-$75,041,600	-$52,568,500	-$50,265,000	$0	-$102,833,500
Net Total Funding After Transfers	$11,361,600	$26,895,400	$2,685,500	$40,942,500	$14,047,300	$27,714,600	$2,685,500	$44,447,400

2. FAMILY CARE -- ENTITLEMENT

Governor: Authorize DHFS to delay until January 1, 2004, the date by which persons who are not eligible for MA and who meet specified functional criteria are entitled to the Family Care benefit. Specify that before the date determined by DHFS, persons who are not eligible for MA may receive the Family Care benefit within the limits of state funds appropriated for this purpose and available federal funds.

Under current law, DHFS must determine a date that is no later than July 1, 2000, by which individuals not eligible for MA are entitled to the Family Care benefit. However, CMOs have 24 months to build capacity to serve all entitled persons. Since the five current CMOs began operating from February, 2000, to January, 2001, entitlement under current law could be delayed until February, 2002, to January, 2003, depending on the county. As a result, this provision could delay entitlement for non-MA eligibles by 12 to 23 months, depending on the county.

Under current law, entitlement for the Family Care benefit for persons who are ineligible for MA will eventually include the following two groups: (a) persons at the comprehensive level of functional capacity; and (b) persons with conditions that are expected to last at least 90 days or result in death within 12 months that, on the date that the Family Care benefit became available, were residents of nursing homes or had been receiving, for at least 60 days, certain public-funded long-term care services. Persons in either group must meet the financial eligibility criteria under Family Care and be a member of one of the three target groups under Family Care -- elderly, adults who are physically disabled and adults who are developmentally disabled.

[Bill Section: 1538]

3. FAMILY CARE -- REFERRALS TO RESOURCE CENTERS

Governor: Repeal the current requirement that DHFS promulgate rules that require hospitals, before discharging a patient who is 65 years of age or older or who has a developmental disability or physical disability and whose disability or condition requires long-term care that is expected to last at least 90 days, to refer the patient to a resource center. Repeal the $500 forfeiture penalty hospitals must pay if they fail to make such a referral, under the rules promulgated by DHFS. Instead, require hospitals to participate in developing and implementing plans for making appropriate referrals to resource centers for persons who are likely to be eligible for the Family Care benefit. As under current law with respect to required referrals, this requirement would only apply if the DHFS Secretary certified that a resource center was available for the hospital and for specified groups of eligible individuals that include persons seeking admission to, or patients of, the hospital.

Require resource centers to annually develop a tentative plan for coordinating appropriate referrals of individuals who are discharged from hospitals serving the geographic

area served by the resource center and who are likely to be eligible for, and to benefit from, the Family Care benefit. Require resource centers to consider any recommendations of the local long-term care council and to work in cooperation with the hospitals in developing the final form of the plan and its implementation. Require local long-term councils to review a tentative plan of the resource center and to provide the resource center any nonbinding recommendations for ensuring cooperation and coordination between the resource center and hospitals

Include persons with developmental disabilities as one of the groups that are required to be referred to a resource center by an adult family home, residential care apartment complex or community-based residential facility for persons seeking admission to these facilities. Under current law, these facilities must make referrals for persons who are 65 years or older or who are physically disabled, if a resource center has been certified as available in that area. These facilities are subject to a forfeiture of up to $500 if a required referral is not made.

[Bill Sections: 1521, 1527, 1878, 1886, 1894, 1927 and 1929]

The Co-chairs of the Joint Committee on Finance have determined that this is a non-fiscal policy item that will not be addressed as part of this Committee's budget deliberations.

4. FAMILY CARE -- SERVICES OF RESOURCE CENTERS AND MISCELLANEOUS CHANGES

Governor: Transfer the following responsibilities that are currently assigned to Family Care resource centers to DHFS: (a) informing residents of nursing homes, CBRFs, adults family homes (AFHs) and residential care apartment complexes (RCACs) of the services available at the resource center within six months after the Family Care benefit is available to all eligible persons in the area; (b) provision of the functional and financial screens to any nursing home, CBRF, AFH or RCAC resident who requests a screening; (c) assisting in enrolling in a care management organization (CMO) any nursing home, CBRF, AFH or RCAC resident who is eligible and chooses to do so; (d) offering to provide, and, if the offer is accepted, the provision of the functional and financial screens to any person seeking admission to a nursing home, CBRF, AFH or RCAC to persons who are determined by the resource center to have a condition that is expected to last at least 90 days that would require care, assistance or supervision; (e) provision of protective services or protective placements and elder abuse services through cooperation with the county agency or agencies that provide the services.

Modify the current requirement that residents of nursing homes, CBRFs, adults family homes and RCACs be informed of the services of the resource center within six months after the Family Care benefit is available to limit the requirement to only those residents who are members of a target population served by a CMO that operates in the county.

Define a "family member" as a spouse or an individual related by blood, marriage or adoption within the 3rd degree of kinship and replace current references to "immediate family member" to reflect this new definition, for purposes of meeting the requirement that a certain

number of elderly or disabled persons or their family members must be appointed to the local long-term council. Specify that the functional and financial screens prescribed by DHFS be uniform screening tools, and that the financial screen be used to determine the amount the client must contribute to the cost of care. Specify that, initially, DHFS can contract with a Family Care district, in addition to a county, for serving as a CMO during the initial period in which other entities may not compete for the CMO contract. Clarify that resource centers and CMOs must operate to meet state requirements, in addition to federal requirements, as provided under current law.

[Bill Sections: 1510 thru 1512, 1516 thru 1518, 1522 thru 1526, 1529 thru 1531, 1533, 1541, 1543, 1760, 1877, 1879, 1880, 1885, 1887, 1888, 1893, 1895, 1896, 1903 thru 1905 and 1923]

The Co-chairs of the Joint Committee on Finance have determined that this is a non-fiscal policy item that will not be addressed as part of this Committee's budget deliberations.

