



Legislative Fiscal Bureau

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

April 30, 2009

Joint Committee on Finance

Paper #458

Southern Wisconsin Center and CIP IA Placements (DHS -- Care Facilities)

[LFB 2009-11 Budget Summary: Page 379, #1 and Page 383, #12]

CURRENT LAW

The Department of Health Services (DHS) operates three facilities that provide residential care for individuals with developmental disabilities: (a) Northern Wisconsin Center (NWC) in Chippewa County; (b) Southern Wisconsin Center (SWC) in Racine County; and (c) Central Wisconsin Center (CWC) in Dane County. The centers are licensed and regulated as intermediate care facilities for the mentally retarded (ICFs-MR) by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS).

The ICF-MR certification makes the centers eligible for federal cost sharing under the state's medical assistance (MA) program. Since all of the centers' residents are eligible for MA, most of the PR funding that supports the centers is budgeted as GPR and FED funding in the state and federal MA benefits appropriations, then transferred to the DHS Division of Long-Term Care (DLTC) to support the centers' operations. Consequently, this funding appears twice in the DHS budget -- first as MA benefits funding, and second as PR funding for the DLTC. Similar to other MA-eligible services, MA funding that supports the centers is budgeted on approximately a 40% GPR/60% FED cost-sharing basis. Unlike MA payments to other nursing facilities, MA payments to the state centers are based on the actual eligible costs of operating each facility, up to the amount budgeted by the Legislature for this purpose.

In 1995, CWC and SWC entered into an agreement with the U.S. Department of Justice under the Civil Rights of Institutionalized Persons Act (CRIPA). Under the agreement, CWC and SWC may not accept permanent placements unless services outside of the centers are not adequate to meet the needs of the individual, in which case an admission may only be made on a temporary basis. All requests for temporary, longer-term admissions must be approved by the appropriate court. In recent years there have been no admissions for long-term care to the state centers.

The following table identifies the total adjusted base funding and authorized positions for each of the state centers, as well as the number of residents at each facility as of April 1, 2009.

TABLE 1

**State Centers for the Developmentally Disabled
Base Funding, Positions and Residents**

<u>State Center</u>	<u>Adjusted Base Budget</u>	<u>Authorized Positions</u>	<u>Residents as of April 1, 2009</u>
Central Center	\$68,295,800	820.90	261
Southern Center	44,844,200	524.70	189
Northern Center	<u>11,508,400</u>	<u>124.50</u>	<u>15</u>
Total	\$124,648,400	1,470.10	465

Funding for the centers is reduced following each placement made under the community integration program (CIP IA). In the past, reductions to the centers' base budgets, and position authority, have been made as part of the biennial budget process to reflect placements made during the previous biennium. Because the centers' budget reduction rate (currently \$325 per day) is equal to the CIP IA placement rate, the cost to the state of providing additional placements under CIP IA is budget neutral. In 2007-08, 13 individuals were transferred from the centers to community placements under CIP IA, while 18 are expected to transfer from the centers to community placements in 2008-09 under the current CIP IA rate.

DHS reimburses counties for the cost of services they provide to CIP IA enrollees under seven different rates, depending on when the placements occur. These rates are listed below.

<u>Placement Date</u>	<u>Daily Rate</u>
Before July 1, 1995	\$125
July 1, 1995 thru June 30, 1997	153
July 1, 1997 thru June 30, 2000	184
July 1, 2000 thru June 30, 2001	190
July 1, 2001 thru June 30, 2002	200
July 1, 2002 thru June 30, 2003	225
July 1, 2003 and after	325

DHS is required to submit an annual report to the Joint Committee on Finance describing the impact on state employees resulting from CIP IA placements that occurred in the previous calendar year. Specifically, DHS must report the number of state center positions eliminated due to CIP IA placements and whether any employees were laid off as a result of the placements.

