

1991 Senate Bill 563

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1991 WISCONSIN ACT 235

AN ACT *to repeal* 46.81 (6); *to renumber* 46.27 (1) (a); *to amend* 46.27 (2) (c) and (f), 46.27 (3) (b) 6, 46.27 (5) (intro.) and (am), 46.27 (5) (d) 1 and (i), 46.27 (6) (d), 46.27 (7) (b) 1m, 46.27 (11) (c) 3, 46.27 (11) (c) 5, 46.27 (11) (c) 6. (intro.), 46.271 (1) (intro.), 46.271 (2) (a), (b) and (c) (intro.), 46.271 (3), 46.28 (1) (e) 5, 46.81 (1) (a), 46.81 (1) (c), 46.81 (2) to (4), 46.81 (5), 46.87 (3) (c) 4, 46.90 (1) (ag) and (5m) (b), 59.07 (93) (b) and 146.885; and *to create* 46.27 (1) (a), 46.80 (2m), 46.82 and 59.07 (150) of the statutes, **relating to:** establishing aging units, procedures for appointment and requirements of membership of commissions on aging and certain duties of the department of health and social services.

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

SECTION 1. 46.27 (1) (a) of the statutes is renumbered 46.27 (1) (ad).

SECTION 2. 46.27 (1) (a) of the statutes is created to read:

46.27 (1) (a) "Aging unit" means an aging unit director and necessary personnel, directed by a county commission on aging and organized as one of the following:

1. An agency of county government with the primary purpose of administering programs of services for older individuals of the county.

2. A unit, within a county department under s. 46.215, 46.22 or 46.23, with the primary purpose of administering programs of services for older individuals of the county.

3. A private, nonprofit corporation that is organized under ch. 181.

SECTION 3. 46.27 (2) (c) and (f) of the statutes are amended to read:

46.27 (2) (c) Review and approve or disapprove the selection of a county department or aging unit under sub. (3) (b) to administer the program.

(f) Evaluate the cost-effectiveness of the program, the ability of the program to provide alternatives to institutional care of persons and the reasons why any county

department or aging unit administering the program finds that a community arrangement is not feasible under sub. (6) (d).

SECTION 4. 46.27 (3) (b) 6. of the statutes is amended to read:

46.27 (3) (b) 6. A county An aging unit, as defined ~~in s. 46.81 (1) (a).~~

SECTION 5. 46.27 (5) (intro.) and (am) of the statutes are amended to read:

46.27 (5) (title) COUNTY DEPARTMENT OR AGING UNIT DUTIES. (intro.) The county department or aging unit selected ~~by the county board of supervisors~~ to administer the program shall:

(am) Organize assessment activities specified in sub. (6). The county department or aging unit shall utilize persons for each assessment who can determine the needs of the person being assessed and who know the availability within the county of services alternative to placement in a nursing home. If any hospital patient is referred to a nursing home for admission, these persons shall work with the hospital discharge planner in performing the activities specified in sub. (6). The county department or aging unit shall coordinate the involvement of representatives from the county departments under ss. 46.215, 46.22, 51.42 and 51.437, health service providers and the county commission on aging in the assessment activities specified in sub. (6), as well as the person being assessed

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and members of the person's family or the person's guardian.

SECTION 6. 46.27 (5) (d) 1. and (i) of the statutes are amended to read:

46.27 (5) (d) 1. Apply the uniform fee schedule under s. 46.03 (18) for long-term community support services provided any person under par. (b), if the person is eligible for medical assistance under s. 49.46, 49.468 or 49.47 or if the county department or aging unit finds the person likely to become medically indigent within 6 months by spending excess income or assets for medical or remedial care.

(i) In the instances in which an individual who is provided long-term community support services under par. (b) for which the individual receives direct funding, serve directly as a fiscal agent or contract with a fiscal intermediary to serve as a fiscal agent for that individual for the purposes of performing the responsibilities and protecting the interests of the individual under the unemployment compensation law. The county department or aging unit may elect to act as a fiscal agent or contract with a fiscal intermediary to serve as a fiscal agent for an individual who is provided long-term support services under s. 46.275, 46.277, 46.278, 49.52, 51.42 or 51.437. The fiscal agent under this paragraph is responsible for remitting any federal unemployment compensation taxes or state unemployment compensation contributions owed by the individual, including any interest and penalties which are owed by the individual; for serving as the representative of the individual in any investigation, meeting, hearing or appeal involving ch. 108 or the federal unemployment tax act (26 USC 3301 to 3311) in which the individual is a party; and for receiving, reviewing, completing and returning all forms, reports and other documents required under ch. 108 or the federal unemployment tax act on behalf of the individual. An individual may make an informed, knowing and voluntary election to waive the right to a fiscal agent. The waiver may be as to all or any portion of the fiscal agent's responsibilities. The waiver may be rescinded in whole or in part at any time.