5. FAMILY CARE -- EXEMPT CMO CONTRACTORS FROM HOME HEALTH AGENCY LICENSURE REQUIREMENT

Governor: Exempt entities that contract with care management organizations (CMOs) to provide services under Family Care from the requirement to be licensed as a home health agency. Under current law, a Family Care CMO is exempt from the home health licensure requirement, but the exemption does not apply to entities that contract with CMOs

[Bill Section: 1931]

The Co-chairs of the Joint Committee on Finance have determined that this is a non-fiscal policy item that will not be addressed as part of this Committee's budget deliberations.

6. FAMILY CARE -- ELIGIBILITY

Governor: Require a person who seeks a determination of functional eligibility for Family Care, under the current grandfathering provision, to have first applied for the Family Care benefit within 36 months after the date on which the Family Care benefit first became available in the person's county of residence. The grandfather provision allows someone who is not at either the comprehensive or intermediate level of functional capacity, but has a condition that is expected to last at least 90 days, or result in death within 12 months, to be eligible for Family Care if the person was receiving public-funded long-term care services for at least 60 days under other long-term care programs, when the Family Care benefit first became available.

Further, make the following changes regarding Family Care eligibility for persons with developmental disabilities: (a) specify that a person with a developmental disability could be 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 a CMO before July 1, 2003, rather than July 1, 2001, as provided

under current law; (b) clarify that persons with developmental disabilities must be 18 years of age or older to be eligible for Family Care; and (c) clarify that persons with developmental disabilities must meet the functional and financial eligibility standards of Family Care to be eligible for the Family Care benefit.

These changes would first apply to applications for Family Care that are made on the bill's general effect date.

[Bill Sections: 1534 thru 1537 and 9323(4)]

7. FAMILY CARE -- FAMILY CARE DISTRICTS

Governor: Modify provisions relating to the appointments and terms of members of a Family Care district to: (a) allow the county to appoint only the initial board members, and specify that the board would appoint any future members; (b) reduce the terms of the initial members of the board from three years to one year for five of the initial members, from four years to two years for five of the initial members, and from five years to three years for the remaining members; (c) make initial appointments subject to review and approval by the DHFS Secretary; (d) require the local long-term care council to review the proposed initial members of the board and make a recommendation concerning the appointments to the DHFS Secretary; and (e) limit the number of elected or appointed officials or employees of the county that may be board members to less than one-fourth of the board members.

Require counties to obtain the approval of the DHFS Secretary to create a Family Care district.

Under current law, a county can create a Family Care district that is separate and distinct from the county, to operate either a care management organization or a resource center, but not both. The county appoints the members of the board of the Family Care district, and up to one-fourth of the members of the board may be elected or appointed officials or employees of the county. DHFS does not currently have any review authority for board appointees.

[Bill Sections: 1513 thru 1515, 1519, 1520, 1544 thru 1552, 1881, 1889, 1897, 1906 and 1907]

The Co-chairs of the Joint Committee on Finance have determined that this is a non-fiscal policy item that will not be addressed as part of this Committee's budget deliberations.

8. FAMILY CARE -- ESTATE RECOVERY

Governor: Provide that revenue from estate recoveries from MA-eligible Family Care recipients be credited to the estate recovery appropriation that receives other MA estate recoveries and funds MA benefit expenditures and payments to counties to fund county administrative costs of the estate recovery program. Authorize DHFS to expend funds from

this appropriation to support care management organization (CMO) payments for persons eligible for MA.

Provide that revenue from estate recoveries from non-MA eligible Family Care recipients be credited to: (a) the appropriation currently funded by recoveries made for services provided under the community options program (COP), to fund county administrative costs for estate recovery; and (b) the appropriation currently funded by COP and Family Care estate recoveries that funds COP and Family Care CMO services.

[Bill Sections: 710, 711, 727 and 1532]

9. FAMILY CARE -- HEARING RIGHTS

Governor: Require a person to file a written request for a hearing with the DOA Division of Hearings and Appeals on a matter relating to Family Care within 45 days after the effective date of the matter. Under current law, a person must file the written request within 45 days of the failure by a resource center or CMO to act on the matter within the time frames specified by rule by DHFS, or within 45 days after receipt of notice of a decision in a contested matter.

In addition, eliminate estate recoveries as one of the matters for which a Family Care client could request a hearing.

[Bill Sections: 1540 and 1542]

The Co-chairs of the Joint Committee on Finance have determined that this is a non-fiscal policy item that will not be addressed as part of this Committee's budget deliberations.

10. PREADMISSION REQUIREMENT FOR CBRFS AND RCACS IN NON-FAMILY CARE COUNTIES

Governor: Modify preadmission requirements for community-based residential care (CBRFs) and residential care apartment complexes (RCACs) in non-Family Care counties to: (a) require RCACs to inform prospective residents of the county aging unit and the agency in the county that administers the community options program (COP) and to inform the prospective resident of conditions for eligibility for public funding for long-term care services: (b) require CBRFs to refer persons seeking admission to the CBRF to the agency in the county that administers COP. Authorize DHFS to assess a forfeiture of up to $500 for each violation of these disclosure and referral requirements. Permit counties to use COP funding to conduct preadmission consultations for persons who seek admission, or are about to be admitted to, a CBRF. Specify that these provisions would apply to residencies in RCACs and CBRFs sought on or after January 1, 2002.

Under current law, CBRFs and RCACs in counties with a certified Family Care resource center must inform prospective residents of public long-term care resources and must refer

persons to the Family Care resource center. The penalty for failing to provide such information or a referral is a forfeiture of up to $500 for each violation.

[Bill Sections: 726, 1884, 1892, 1898, 1899, 1900, 1902, 9323(8) and 9423(5)]

The Co-chairs of the Joint Committee on Finance have determined that this is a non-fiscal policy item that will not be addressed as part of this Committee's budget deliberations.

COP and MA Waiver Programs

1. COP COST-TO-CONTINUE

GPR	$2,679,300

Governor: Provide $1,336,300 in 2001-02 and $1,343,000 in 2002-03 to fully fund community option program (COP) slots that were created in 2000-01. 1999 Wisconsin Act 9 created 581 new COP slots that were phased-in during the 2000-01 fiscal year and, as a result, the full annualized cost of these slots is not included in the base budget. Federal matching funds for COP-waiver slots are included as part of the MA base reestimate.