GOVERNOR

Southern Wisconsin Proposal. Reduce funding by \$1,178,200 (\$100,000 GPR, \$1,009,200 FED, -\$2,203,900 PR, and -\$83,500 SEG) in 2009-10 and by \$7,765,500 (\$266,000 GPR, \$2,920,000 FED, -\$10,564,300, and -\$387,200 SEG) in 2010-11, and eliminate 310.8 positions in 2010-11, to reflect the net effect of accelerating relocations of individuals who currently receive long-term care services at SWC to alternative community-based settings. The funding and staff changes under this item reflect the administration's estimate that approximately 154 long-term care residents at SWC would be placed in community-based settings under one of the state's MA home and community-based waiver programs by June 30, 2011. In addition, increase GPR revenue by \$459,400 in 2009-10 and by \$561,700 in 2010-11, which primarily reflects an increase in revenue from counties that pay the costs of the ITP program. Finally, this item would also reduce estimated revenue to the MA trust fund by \$83,500 in 2009-10 and by \$387,200 in 2010-11 to reflect that there would be fewer licensed ICF-MR beds, which is the basis for claiming federal MA funds under the ICF-MR bed assessment.

CIP IA Placements. Repeal provisions that require DHS to reduce funding for the state centers by \$325 per day after a resident transfers from the Centers to a community-based placement under the community integration program. Instead, beginning in 2009-10, require DHS to reduce funding to the Centers by an amount, as determined by DHS for each placement, that is equal to the nonfederal share of the costs for placement under the program.

In addition, the bill would repeal the provision that requires DHS to submit an annual report to the Joint Committee on Finance describing the impact the CIP IA program has had during the preceding calendar year on individuals employed at the state centers, including DHS efforts to redeploy employees into vacant positions and the number of employees who were laid off.

DISCUSSION POINTS

1. On March 18, 2009, the DHS Secretary sent a memorandum to the Co-Chairs of the Joint Committee on Finance requesting that the Committee make several modifications to the Governor's bill. The requested modifications reflect revised estimates of the number of people DHS anticipates will be relocated during the 2009-11 biennium. The fiscal impact of these revised estimates, compared to the Governor's original proposal, include: (a) reducing MA benefits funding by \$303,300 (-\$70,000 GPR, -\$281,600 FED, and \$48,300 SEG) in 2009-10 and by \$742,700 (-\$68,400 GPR, -\$843,200 FED, and \$168,900 SEG) in 2010-11; (b) increasing funding for SWC by \$1,245,600 PR in 2009-10 and by \$5,093,900 PR in 2010-11; and (c) increasing estimated GPR revenues by \$78,700 in 2009-10 and \$315,000 in 2010-11.

Under the revised proposal, DHS estimates that approximately 94 long-term care residents at SWC would be placed in community-based settings under one of the state's MA home and community-based waiver programs by June 30, 2011. The Governor's revised budget estimates also assume that, by that date, there would be 105 residents remaining at SWC, including 75 who would continue to receive long-term care services, and 30 who would receive ITP services.

2. The state centers provide residents with services that may not otherwise be available to them and assist them in returning to the community. Counties are responsible for the care and treatment of persons with developmental disabilities and, thus, play a significant role in determining where an individual will receive services.

3. The state centers provide the following services: (a) education, training, habilitative and rehabilitative services for residents; (b) behavioral evaluation of individuals at the request of county community program boards and county developmental disabilities boards; (c) assistance to county boards to enable them to better meet the needs of developmentally disabled persons; and (d) short-term care to individuals, including intensive treatment program (ITP) services, to help prevent long-term institutionalization. In addition to these services, the centers may offer dental, mental health, therapy, psychiatric, psychological, general medical, pharmacy, and orthotics services.

4. Currently, two of the three state-operated facilities, CWC and SWC, serve individuals with developmental disabilities on a long-term basis. Most of these individuals have lived at the Centers for many years. 2003 Wisconsin Act 33 (the 2003-05 biennial budget act) required DHS to relocate NWC's residents to either a community-based setting or to another ICF-MR, but authorized the facility to continue to provide short-term ITP services and certain alternative services. A total of 136 individuals were relocated from NWC between 2003-04 and 2006-07.

5. Data collected by the University of Minnesota Research and Training Center on Community Living show a significant decrease in the average daily population of residents at large, state-operated facilities during the last 40 years. For example, in 1967, the number of individuals nationwide that were residing in state facilities for individuals with developmental disabilities was approximately 228,000. By 2007, the number of individuals residing in a state facility had decreased by approximately 83% to 38,000. A similar trend has occurred in Wisconsin during the same general period. For example, in 1970 nearly 3,700 persons resided in the state centers, compared to 486 as of June 30, 2008.