SECTION 7. 46.27 (6) (d) of the statutes is amended to read:

46.27 (6) (d) If the county, through an assessment, determines that a community arrangement is not feasible, the county department or aging unit administering the program shall explain the reasons to the person and his or her family or guardian. The county department or aging unit administering the program shall maintain records sufficient to provide the county long-term support planning committee and the department with a periodic review of the reasons community arrangements were not feasible in order to assist future program planning.

SECTION 8. 46.27 (7) (b) 1m of the statutes is amended to read:

46.27 (7) (b) 1m. From the appropriation under s. 20.435 (7) (bd), the department shall allocate funds to each county to pay the cost of providing long-term community support services under sub. (5) (b) not otherwise paid under s. 49.45 to persons eligible for medical assistance under s. 49.46 or 49.47 or to persons whom the county department or aging unit administering the program finds likely to become medically indigent within 6 months by spending excess income or assets for medical or remedial care. The average per person reimbursement under this paragraph may not exceed the state share of the average per person payment rate the department expects under s. 49.45 (6m). The county department or aging unit administering the program may spend funds received under this paragraph only in accordance with the case plan and service contract created for each person receiving long-term community support services.

SECTION 9. 46.27 (11) (c) 3. of the statutes is amended to read:

46.27 (11) (c) 3. Medical assistance reimbursement for services a county, a private nonprofit agency or a ~~county an~~ aging unit with which the department contracts provides under this subsection shall be made from the appropriations under s. 20.435 (1) (o) and (7) (b) and (bd).

SECTION 10. 46.27 (11) (c) 5. of the statutes is amended to read:

46.27 (11) (c) 5. The department may contract for services under this subsection with a county, a private nonprofit agency or, if a county board of supervisors by resolution so requests the department, ~~a county an~~ aging unit, ~~as defined in s. 46.81 (1) (a).~~

SECTION 11. 46.27 (11) (c) 6. (intro.) of the statutes, as created by 1991 Wisconsin Act 39, is amended to read:

46.27 (11) (c) 6. (intro.) No county, private nonprofit agency or ~~county~~ aging unit, ~~as defined in s. 46.81 (1) (a),~~ may use funds received under this subsection to provide residential services in any community-based residential facility, as defined in s. 50.01 (1g), or group home, as defined in s. 48.02 (7), that has more than 4 beds, unless one of the following applies:

SECTION 12. 46.271 (1) (intro.) of the statutes, as affected by 1991 Wisconsin Act 39, is amended to read:

46.271 (1) (intro.) From the appropriation under s. 20.435 (7) (bd), the department shall allocate \$100,000 in fiscal year 1991-92 and \$100,000 in fiscal year 1992-93 to applying county departments under s. 46.215, 46.22, 46.23, 51.42 or 51.437 or to a ~~county an~~ aging unit under the conditions specified in sub. (3) to establish pilot projects for home and community-based long-term support services. Funds allocated to the pilot projects shall be used to do any of the following:

SECTION 13. 46.271 (2) (a), (b) and (c) (intro.) of the statutes are amended to read:

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46.271 (2) (a) Solicit applications from county departments or aging units for the pilot projects under sub. (1).

(b) Require that an applying county department or aging unit under par. (a) submit as part of the application specific plans for improving the coordination between hospitals and providers of home and community-based long-term support services.

(c) (intro.) Give priority, in awarding funds under sub. (1), to an application from a county department or aging unit in a county that has one of the following:

SECTION 14. 46.271 (3) of the statutes is amended to read:

46.271 (3) The department may contract with a county an aging unit, as defined in s. ~~46.81~~ 46.27 (1) (a), for administration of services under sub. (1) if, by resolution, the county board of supervisors of that county so requests the department.

SECTION 15. 46.28 (1) (e) 5. of the statutes is amended to read:

46.28 (1) (e) 5. A county commission on aging created appointed under s. ~~59.07 (93)~~ 46.82 (4) (a).

SECTION 16. 46.80 (2m) of the statutes is created to read:

46.80 (2m) The department:

(a) In accordance with the requirements of 42 USC 3025, 3026 and 3027, shall do all of the following:

1. Divide the state into distinct planning and service areas and designate a public or private nonprofit agency or organization as the area agency on aging for each planning and service area.