2. CIP IB AND CIP II SLOTS

GPR	$7,109,400
FED	10,075,500
Total	$17,184,900

Governor: Provide $5,728,300 ($2,362,900 GPR and $3,365,400 FED) in 2001-02 and $11,456,600 ($4,746,500 GPR and $6,710,100 FED) in 2002-03 to fund 60 new CIP IB placements and 686 new CIP II slots that will be phased-in over the 2001-02 fiscal year.

The CIP IB and CIP II programs provide enrollees a comprehensive set of community-based services as an alternative to institutional care. The CIP IB program serves persons with developmental disabilities, while the CIP II program serves persons who are elderly and persons who are physically disabled.

3. CIP IA RATE FOR NEW PLACEMENTS

Governor: Increase the maximum reimbursement rate for persons who are relocated from state Centers for the Developmentally Disabled to the community under the CIP IA program, from the current rate of $190 per day, to $200 per day for placements made in state fiscal year 2001-02 and to $225 per day for placements made in 2002-03. No additional funding is budgeted to support this increase because the bill would also increase the amount of funding that would be reduced from the state Centers budget following a CIP placement by the same amounts. Thus, the additional costs for community placements would be offset by reduced funding to support services at the State Centers.

Under current law, CIP IA placements are supported at four different rates. For placements made before July 1, 1995, the rate is $125 per day, for placements made on or after July 1, 1995 and before July 1, 1997, the rate is $153 per day, for placements made on or after July 1, 1997 and before July 1, 2000, the rate is $184 per day and for placements on or after July 1, 2000, the rate is $190 per day.

[Bill Section: 1767]

4. CBRF SIZE LIMIT FOR COP-W AND CIP II

Governor: Authorize counties to use COP-W and CIP II funds to support residential services in community-based residential facilities (CBRFs) with up to 20 beds, with the approval of DHFS. Under current law, counties may use COP-W and CIP II funds to support residential services in CBRFs with up to four beds without receiving approval from DHFS, but may use COP-W and CIP II funds to support residential services in CBRFs with up to eight beds with the approval of DHFS.

[Bill Sections: 1505 and 1508]

CWAG

Thomas L. Frazier, *Executive Director*

Coalition of Wisconsin Aging Groups

March 2, 2001

Senator Judy Robson
State Capitol
P. O. Box 7882
Madison, Wisconsin 53707

Dear Senator ~~Robson~~ Judy:

Following up on your meeting with our Legislative Caucus, I am writing to request that your committee on Human Services and Aging hold public hearings on the issues of elder abuse and estate recovery. We have been working with the Wisconsin Association of Area Agencies on Aging to develop a proposal on elder abuse (enclosed) and the Governor is proposing a further expansion of estate recovery (at the same time that Congress is considering eliminating estate taxes for millionaires). I am enclosing additional information regarding estate recovery.

If we had enough advance notice of hearing dates, I am sure that we could guarantee a good turnout and excellent testimony.

Please let me know if you are agreeable to these suggestions.

Sincerely,

Thomas L. Frazier
Executive Director

cc: Richard Sicchio, WAAA

2850 Dairy Drive • Suite 100 • Madison, WI 53718-6751 • 608/224-0606 • Fax 608/224-0607

Rock County First Time Parent Program
804 Broad Street
Beloit, Wisconsin 53511

The Honorable Senator Judy Robson
Post Office Box 7882
Madison, Wisconsin 53707-7882
19 April 2001

RE: Proposed State Budget: Funding for in-home parenting programs

Dear Senator Robson:

We were pleased to be able to attend the legislative hearing today in Janesville. We chose not to address the committee in that format as we wanted to organize our thoughts a bit in light of the other comments. We've organized our comments in three categories:

(i.) why state funding is appropriate and necessary,
(ii.) from whence the funding might come, and
(iii.) responses to reasonable criticisms of (i.) & (ii.).

We hope that you will pass this information and perspective on to the other distinguished members of the committee.

I. Why state funding is appropriate and necessary for in-home visitation parent programming.

The utility of early intervention is the fundamental assumption driving in-home services. By meeting parents at the earliest point in their relationship with their newborn child several positive aims can be accomplished. These include (a) improved attachment (parent/child bonding); awareness of early brain development issues; knowledge and skills for proper child care; improved understanding of child development; improved access/commitment to infant medical care, and decreased isolation.

The most obvious outcome for communities is the decrease in the incidence of child abuse/neglect. Since children who have been abused or neglected tend to need and/or require intervention and follow-up services, a reduction in the number of cases that have been brought to the attention of the county can result in substantial direct cost savings. Longer term gains accrue from the higher levels of functioning associated with non-abused children. These costs, while not attributable to every child that is abused or neglected, can become significant. On a less dramatic basis, in home parent visitation services can enhance the quality of parenting and hence enhance the quality of care/interaction resulting in a higher functioning/better socialized child/youth.

Clearly, child abuse/neglect exact large personal, inter-personal, and financial consequences. Unfortunately, the "return" on prevention dollars is neither immediate nor immediately obvious. It is thus particularly difficult for elected officials to have the fiscal fortitude to take the "long view" and be willing and/or able to invest in prevention efforts in order to "save" money at some later date (and under someone else's budget). We are hopeful that the state will be able to recognize the long-term value of an increased investment in prevention programming (particularly, but not limited to, home visitation programs) and assume a leadership role in pro-actively responding to future needs.