6. In Olmstead vs. L.C. [119 S. Ct. 2176 (1999)], the U.S. Supreme Court established a legal framework for states to improve efforts to provide community-based services for persons with disabilities. The Olmstead case was brought by two women with disabilities who desired to live in the community but resided in state institutions, even though health professionals had determined that they could be appropriately served in a community setting. The plaintiffs claimed that their continued institutionalization was a violation of their right under the Americans with Disabilities Act of 1990 (ADA) to live in the most integrated setting appropriate.

In deciding in favor of the plaintiffs, the Court stated that "unjustified isolation . . . is properly regarded as discrimination based on disability." The Court asserted that "institutional placements of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life" and that "confinement in an institution severely diminishes the everyday life activities of individuals including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment."

7. In a January, 2000, letter to state Medicaid directors, the CMS Office for Civil

Rights indicated that, under the Court's decision, states are required to provide community-based services for persons with disabilities who would otherwise be entitled to institutional services when: (a) the state's treatment professionals reasonably determine that such placement is appropriate; (b) the affected persons do not oppose such treatment; and (c) the placement can be reasonably accommodated, taking into account disability services. However, the Court indicated that nothing in the ADA condones termination of institutional settings for persons unable to handle or benefit from community settings. Moreover, the state's responsibility, once it provides community-based treatment to qualified persons with disabilities, is not unlimited.

The Court suggested that a state could establish compliance with ADA if it demonstrates that it has:

- A comprehensive, effectively working plan for placing qualified persons with disabilities in less restrictive settings, and
- A waiting list that moves at a reasonable pace not controlled by the state's endeavors to keep its institutions fully populated.

8. Advocates for the Governor's proposals to reduce institutional care for individuals with developmental disabilities argue that: (a) the Governor's proposals are consistent with the state's long-standing policy of promoting community-based care over institutional care, national trends toward de-institutionalization of this population, and the Olmstead Supreme Court decision; (b) there are sufficient safeguards to assure quality of care for individuals who receive services in a community-based setting; and (c) it is less expensive to provide community-based care than institutional care.

9. Historically, the cost of providing institutional care for persons with developmental disabilities has been significantly higher than the cost of caring for these individuals in the community under the MA community-based waiver programs. In 2007-08, the average cost of providing care for individuals that had been relocated from SWC, including MA card costs, was \$330 per day. By comparison, the average cost of providing care at the state centers, including SWC, was \$671 per day.

10. While the average cost of providing care to persons with developmental disabilities is generally less expensive in the community, the cost savings that accrue to the state following relocation of these individuals from SWC, in the short run, is limited due to the fact that fixed operating costs at SWC are relatively unaffected by resident relocations. As a result, the average cost per person of providing care at SWC is likely to increase due to the declining number of residents receiving care at SWC.

11. The Department indicates that all relocations will be made on a voluntary basis and will be based on a relocation plan developed for each individual that reflects the individual's care needs and interests. Each plan will be developed in collaboration with the resident, his or her family or guardian, and SWC staff. DHS is currently creating a relocation team, which will oversee all placements of individuals into the community. DHS plans to begin contacting residents' family members to discuss interest in a community placement beginning in April, 2009, and expects to

complete this process by June, 2009.

12. The funding and position reductions in the administration's revised proposal are based on the assumption that at least 94 residents --31 in 2009-10 and 63 in 2010-11 will voluntarily choose to be relocated to a community-based setting during the 2009-11 biennium. All residents placed in the community would be placed in their original county of residence, where possible. Table 2 shows the distribution, by county, of the current SWC long-term care population as of February 6, 2009.

TABLE 2

**Current Long-Term Clients at Southern Wisconsin Center
By County of Residence**

<u>County</u>	<u>Number of Residents</u>
Milwaukee	74
Racine	31
Kenosha	20
Waukesha	15
Dane	10
Rock	7
Walworth	7
Fond du Lac	3
Green	3
Ozaukee	3
Dodge	1
Jefferson	1
Sheboygan	1
Winnebago	1
Wood	1
Various	<u>4</u>
Total*	182

* Excludes 7 individuals receiving short-term services.

13. Each resident at the state centers is assessed to determine his or her care needs, and is assigned one of four classifications: DD-1a, DD-1b, DD-2, and DD-3. The DD-1a category is the highest level of care need -- it includes individuals who require active treatment and whose health status is fragile, unstable or relatively unstable. The health care needs of these individuals may be complex, requiring frequent professional assessments and monitoring. The DD-1b category includes developmentally disabled adults and children who require active treatment and considerable guidance and supervision. The DD-2 category applies to developmentally disabled individuals who typically require active treatment with an emphasis on skills training. Finally, the DD-3 category, which is the lowest level of care category, applies to individuals who require active

treatment with a focus on refinement of social skills and attainment of domestic and vocational skills.