2. Develop formulas for distribution within the state of funds received under 42 USC 3001.

3. Receive area plans prepared and developed by area agencies on aging designated under subd. 1.

4. Contract with each area agency on aging that is designated under subd. 1 to do all of the following:

a. Distribute, according to the formulas developed by the department, state or federal funds to a county, to the elected governing body of a federally recognized American Indian tribe or band or to a private, nonprofit organization for the purposes that are established in an area plan that is specified in subd. 3.

b. Monitor programs of services for individuals who are at least 60 years of age that are provided under an area plan by a county or the elected governing body of a federally recognized American Indian tribe or band.

c. Provide technical assistance and training.

5. Ensure that each area agency on aging meets the requirements that are specified for an area agency on aging under 42 USC 3025 and 3026.

6. Establish and operate, either directly or by contract or other arrangement with a public agency or private, nonprofit organization, other than an agency or organization that licenses or certifies long-term care services or

is an association of providers of long-term care services, a long-term care ombudsman program.

(b) May operate the foster grandparent project specified under 42 USC 5011 (a).

(c) May operate the older American community service employment program under 42 USC 3056.

SECTION 17. 46.81 (1) (a) of the statutes is amended to read:

46.81 (1) (a) “Aging unit” ~~means the agency in each county designated by the department as an aging unit for purposes of the state plan under 42 USC 3027~~ has the meaning given in s. 46.82 (1) (a).

SECTION 18. 46.81 (1) (c) of the statutes is amended to read:

46.81 (1) (c) “Older person individual” means a person ~~an individual who is~~ 60 years of age or older.

SECTION 19. 46.81 (2) to (4) of the statutes are amended to read:

46.81 (2) (a) From the appropriation under s. 20.435 (7) (dj), the department shall allocate \$360,400 for the last 6 months of 1989, \$720,800 for 1990 and \$360,400 for the first 6 months of 1991 to aging units to provide benefit specialist services for older persons individuals. The department shall ensure that each aging unit receives funds and shall take into account the proportion of the state’s population of low-income older persons individuals who reside in a county.

(b) In addition to the amounts under par. (a), from the appropriation under s. 20.435 (7) (dj), the department shall allocate \$110,700 for 1990 and \$55,300 for the first 6 months of 1991 to aging units to provide benefit specialist services to older persons individuals. The department shall allocate the funds under this paragraph so that each aging unit which in 1989 received funds under this subsection sufficient to provide 15 hours per week of benefit specialist services receives funds under this subsection sufficient to provide 20 hours per week of benefit specialist services; and so that each aging unit which in 1989 received funds under this subsection sufficient to provide 27 hours per week of benefit specialist services receives funds under this subsection sufficient to provide 30 hours per week of benefit specialist services.

(3) An aging unit shall use the funds allocated under sub. (2) and federal funds designated for the purpose to provide benefit specialist services to older persons ~~including those residing on American Indian reservations~~ individuals. Aging units may also use other funds to provide benefit specialist services.

(4) Benefit specialists shall offer information, advice and assistance to older persons individuals related to individual eligibility for, and problems with, public benefits and services and to health care financing, insurance, housing and other financial and consumer concerns. Benefit specialists shall refer older persons individuals in

need of legal representation to the private bar or other available legal resources.

SECTION 20. 46.81 (5) of the statutes, as affected by 1991 Wisconsin Act 39, is amended to read:

46.81 (5) From the appropriation under s. 20.435 (7) (dj) the department shall allocate \$132,500 in each fiscal year to area agencies on aging. Each area agency on aging shall use the funds for training, supervision and legal back-up services for ~~the benefit specialist program specialists within its area.~~

SECTION 21. 46.81 (6) of the statutes is repealed.

SECTION 22. 46.82 of the statutes is created to read:

46.82 Aging unit. (1) DEFINITIONS. In this section:

(a) “Aging unit” means an aging unit director and necessary personnel, directed by a county or tribal commission on aging and organized as one of the following:

1. An agency of county or tribal government with the primary purpose of administering programs of services for older individuals of the county or tribe.

2. A unit, within a county department under s. 46.215, 46.22 or 46.23, with the primary purpose of administering programs of services for older individuals of the county.

3. A private, nonprofit corporation that is organized under ch. 181.

(b) “Area agency on aging” means an agency designated as specified in 42 USC 3025 (a) (2) (A).

(c) “Older individual” means an individual who is 60 years of age or older.