The economics of prevention are perhaps the most compelling non-moral argument. If the numbers cited today are accurate – that it costs $64,000 to house a juvenile offender annually – then it is not particularly difficult to argue that prevention pays.

ii. From whence the funding might come

There is a certain logic, if not symmetry, to the 1% prevention funding proposal. We would respectfully recommend support of that initiative to fund prevention programs (including in home visitation) and/or support for the initiative to add an additional tobacco tax. Following up on a suggestion raised at the hearing today, we would suggest consideration of funding prevention/home visit programs through an additional fee to be attached to traffic fines for moving violations in school zones.

iii. **Responses to reasonable criticisms of (i.) & (ii.).**

One of the more common criticisms of home visit programs for parents is that they do not effectively impact upon abuse/neglect rates due to the relatively low prevalence of reported child abuse/neglect. This raises the serious possibility that one is providing a substantial amount of service to a large segment of the population that is not at risk. There are a couple of responses to this. The first is simply that this ultimately is an argument for increasing the scope of parenting services—the more clients served the more likely prevention occurs. This is manageable in so far as the costs associated with abuse/neglect continue to rise substantially. The second response is to look at improving the odds by using known risk factors to establish eligibility.

One of the more cogent criticisms is whether services are, in fact, a mechanism for effecting long-term change. Interestingly, our client satisfaction surveys consistently report that the information and advice they received made a qualitative difference in their parenting. While we are hesitant to make the claim that the self-reporting of the parents correlates to a decrease in the rate of abuse/neglect, we would find it odd to ignore such claims.

In terms of fiscal criticisms, one might argue that the state should not become involved in this sort of programming. We would argue the contrary. Private funding sources appear to be motivated to find new/evolving programs and do not appear – for the most part – willing to look at sustaining programs. Our own First Time Parent program began with

4-E dollars; we have expanded the program through Brighter Futures funding. County funding, however, is precarious. State funding makes sense over the long-haul because of the state's unique ability to access various revenues.

Finally, the notion of funding the program through a subset of moving vehicle traffic fines falls prey to the administrative nightmare criticism. However, given the information technology as it currently stands, we would assume that this could be addressed without disproportionate hardship. (Perhaps the Children's Trust Fund could administer the funds?)

We hope the above perspective is helpful. We appreciate the daunting challenge you all face in developing a viable budget under challenging economic conditions.

Please do not hesitate to contact us for any additional clarification/information.

Sincerely,

Kay Deupree (JP)

Kay Deupree
First Time Parents Program
UW Extension

John Pfleiderer
Family Service Association of Beloit

Rock County, Wisconsin
Rock County Board
51 South Main Street
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608/757-5510

April 17, 2001

Senator Judy Robson
Room 15S, State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Dear Senator Robson:

The purpose of this letter is to ask for your support for the concept of the expanded IGT program that is contained in the Governor's Budget. The expanded IGT issue is by far the biggest priority for Rock County with respect to the State Budget.

The expanded IGT program uses the "wire transfer" mechanism to maximize the allowable claim on federal dollars. The change in methodology came about due to the fact that the previous method was not in compliance with federal regulations, and it was advantageous to both the State of Wisconsin and the nursing home industry to use the wire transfer method.

The Governor's budget earmarks the "vast majority" of the funds for the nursing home industry. Federal Funds that are in excess of the state budget appropriation go into a trust fund as the source for future MA expenditures for the nursing home industry. The Governor's budget continues the present practice of making $37.1 million IGT payments to county nursing homes and provides an additional $115 million in FY02 and $157 million in FY03 of MA funding to the entire industry. Of the $115 million, $40 million would be distributed to counties through IGT awards to counties and $75 million will provide increases in the MA reimbursement rates to all nursing homes, including county-owned nursing homes. The trust fund is the future source of funding as the expanded IGT program is phased down over the next seven years.

The expanded IGT Program is the **only** bright spot in the Governor's Budget. With the exception of minimal increases in transportation funding, all other state funding sources have not increased, or in some cases decreased. Given the fact that Rock County is only $400,000 away from its tax rate cap, the potential for extensive service cuts exists in 2002 if the expanded IGT program is reduced or eliminated by the Legislature. The impact will be longer waiting lists for human services in Rock County, more calls to our legislative delegation from citizens whose services are eliminated, and increased unmet needs.

Due to the State's basic policy of under funding medical assistance, we are seeing a shortage of nursing home beds in Rock County. The crisis is due to the fact that the cost of patient care greatly exceeds the MA reimbursement rate for patient care. It is my understanding that this is a problem statewide in both public and private nursing homes. The expanded IGT program addresses the problem by increasing funding to an ailing industry. Thus, it helps keep private nursing homes in business and reduces the pressure on publicly owned nursing homes.

In 2001, the County budgeted nearly $9.1 million in tax levy to support the nursing home. In addition, the nursing home has accumulated a $5 million retained earnings deficit over the last three years. It was that bleak financial picture and an uncertain funding stream that led to the decision to downsize the nursing home from a 388-bed facility to a 180-bed facility. The Board made the tough decision to downsize knowing full well that it would be a time consuming, difficult process. Furthermore, the County Board understands that the expanded IGT program is a temporary financial fix, but will aid the County during downsizing.

At present, we are midway through the steps required to implement the expanded IGT program in Wisconsin. The State has submitted its plan amendment to the Federal Government, and Rock, Walworth and Sheboygan County partnered with the state to accomplish the wire transfer on March 12th. Our decision to participate was based on an agreement between the nursing home associations and DOA/DHFS that committed the "vast majority" of the funding to the nursing home industry. Furthermore, that agreement indicated that Rock County would have its nursing home deficits covered by IGT funding throughout the biennium.

The next step is the federal approval the State Plan Amendment that expands the IGT program in Wisconsin. I expect that decision to be made by mid-May. And finally, the Legislature must approve the State budget that creates the trust fund and appropriates the funding. Rock County will be asked again to participate in a wire transfer in 2002. If the adopted State budget diverts the funding from the nursing home industry, it may be difficult to find County Board support for its continued participation in the wire transfer.

Again, I ask for your support to ensure that the funding remains in place for the purpose of funding the nursing home industry. Please feel free to call me at (608) 757-5506 if you have any questions regarding the expanded IGT program and its impact on Rock County.