14. Table 3 compares the care levels of individuals currently receiving services under CIP IA that have been relocated from one of the state centers and the current residents at SWC.

TABLE 3

**Level of Care Requirements
CIP IA Clients and SWC Residents**

	<u>SWC</u>		<u>CIP IA</u>	
	<u>Number</u>	<u>% of Total</u>	<u>Number</u>	<u>% of Total</u>
DD 1A	62	33%	53	11%
DD 1B	85	45	130	27
DD 2	42	22	295	61
DD 3	<u>0</u>	<u>0</u>	<u>2</u>	<u>0</u>
Total	189	100%	480	100%

The table shows that, of the current 480 CIP IA clients, 53 (11%) were classified as having the highest level of care needs, compared to 62 (33%) of the residents currently at SWC. Most CIP IA clients (61%) were classified as having a moderate level of care (DD 2), but only 22% of the current residents at SWC are classified as requiring that level of care. These data indicate that, although CIP IA has successfully provided community-based services to individuals with the highest care needs, the individuals who currently reside at SWC generally have greater care needs than most current CIP IA clients.

15. Guardians frequently express concerns about the quality of care their wards would receive if they were relocated from the centers. In an institutional setting, residents have access to 24-hour care and supervision provided by well-trained state staff, many of whom have worked at the centers with their wards for years. Further, the centers are required to meet ICF-MR standards of care required under federal law. For these reasons, they view the state centers as the safest place for their wards to live.

16. The administration made several assumptions to estimate the cost savings that would result by reducing the number of long-term care residents at SWC. These assumptions relate to staffing, placements, and general fund revenue effects. The most significant adjustments were made for: (a) salary, fringe, and supplies and services associated with staff reductions and resident placements; (b) additional revenue generated from expanded ITP services; and (c) additional federal MA matching funds under the money-follows-the-person grant program, which support the costs of individuals relocated into a community-based setting during the first year following placement.

17. The administration's revised proposals, would eliminate 188.60 state FTE positions

employed by SWC in the 2009-11 biennium. The administration has assumed that all these positions would be terminated in 2010-11 rather than phased-in over the biennium, in order to give the Department flexibility in managing staff during the relocation process. DHS has indicated that potential employment opportunities for former SWC employees could include the Southern Oaks Girls School, Boland Hall Veterans Home, and local in-home care providers, long-term care providers, and community hospitals. AB 75 would provide \$186,100 in 2009-10 and \$336,100 in 2010-11 to support anticipated unemployment compensation benefits paid to an estimated 30% of individuals who may not find immediate employment after their employment at SWC is terminated.

18. As part of the Governor's proposal, funding would be provided to expand the capacity at SWC to provide short-term specialized treatment services. These short-term programs are the intensive treatment programs (ITPs). Currently, SWC has a 10-bed capacity for providing ITP services. As of July, 2008, seven individuals were receiving these services at SWC. The administration's proposal would expand the number of staffed short-term beds at SWC to 30 beds.

19. A short-term admission is typically made to provide evaluation, assessment, crisis intervention, or to allow the county and provider adequate time to redesign a community support plan. These types of admissions require the approval of the local community board or appropriate managed care organization, the director of the center, and the parent or guardian, unless the admission is ordered by a court. A short-term admission is typically for 30 to 90 days and may be extended to 180 days with mutual agreement of the referring entity and the center director. Short-term admissions are typically voluntary admissions.

20. The funding in AB 75 assumes additional revenue will be generated from the expanded ITP services provided at SWC. Specifically, it is estimated that DHS will collect an additional \$606,400 in 2009-10 and \$1,256,100 in 2010-11. Counties are responsible for the nonfederal share of the cost of ITP services provided to individuals at the state centers. All revenue DHS collects from the ITP services is deposited to the general fund.

CIP IA Placements

21. The state's community integration program (CIP 1A) is one of several MA home and community-based waiver programs that enable the state to offer medical and support services that would not otherwise be available to certain qualifying MA enrollees. As a condition of receiving the waiver, the state must demonstrate that the average costs of providing care to individuals that receive community-based waiver services will not exceed the costs the state would have incurred had the waiver not been granted. By providing the necessary support services for individuals with developmental disabilities, the CIP 1A program, together with the Department's strict admissions policies for long-term care at the centers, is responsible for the significant decreases in resident populations at the centers during the past 30 years.