(2) **AGING UNIT; CREATION.** A county board of supervisors of a county, the county boards of supervisors of 2 or more contiguous counties or an elected tribal governing body of a federally recognized American Indian tribe or band in this state may choose to administer, at the county or tribal level, programs for older individuals that are funded under 42 USC 3001 to 3057n, 42 USC 5001 and 42 USC 5011 (b). If this is done, the county board or boards of supervisors or tribal governing body shall establish by resolution a county or tribal aging unit to provide the services required under this section. If a county board of supervisors or a tribal governing body chooses, or the county boards of supervisors of 2 or more contiguous counties choose, not to administer the programs for older individuals, the department shall direct the area agency on aging that serves the relevant area to contract with a private, nonprofit corporation to provide for the county, tribe or counties the services required under this section.

(3) **AGING UNIT; POWERS AND DUTIES.** In accordance with state statutes, rules promulgated by the department and relevant provisions of 42 USC 3001 to 3057n and as directed by the county or tribal commission on aging, an aging unit:

(a) *Duties.* Shall do all of the following:

1. Work to ensure that all older individuals, regardless of income, have access to information, services and

opportunities available through the county or tribal aging unit and have the opportunity to contribute to the cost of services and that the services and resources of the county or tribal aging unit are designed to reach those in greatest social and economic need.

2. Plan for, receive and administer federal, state and county, city, town or village funds allocated under the state and area plan on aging to the county or tribal aging unit and any gifts, grants or payments received by the county or tribal aging unit, for the purposes for which allocated or made.

3. Provide a visible and accessible point of contact for individuals to obtain accurate and comprehensive information about public and private resources available in the community which can meet the needs of older individuals.

4. Consistent with s. 46.81, provide older individuals with services of benefit specialists or appropriate referrals for assistance.

5. Organize and administer congregate programs, which shall include a nutrition program and may include one or more senior centers or adult day care or respite care programs, that enable older individuals and their families to secure a variety of services, including nutrition, daytime care, educational or volunteer opportunities, job skills preparation and information on health promotion, consumer affairs and civic participation.

6. Work to secure a countywide or tribal transportation system that makes community programs and opportunities accessible to, and meets the basic needs of, older individuals.

7. Work to ensure that programs and services for older individuals are available to homebound, disabled and non-English speaking persons, and to racial, ethnic and religious minorities.

8. Identify and publicize gaps in services needed by older individuals and provide leadership in developing services and programs, including recruitment and training of volunteers, that address those needs.

9. Work cooperatively with other organizations to enable their services to function effectively for older individuals.

10. Actively incorporate and promote the participation of older individuals in the preparation of a county or tribal comprehensive plan for aging resources that identifies needs, goals, activities and county or tribal resources for older individuals.

11. Provide information to the public about the aging experience and about resources for and within the aging population.

12. Assist in representing needs, views and concerns of older individuals in local decision making and assist older individuals in expressing their views to elected officials and providers of services.

13. If designated under s. 46.27 (3) (b) 6., administer the long-term support community options program.

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14. If the department is so requested by the county board of supervisors, administer the pilot projects for home and community–based long–term support services under s. 46.271.

15. If designated under s. 46.90 (2), administer the elder abuse reporting system under s. 46.90.

16. If designated under s. 46.87 (3) (c), administer the Alzheimer’s disease family and caregiver support program under s. 46.87.

17. If designated by the county or in accordance with a contract with the department, operate the specialized transportation assistance program for a county under s. 85.21.

18. Advocate on behalf of older individuals to assist in enabling them to meet their basic needs.

(b) *Powers.* May perform any other general functions necessary to administer services for older individuals.

(4) COMMISSION ON AGING. (a) *Appointment.* 1. Except as provided under subd. 2, the county board of supervisors in a county that has established a single–county aging unit, the county boards of supervisors in counties that have established a multicounty aging unit or the elected tribal governing body of a federally recognized American Indian tribe or band that has established a tribal aging unit shall, before qualification under this section, appoint a governing and policy–making body to be known as the commission on aging.

2. In any county that has a county executive or county administrator and that has established a single–county aging unit, the county executive or county administrator shall appoint, subject to confirmation by the county board of supervisors, the commission on aging. A member of a commission on aging appointed under this subdivision may be removed by the county executive or county administrator for cause.

(b) *Composition.* A commission on aging, appointed under par. (a) shall be one of the following:

1. For an aging unit that is described in sub. (1) (a) 1. or 2., organized as a committee of the county board of supervisors, composed of supervisors and, beginning January 1, 1993, advised by an advisory committee, appointed by the county board. Older individuals shall constitute at least 50% of the membership of the advisory committee and individuals who are elected to any office may not constitute 50% or more of the membership of the advisory committee.