Sincerely,

Terry G. Maybee
County Board Chair

cc: Craig Knutson, County Administrator
Terry Scieszinski, RCHCC Administrator

AFSCME®

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April 25, 2001

Senator Judy Robson, Chair
Committee on Human Services and Aging
State Capitol, 15 South
Post Office Box 7882
Madison, WI 53707-7882

Dear Senator Robson:

As your committee holds hearings on the state budget provisions related to aging and human services, we would like to offer some of our issues and concerns for consideration.

Intergovernmental Transfer Program

The preservation of the agreement between the Wisconsin Counties Association, the Governor and the nursing home industry to modify IGT in order to capture additional federal funds is critical for our county-operated nursing homes. We urge you to support this budget provision and to help stop the possible transfer of IGT funding to other programs. Nursing homes are in dire financial shape, a condition which will only worsen should increased Medicaid dollars be diverted to other sources.

W-2 Program

1. *Re-contracting Process and Funding Issues* – The Department has issued its final application materials for those W-2 agencies achieving the right of first selection status. The final allocations have not yet been announced.

   We have heard concerns from several smaller counties about the amounts in the Department's draft allocations, that some counties' allocations are being cut while the large, private agencies in Milwaukee continue to receive still more funding despite concerns about their financial management and program practices. Some counties acknowledge that while they have made good use of TANF and other funds (such as Workforce Advancement and Attachment funds), their allocations for the next contract are being cut, while the Milwaukee agencies are being given increases (despite having failed to use these funds). Evidently, DWD is expecting counties to make up the shortfall in funding

– or asking clients in small counties to do without services. We urge the Committee to help see that counties, and their clients, are not penalized in favor of shifting still more money to the private Milwaukee agencies.

2. *Child Care Administration* - The Department of Workforce Development is planning to shift responsibility for child care administration from counties to W-2 agencies. Currently, W-2 agencies determine eligibility for child care, and then the county administers payments and other parts of the process. Counties now receive administrative funds, but under this DWD's plan, all administrative funds would go to the W-2 agencies. This would have a particularly negative impact on Milwaukee County, which currently uses its administrative funds for technical assistance and training for new child care providers.

   In its right of first selection application materials, DWD states that it has decided not to make this change in the contracts at this time. We support this decision, but ask the Committee to seek clarification from DWD of their intentions on this issue.

3. *Contingency Fund* – The Governor's budget calls for elimination of the $100 million contingency fund, created to be a safety net for agencies in case of an economic downturn. Through the first four years of the program, while Wisconsin enjoyed good economic times, no agency ever accessed the fund. Now, with an economic downturn looming, DWD and the Governor have put their funding priorities elsewhere. Some counties are already facing potential cuts in their allocations for the next contract period. In times of economic hardship and in the absence of such a fund, will counties once again be asked to make up the difference when state funding falls short? We ask the Committee to seek reinstatement of some amount of contingency funding for W-2 agencies, should hard times hit.

WISACWIS

The budget bill seeks funding to expand implementation of the state's child welfare information system (WISACWIS) to eight counties in the first year of the biennium, and twenty more in the second year. However, DHFS and the Governor have requested that counties fund one-third of the cost of implementing the system.

Over the years, state government has developed and implemented a number of information systems (CARES, KIDS, HSRS, etc.), used in partnership with counties, to administer its programs. Counties already contribute substantially to these systems through staff time, equipment, training, and in other indirect ways. Never before has the state required counties to help pay for these systems directly. In fact, in 1997, DHFS administrators assured the counties in writing that they would not be required to assume any of the implementation costs for WISACWIS.

We consider this a poor precedent to set, and an abrogation of the state's responsibility to fully fund the process of collecting the information it requires for its own programs. We ask the Committee to recommend that the state fully fund implementation of WISACWIS.

Thank you for your consideration of these issues. Please feel free to contact at 836-6666 me if you have any questions.

Sincerely,

Beth Smith

Beth Smith
Policy Analyst, AFSCME Council 11

Cc: Members of the Committee on Human Services and Aging

Recommended Legislative Initiatives to Enhance the Medicaid Card Services:

Problem: The current definition of "Medical Necessity" is subject to ongoing reinterpretation with DHFS in administering Medicaid Card services. A definition that is contemporary and includes a clear understanding of the ongoing needs of children & adults with life-long disabilities is available and should be considered for Medicaid recipients in WI.

Rules that clearly define "Medical Necessity" should be established with careful consideration of children with long term health and rehabilitative needs.

Problem: Currently the aggressive prior authorization process in place in the WI Medicaid program is based on a management model appropriate for managing short term acute rehabilitative services. Ongoing prior authorization on an 8-12 week basis for the long-term *habilitative* needs of children & adults with disabilities is costly for providers and the state. It results in needless repetitive paperwork, delays in services and stress on families within the system.

A separate process and funding stream should be established that enables the long term rehabilitative and care management of children & adults with special health care needs to be approved annually for an appropriate level of ongoing service. Perhaps a waiver program would offer a better long-term care management solution. Limiting the Prior Authorization process to managing episodic needs for service such as defined in a traditional medical utilization review model.

Problem: Families and providers wishing to consider and prepare appeals for modified or denied PA's have little information stated in the original denial/modification upon which to base their decision. They must currently initiate an actual formal appeal to receive a written explanation regarding the basis for denial/modification.

DHFS should be required to provide more specific information regarding the reason for modification/denial of PA's immediately upon modification/denial.

Problem: Families & providers navigating the Prior Authorization process and issues surrounding both community and school-based services are hindered by the complexity of the system. With increasing challenges and time required to administer services for Medicaid recipients, providers are less willing to offer the additional time and resources needed to prepare for and participate in the formal appeals process. Without Provider participation, most families find it intimidating and difficult to present their child's case to the hearing officer.

An independent ombuds program should be established to assist families in navigating this process for the PA process including issues of access to therapies, DME, home & personal care.