22. The Governor's bill would eliminate the requirement that DHS reduce funding at the state centers by \$325 per day for each individual placed in the community under the CIP IA program (Alternative C1). Under the bill, DHS would instead be authorized to establish a global budget to fund the cost of services provided to current residents at the state centers, regardless of where they receive these services. While DHS would still be required to reduce the amount of

funding provided to the state centers for each placement, DHS would have the discretion to determine the reduction amount in accordance with the actual cost of providing care to the individual in the community.

23. DHS indicates that, on average, the required reduction of \$325 for every placement exceeds the current average cost of providing long-term care through the state CIP IA waiver programs. As a result, the Department argues that a reduction of \$325 per day creates an undue burden on the state centers, making it more difficult to maintain minimum staffing requirements.

24. Although the current \$325 per day rate exceeds the average waiver costs, because of the large number of CIP IA slots from prior years that are funded at lower rates, counties may have waiver costs that are unreimbursed by the state. As a result, even though the current rate may exceed the cost of providing care to individuals recently relocated, current policy allows counties to use the excess reimbursement to cover some of these unreimbursed costs.

25. CIP IA placements in the 2007-09 biennium have been lower than anticipated in 2007 Wisconsin Act 20 (the 2007-09 biennial budget act). The funding in Act 20 assumed that DHS would place 16 individuals from CWC and 20 individuals from SWC (for a total of 36 placements) in the community from July 1, 2007 through June 30, 2009. Based on actual placements through March, 2009, it is estimated that 14 individuals from CWC and 17 individuals will be placed from SWC (for a total of 31 placements) in the 2007-09 biennium. Consequently, the Committee could increase funding in the bill by \$593,100 PR annually to reflect that fewer placements will be made in the 2007-09 than was assumed in Act 20 (5 individuals x \$325 per day x 365 days = \$593,100). This option is Alternative B1.

26. Finally, AB 75 would eliminate the annual reporting requirement pertaining to CIP IA placements from the state centers. DHS argues that these reports are not necessary, since information pertaining to CIP IA placements and their effect on the state centers is available through the biennial budget process. Further, DHS indicates that staff time currently allocated to prepare these reports should be deployed to higher priority activities.

ALTERNATIVES

A. Southern Wisconsin Center

1. Modify the bill to reflect the administration's revised proposal. Increase funding by \$942,300 (-\$70,000 GPR, -\$281,600 FED, \$1,245,600 PR and \$48,300 SEG) in 2009-10 and by \$4,690,200 (-\$151,800 GPR, -\$441,600 FED, \$5,093,900 PR and \$189,700 SEG) in 2010-11 and provide an additional 127.20 PR positions, beginning in 2010-11. In addition, increase estimates of GPR revenue from the ITP program by \$78,700 in 2009-10 and by \$315,000 in 2010-11. Increase revenue to the MA trust fund by \$48,300 in 2009-10 and \$189,700 in 2010-11.

ALT A1	Change to Bill		
	Revenue	Funding	Positions
GPR-REV	\$393,700		
SEG-REV	217,200		
GPR		-\$138,400	0.00
FED		- 1,124,800	0.00
PR		6,339,500	127.20
SEG		<u>217,200</u>	<u>0.00</u>
Total		\$5,293,500	127.20

2. Delete provision.

ALT A2	Change to Bill		
	Revenue	Funding	Positions
GPR-REV	-\$1,021,100		
GPR		-\$743,900	0.00
FED		- 3,614,600	0.00
PR		14,979,800	310.80
SEG		<u>528,700</u>	<u>0.00</u>
Total		\$11,150,000	310.80

B. CIP IA Placements -- Placements Made in 2007-09 Biennium

1. Approve the Governor's recommendations.
2. Increase the Centers' budget by an additional \$593,100 annually to reflect that fewer residents were placed from the Centers under CIP IA in the 2007-09 biennium than were assumed in Act 20.

ALT B2	Change to Bill
	Funding
PR	\$1,186,200

C. CIP IA Placements

1. Approve the Governor's recommended statutory changes.
2. Delete provision.

Prepared by: Cory Kaufman