2. For an aging unit that is described in sub. (1) (a) 1. or 2., composed of individuals of recognized ability and demonstrated interest in services for older individuals. Older individuals shall constitute at least 50% of the membership of this commission and individuals who are elected to any office may not constitute 50% or more of the membership of this commission.

3. For an aging unit that is described in sub. (1) (a) 3., the board of directors of the private, nonprofit corpora-

tion. Older individuals shall constitute at least 50% of the membership of this commission and individuals who are elected to any office may not constitute 50% or more of the membership of this commission.

(c) *Terms.* Members of a county or tribal commission on aging shall serve for terms of 3 years, so arranged that, as nearly as practicable, the terms of one–third of the members shall expire each year, and no member may serve more than 2 consecutive 3–year terms. Vacancies shall be filled in the same manner as the original appointments. A county or tribal commission on aging member appointed under par. (a) 1. may be removed from office for cause by a two–thirds vote of each county board of supervisors or tribal governing body participating in the appointment, on due notice in writing and hearing of the charges against the member.

(d) *Powers and duties.* A county or tribal commission on aging appointed under sub. (4) (a) shall, in addition to any other powers or duties established by state law, plan and develop administrative and program policies, in accordance with state law and within limits established by the department of health and social services, if any, for programs in the county or for the tribe or band that are funded by the federal or state government for administration by the aging unit. Policy decisions not reserved by statute for the department of health and social services may be delegated by the secretary to the county or tribal commission on aging. The county or tribal commission on aging shall direct the aging unit with respect to the powers and duties of the aging unit under sub. (3).

(5) AGING UNIT DIRECTOR; APPOINTMENT. A full–time aging unit director shall be appointed on the basis of recognized and demonstrated interest in and knowledge of problems of older individuals, with due regard to training, experience, executive and administrative ability and general qualification and fitness for the performance of his or her duties, by one of the following:

(a) 1. For an aging unit that is described in sub. (1) (a) 1., except as provided in subd. 2, a county or tribal commission on aging shall make the appointment, subject to the approval of and to the personnel policies and procedures established by each county board of supervisors or the tribal governing body that participated in the appointment of the county or tribal commission on aging.

2. In any county that has a county executive or county administrator and that has established a single–county aging unit, the county executive or county administrator shall make the appointment, subject to the approval of and to the personnel policies and procedures established by each county board of supervisors that participated in the appointment of the county commission on aging.

(b) For an aging unit that is described in sub. (1) (a) 2., the director of the county department under s. 46.215, 46.22 or 46.23 of which the aging unit is a part shall make the appointment, subject to the personnel policies and

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procedures established by the county board of supervisors.

(c) For an aging unit that is described in sub. (1) (a) 3., the commission on aging under sub. (4) (a) 3. shall make the appointment, subject to ch. 181.

SECTION 23. 46.87 (3) (c) 4. of the statutes is amended to read:

46.87 (3) (c) 4. ~~The county An aging unit designated by the subunit of the department that administers programs for the aging under the federal older Americans act, as defined in s. 46.82 (1) (a).~~

SECTION 24. 46.90 (1) (ag) and (5m) (b) of the statutes are amended to read:

46.90 (1) (ag) "Aging unit" has the meaning given under s. 46.81 ~~46.82~~ (1) (a).

(5m) (b) If the county agency designated under sub. (2) is not the county aging unit, the county agency in each county shall consult with and accept advice from the county aging unit with respect to the distribution of the funds for direct services that are allocated under par. (a).

SECTION 25. 59.07 (93) (b) of the statutes is amended to read:

59.07 (93) (b) ~~Create a county~~ Appoint a commission

on aging.—~~Appointments to the commission may include members and nonmembers of the board as provided in s. 46.82 (4) (a) 1., if s. 46.82 (4) (a) 1. is applicable.~~

SECTION 26. 59.07 (150) of the statutes is created to read:

59.07 (150) SPECIALIZED TRANSPORTATION SERVICES. Coordinate specialized transportation services, as defined in s. 85.21 (2) (g), for county residents who are disabled or are aged 60 or older, including services funded under 42 USC 3001 to 3057n, 42 USC 5001 and 42 USC 5011 (b), under ss. 49.43 to 49.499 and 85.21 and under other public funds administered by the county.

SECTION 27. 146.885 of the statutes is amended to read:

146.885 Acceptance of assignment for medicare. The department shall annually provide aging units, as defined in s. 46.81 ~~46.82~~ (1) (a), with enrollment cards for and materials explaining the voluntary program that is specified in s. 71.55 (10) (b), for distribution to individuals who are eligible or potentially eligible for participation in the program. The state medical society shall supply the department with the enrollment cards and the explanatory materials for distribution under this section.