Problem: Substantial cost increases in administering services to WI Medicaid recipients have been noted by providers over the past 5 years. This increase has been the result of the costly prior authorization process and its ongoing demand for volumes of repetitive paperwork. It has resulted in a disincentive to provide needed services to children & adults with disabilities in WI. On the other hand, WI school districts involved in billing the WI Medicaid Program for school-based services are surveyed regularly and experience rate increases and administrative compensation related to the cost of providing Medicaid services and performing outreach activities. A similar study of community-based providers would enable the Department to capture information about the rapidly growing costs of providing services and accessing Medicaid reimbursement for this population.

A mandatory cost study should be conducted every 3-5 years with community-based Medicaid Providers to capture the related costs to the delivery of service including the costly Prior Authorization process.

Problem: Currently the WI Medicaid program demonstrates a preference for school-based services for children with special needs, despite the clearly defined role of school-based services in their of meeting the "educational" needs of children. This preference may be fueled by the fact that the School-Based Services benefit in WI currently funnels 40% of Federal revenues received into the state general fund.

In addition, there is no related legislation to the school-based service benefit that describes that revenues received by a district should be used to enhance special education or related services. Therefore, when a school district provides and bills for school-based therapy services, the state makes money on these services whether or not the student's medical needs for therapy are met. There have been few if any increases or changes in the level of therapy services available in school districts related to the increased revenues. Yet there have been increasing denials related to "duplication of services" issues for medically-based community services. This results in a net decrease in the services available to children in our state despite the obvious increase in federal dollars.

There should be a substantial reduction in the amount of Federal Medicaid dollars flowing to the WI General Fund for School-Based Services. The current system creates improper incentives for service to be delivered through the schools in lieu of community-based services despite the significant differences in delivery models.

Problem: Providers have experienced Medicaid audits and recoupments based on unclear, unpublished guidelines for documentation and delivery of Medicaid Services. Since ongoing provider education & standards are often unclear, the Bureau of Health Care Integrity should consider for recoupment only those billed services that are provided in clear violation of written policy in force at the time of the services in question. Infractions that cannot be so substantiated with specific provider publications should be given an "educational audit" and follow up. The Federal Health Care Finance Administration has recently stated their support for educational audits in cases where true fraud and abuse could not be substantiated.

Regulations should be established insuring that Provider Audits have an educational option when non-criminal intent is noted for minor violations in regulations.

Regulations should be established that limit DHFS' ability to implement tighter standards for audit than what are clearly published and provided to Medicaid Providers of Service.

4/25/01 Respectfully Submitted by Lynn Steffes, PT
Survival Coalition, Medicaid Project Leader
For additional information, I can be reached @ (414) 587-0374 OR stefbiz@execpc.com

Lisa Oberbruner & Jerry Perry

FOR IMMEDIATE RELEASE:
July 14, 1998

Governor: New Law Creates Spinal Cord Research Trust Fund

Christopher Reeve, Steven McDonald, Paul Richter Hail Legislation

Governor George E. Pataki today was at NYU Medical Center where he signed into law legislation to establish a new Spinal Cord Injury Research Trust Fund, giving new hope to thousands of people. The legislation, which received the strong support of well-known actor, activist and Chairman of the Board of the American Paralysis Association, Christopher Reeve, establishes a new dedicated fund to assist top researchers in their ongoing efforts to find a cure for spinal cord injury paralysis.

"This legislation will help us work toward a cure for spinal cord damage so that courageous individuals like Christopher Reeve, Detective Steven McDonald and retired New York State Police Sergeant Paul Richter -- and thousands of others like them-- can someday be provided with a real chance of recovering from their traumatic and devastating injuries," Governor Pataki said. "New York leads the nation in providing high-quality health care for our citizens. This legislation will further that effort."

Tremendous scientific advances have been made in recent years in the area of spinal cord research, and many top experts believe that a cure may eventually be within reach for individuals who have suffered from spinal cord damage.

Christopher Reeve said, "All of us in the spinal cord community, patients and researchers alike, are deeply grateful to the New York State Legislature and Governor Pataki for passing this bill. The only obstacle to a cure for paralysis is money. This legislation will have a tremendous effect on the quality and pace of research now being conducted in New York. I hope that other states across the country will follow New York's lead and enact similar measures."

New York City Detective Steven McDonald said, "Patti Ann and I salute Governor Pataki for his insight and compassion in signing this historic legislation. Our hopes and prayers are given new life by New York State's new commitment to help us walk again."

A prime mover behind this bill, retired State Police Zone Sgt. Paul A. Richter, who was shot and disabled while on duty in 1973 and is New York State Coordinator for the Spinal Cord Society said: "When I was hurt in 1973, doctors told me to forget about a cure. That has changed completely. I am very proud to see my State of New York take the lead in finding that cure."

"There is now a very real and growing hope that we may someday move beyond basic rehabilitation and therapy efforts for individuals who suffer from serious spinal cord injuries," the Governor said. "This new law is designed to help us take that critical step toward an actual cure."

Instead of using new taxes or fees, the new trust fund will be financed through an existing surcharge currently imposed on drivers who receive traffic tickets. Under the legislation, a portion of the surcharge -- which varies depending on the infraction -- will be targeted directly toward the new Trust Fund. It is expected to raise $8.5 million annually.

"Each day we are seeing tremendous medical advances in the treatment of spinal cord injuries by facilities such as the NYU Rusk Institute and our own Helen Hayes Rehabilitation Hospital," said State Health

Commissioner Barbara A. DeBuono, M.D. "This fund will be a magnificent resource for researchers in New York to develop the innovative solutions to overcome spinal cord injuries."

The legislation, sponsored by Senator Vincent Leibell and Assemblyman Edward Griffith, also establishes a new Spinal Cord Injury Research Board which will consist of 13 members appointed by the Governor and legislative leaders. The legislation takes effect January 1, 1999.

"The Research Board will be the driving force from this legislation and their determination to find a cure for spinal cord injuries will provide hope for thousands of people, their families and their future," Senator Leibell said. "The dedication of state funding for spinal injury research brings New York to another level of leadership in healthcare legislation."

Assemblyman Griffith said, "Today - and I mean this day, July 14, 1998 - there is more hope than there has ever been that people whose lives have been devastated by spinal cord injury will live to see those injuries reversed. This enactment is a tribute to those who never lost hope in the face of medical dogma of long standing that spinal nerve tissue could not regenerate."

The Board will hold regular meetings to review spinal cord injury research projects and programs and to solicit research proposals from top scientists, physicians and other experts who are dedicated to finding a cure for spinal cord injuries.

After close review of these proposals -- and after consulting with various individuals who are knowledgeable in the field -- the Board will make recommendations to the Commissioner of Health regarding which research efforts should be funded using money from the Spinal Cord Injury Research Trust Fund.

Return to the Press Releases
Return to the Office of the Governor

CHAPTER 201

An Act establishing a New Jersey Commission on Spinal Cord Research, supplementing Title 52 of the Revised Statutes and amending R.S.39:5-41.

Be It Enacted *by the Senate and General Assembly of the State of New Jersey:*

C.52:93E-1 Short title.

1. This act shall be known and may be cited as the "Spinal Cord Research Act."

C.52:93E-2 Definitions relative to spinal cord research.

2. As used in this act:

a. "Approved research project" means a peer reviewed scientific research project, which is approved by the commission and which focuses on the treatment and cure of spinal cord injuries and diseases that damage the spinal cord.

b. "Commission" means the New Jersey Commission on Spinal Cord Research established pursuant to this act.

c. "Institutional support services" means all services, facilities, equipment, personnel and expenditures associated with the creation and maintenance of approved research projects.

d. "Qualifying research institution" means the University of Medicine and Dentistry of New Jersey; Rutgers, The State University; Princeton University; the Kessler Medical Rehabilitation Research and Education Corporation; the Coriell Institute for Medical Research; and any other research institution in the State approved by the commission.

C.52:93E-3 New Jersey Commission on spinal Cord Research.

3. a. There is established in the Executive Branch of the State government, the New Jersey Commission on Spinal Cord Research. For the purposes of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the commission is allocated within the Department of Health and Senior Services, but notwithstanding that allocation, the commission shall be independent of any supervision or control by the department or by any board or officer thereof.

b. The commission shall consist of 11 members, including the Commissioner of Health and Senior Services, or his designee, who shall serve ex officio; one representative of the University of Medicine and Dentistry of New Jersey; one representative of Rutgers, The State University; one representative of the federally designated Spinal Cord Injury Model System; one representative from the American Paralysis Association; and six public members who are residents of the State knowledgeable about spinal cord injuries and who include at least one physician licensed in this State and at least one person with a spinal cord injury. The members shall be appointed by the Governor with the advice and consent of the Senate.

c. The term of office of each appointed member shall be three years, but of the members first appointed, three shall be appointed for a term of one year, four for terms of two years, and three for terms of three years. All vacancies shall be filled for the balances of the unexpired terms in the same manner as the original appointments. Appointed members are eligible for reappointment upon the expiration of their terms. A member shall continue to serve upon the expiration of his term until a successor is appointed.

The members of the commission shall not receive compensation for their services, but shall be reimbursed for the actual and necessary expenses incurred in the performance of their duties as members of the commission.

C.52:93E-4 Responsibilities of commission.

4. The commission shall:

a. Review and authorize approved research projects, for which purpose the commission may establish an independent scientific advisory panel composed of scientists and clinicians who are not members of the commission to review proposals submitted to the commission and make funding recommendations to the commission;

b. Apportion all available funds to qualifying research institutions to finance approved research projects and necessary institutional support services;

c. Ensure that funds so apportioned to approved research projects are not diverted to any other use;

d. Take steps necessary to encourage the development within the State of spinal cord research projects;

e. Compile a directory of all spinal cord research projects being conducted in the State; and

f. Provide the Governor and the Legislature with a report by January 30 of each year describing the status of the commission's activities and the results of its funded research efforts.

C.52:93E-5 Authority of commission.

5. The commission is authorized to:

a. Adopt rules and regulations concerning the operation of the commission, the functions and responsibilities of its officers and employees and other matters as may be necessary to carry out the purposes of this act;

b. Maintain offices at such places within the State as it may designate;

c. Employ an executive director and other personnel as may be necessary, whose employment shall be in the unclassified service of the State, except that employees performing stenographic or clerical duties shall be appointed pursuant to Title 11A (Civil Service) of the New Jersey Statutes;

d. Design a fair and equitable system for the solicitation, evaluation and approval of proposals for spinal cord research projects;

e. Apply for and accept any grant of money from the federal government, which may be available for programs relating to research on the spinal cord;

f. Enter into contracts with individuals, organizations and institutions necessary or incidental to the performance of its duties and the execution of its powers under this act; and

g. Accept gifts, grants and bequests of funds from individuals, foundations, corporations, governmental agencies and other organizations and institutions.

C.52:93E-6 Election, duties of officers.

6. The commission shall annually elect a chairman and a vice-chairman from among its members. The chairman shall be the chief executive officer of the commission, shall preside at all meetings of the commission and shall perform other duties that the commission may prescribe.

The executive director shall serve as secretary to the commission and shall carry out its policies under the direction of the chairman.

C.52:9E-7 Direct application for funds permitted.

7. Nothing in this act shall preclude a qualifying research institution or any other research facility in the State from directly applying for or receiving funds from any public or private agency to conduct spinal cord research.

C.52:93E-8 Establishment, maintenance of central registry.

8. a. The commission shall establish and maintain, in conjunction with the Department of Health and Senior Services, a central registry of persons who sustain spinal cord injuries other than through disease, whether or not the injury results in a permanent disability, in order to provide a database that indicates the incidence and prevalence of spinal cord injuries and which will serve as a resource for research, evaluation and information on spinal cord injuries and available services.

b. The commission shall require the reporting of all cases of spinal cord injuries, except those caused through disease, and the submission of specified additional information on reported cases as it deems necessary and appropriate.

The commission shall, by regulation, specify the health care facilities and providers required to make the report of a spinal cord injury to the registry, information that shall be included in the report to the registry, the method for making the report and the time period in which the report shall be made.

c. The reports made pursuant to this section are to be used only by the commission and the Department of Health and Senior Services and such other agencies as may be designated by the commission or the department and shall not otherwise be divulged or made public so as to disclose the identity of any person to whom they relate; and to that end, the reports shall not be included under materials available to public inspection pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.).

d. No individual or organization providing information to the commission in accordance with this section shall be deemed to be, or held liable for, divulging confidential information. Nothing in this section shall be construed to compel any individual to submit to medical, commission or department examination or supervision.

e. A health care facility or health care provider who is required to report a spinal cord injury to the commission that fails to comply with the provisions of this section shall be liable to a penalty of up to $100 per unreported spinal cord injury case. A penalty sued for under the provisions of this section shall be recovered by and in the name of the commission and shall be deposited in the "New Jersey Spinal Cord Research Fund" established pursuant to this act.

C.52:93E-9 "New Jersey Spinal Cord Research Fund."

9. a. There is established in the Department of the Treasury a nonlapsing revolving fund to be known as the "New Jersey Spinal Cord Research Fund." This fund shall be the repository for moneys provided pursuant to subsection e. of R.S.39:5-41. Moneys deposited in the fund, and any interest earned thereon, shall be used exclusively for the purpose of making grants for approved spinal cord research projects at qualified research institutions.

b. Any costs incurred by the department in the collection or administration of the fund may be deducted from the funds deposited therein, as determined by the Director of the Division of Budget and Accounting.

10. R.S.39:5-41 is amended to read as follows:

Fines, penalties; forfeitures, disposition of; exceptions.

39:5-41. a. All fines, penalties and forfeitures imposed and collected under authority of law for any violations of R.S.39:4-63 and R.S.39:4-64 shall be forwarded by the judge to whom the same have been paid to the proper financial officer of a county, if the violation occurred within the jurisdiction of that county's central municipal court, established pursuant to N.J.S.2B:12-1 et seq. or the municipality wherein the violation occurred, to be used by the county or municipality to help finance litter control activities in addition to or supplementing existing litter pickup and removal activities in the municipality.

b. Except as otherwise provided by subsection a. of this section, all fines, penalties and forfeitures imposed and collected under authority of law for any violations of the provisions of this Title, other than those violations in which the complaining witness is the director, a member of his staff, a member of the State Police, a member of a county police department and force or a county park police system in a county that has established a central municipal court, an inspector of the Board of Public Utilities, or a law enforcement officer of any other State agency, shall be forwarded by the judge to whom the same have been paid as follows: one-half of the total amount collected to the financial officer, as designated by the local governing body, of the respective municipalities wherein the violations occurred, to be used by the municipality for general municipal use and to defray the cost of operating the municipal court; and one-half of the total amount collected to the proper financial officer of the county wherein they were collected, to be used by the county as a fund for the construction, reconstruction, maintenance and repair of roads and bridges, snow removal, the acquisition and purchase of rights-of-way, and the purchase, replacement and repair of equipment for use on said roads and bridges therein. Up to 25% of the money received by a municipality pursuant to this subsection, but not more than the actual amount budgeted for the municipal court, whichever is less, may be used to upgrade case processing.

All fines, penalties and forfeitures imposed and collected under authority of law for any violations of the provisions of this Title, in which the complaining witness is a member of a county police department and force or a county park police system in a county that has established a central municipal court, shall be forwarded by the judge to whom the same have been paid to the financial officer, designated by the governing body of the county, for all violations occurring within the jurisdiction of that court, to be used for general county use and to defray the cost of operating the central municipal court.

Whenever any county has deposited moneys collected pursuant to this section in a special trust fund in lieu of expending the same for the purposes authorized by this section, it may withdraw from said special trust fund in any year an amount which is not in excess of the amount expended by the county over the immediately preceding three-year period from general county revenues for said purposes. Such moneys withdrawn from the trust fund shall be accounted for and used as are other general county revenues.

c. (Deleted by amendment, P.L.1993, c.293.)

d. Notwithstanding the provisions of subsections a. and b. of this section, $1.00 shall be added to the amount of each fine and penalty imposed and collected under authority of any law for any violation of the provisions of Title 39 of the Revised Statutes or any other motor vehicle or traffic violation in this State and shall be forwarded by the person to whom the same are paid to the State Treasurer. In addition, upon the forfeiture of bail, $1.00 of that forfeiture shall be forwarded to the State Treasurer. The State Treasurer shall annually deposit those moneys so forwarded in the "Body Armor Replacement" fund established pursuant to section 1 of P.L.1997, c.177 (C.52:17B-4.4). Beginning in the fiscal year next following the effective date of this act, the State Treasurer annually shall allocate from those moneys so forwarded an amount not to exceed $400,000 to the Department of Personnel to be expended exclusively for the purposes of funding the operation of the "Law Enforcement Officer Crisis Intervention Services" telephone hotline established and maintained under the provisions of P.L.1998, c.149 (C.11A:2-25 et al.).

e. Notwithstanding the provisions of subsections a. and b. of this section, $1 shall be added to the amount of each fine and penalty imposed and collected under authority of any law for any violation of the provisions of Title 39 of the Revised Statutes or any other motor vehicle or traffic violation in this State and shall be forwarded by the person to whom the same are paid to the State Treasurer. The State Treasurer shall annually deposit those moneys so forwarded in the "New Jersey Spinal Cord Research Fund" established pursuant to section 9 of P.L.1999, c.201 (C.52:9E-9). In order to comply with the provisions of Article VIII, Section II, paragraph 5 of the State Constitution, a municipal or county agency which forwards moneys to the State Treasurer pursuant to this subsection may retain an amount equal to 2% of the moneys which it collects pursuant to this subsection as compensation for its administrative costs associated with implementing the provisions of this subsection.

C.52:93E-10 Rules, regulations pertinent tospinal cord research.

11. The commission shall adopt such regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) as are necessary to carry out the provisions of this act.

12. This act shall take effect on the 90th day following enactment.

Approved September 13, 1999.