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CHAPTER 46

SOCIAL SERVICES

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46.001 Purposes of chapter. The purposes of this chapter are to conserve human resources in Wisconsin; to prevent dependency, mental illness, developmental disability, mental infirmity, and other forms of social maladjustment by a continuous attack on causes; to provide effective aid and services to all persons in need of that aid and those services and to assist those persons to achieve or regain self−dependence at the earliest possible date; to avoid duplication and waste of effort and money on the part of public and private agencies; and to coordinate and integrate a social welfare program.

History: 1977 c. 354; 1983 a. 447; 1989 a. 31; 1995 a. 27; 1997 a. 292; 2007 a. 20.

46.011 Definitions. In chs. 46, 50, 51, 54, 55, and 58:

(1) "Department" means the department of health services.

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(1g) "Disabled children's long−term support program" means the programs described under 2001 Wisconsin Act 16, section 9123 (16rs), and 2003 Wisconsin Act 33, section 9124 (8c).

(1m) "Institution for mental diseases" has the meaning given in 42 CFR 435.1009.

(2) "Prisoner" means any person who is either arrested, incarcerated, imprisoned or otherwise detained in excess of 12 hours by any law enforcement agency of this state, except when detention is pursuant to s. 51.15, 51.20, 51.45 (11) (b) or 55.135 (1) or ch. 980. "Prisoner" does not include any person who is serving a sentence of detention under s. 973.03 (4) unless the person is in the county jail under s. 973.03 (4) (c).

(3) "Secretary" means the secretary of health services.

(4) "State health planning and development agency" means the department, as designated under s. 250.04 (12).

History: 1975 c. 39, 430; 1977 c. 29; 1979 c. 221; 1985 a. 29 s. 3202 (23); 1987 a. 27; 1989 a. 31; 1993 a. 16, 27, 479; 1995 a. 27 ss. 2022, 9126 (19); 2005 a. 264, 387; 2007 a. 20 ss. 794, 795, 9121 (6) (a).

46.014 Secretary, powers and duties. (1) INVENTORIES. On or before July 1 in each year, the secretary shall cause full and complete inventories and appraisals to be made of all the property of each institution administered by the department, which shall be recorded and so classified as to show separately the amount, kind and value of such property.

(2) VISITATION. The secretary shall cause each of said institutions to be visited and inspected at least once a month to ascertain whether the officers and employees therein are competent and faithful in the discharge of their duties, all inmates properly cared for and governed, all accounts, books and vouchers properly kept, and all the business affairs properly conducted.

(3) POWERS AND DUTIES. The secretary shall plan for and establish within the department a program of research designed to determine the effectiveness of the treatment, curative and rehabilitative programs of the various institutions and divisions of the department. The secretary may inquire into any matter affecting social welfare and hold hearings and subpoena witnesses and make recommendations to the appropriate agencies, public or private, thereon.

History: 1975 c. 39; 1983 a. 27; 1987 a. 186; 2007 a. 20.

46.016 Cooperation with federal government. The department may cooperate with the federal government in carrying out federal acts concerning public assistance, social security, mental hygiene, services for the blind, and in other matters of mutual concern pertaining to public welfare.

History: 1989 a. 31, 107; 1995 a. 27; 2007 a. 20.
Cross−reference: See also chs. DHS 5 and 149, Wis. adm. code.

46.017 Legal actions. The department may sue and be sued.

46.018 Disbursement of funds and facsimile signatures. Withdrawal or disbursement of moneys deposited in a public depository, as defined in s. 34.01 (5), to the credit of the department or any of its divisions or agencies shall be by check, share draft or other draft signed by the secretary or by one or more persons in the department designated by written authorization of the secretary. Such checks, share drafts and other drafts shall be signed personally or by use of a mechanical device adopted by the secretary or his or her designees for affixing a facsimile signature. Any public depository shall be fully warranted and protected in making payment on any check, share draft or other draft bearing such facsimile signature notwithstanding that the facsimile may have been placed thereon without the authority of the secretary or his or her designees.

History: 1983 a. 189 s. 329 (21); 1983 a. 368, 538.

46.02 Agency powers and duties. Any institution that is subject to chs. 46, 49 to 51, 55, and 58 and to regulation under ch. 150 shall, in cases of conflict between chs. 46, 49 to 51, 55, and 58 and ch. 150, be governed by ch. 150. The department shall promulgate rules and establish procedures for resolving any such a conflict.

History: 1977 c. 29; 1979 c. 89; 1985 a. 29 s. 3202 (23); 1989 a. 31, 359; 1995 a. 27; 2007 a. 20.

46.027 Contract powers. (1) RELIGIOUS ORGANIZATIONS; LEGISLATIVE PURPOSE. The purpose of this section is to allow the department to contract with, or award grants to, religious organizations, under any program administered by the department, on the same basis as any other nongovernmental provider without impairing the religious character of such organizations, and without diminishing the religious freedom of beneficiaries of assistance funded under such program.

(2) NONDISCRIMINATION AGAINST RELIGIOUS ORGANIZATIONS. If the department is authorized under ch. 16 to contract with a nongovernmental entity, or is authorized to award grants to a nongovernmental entity, religious organizations are eligible, on the same basis as any other private organization, as contractors under any program administered by the department so long as the programs are implemented consistent with the First Amendment of the U.S. Constitution and article I, section 18 of the Wisconsin Constitution. Except as provided in sub. (10), the department may not discriminate against an organization that is or applies to be a contractor on the basis that the organization has a religious character.

(3) RELIGIOUS CHARACTER AND FREEDOM. (a) The department shall allow a religious organization with which the department contracts or to which the department awards a grant to retain its independence from state and local governments, including the organization's control over the definition, development, practice and expression of its religious beliefs.

(b) The department may not require a religious organization to alter its form of internal governance or to remove religious art, icons, scripture or other symbols in order to be eligible for a contract or grant.

(4) RIGHTS OF BENEFICIARIES OF ASSISTANCE. If an individual has an objection to the religious character of the organization or institution from which the individual receives, or would receive, assistance funded under any program administered by the department, the department shall provide such individual, if otherwise eligible for such assistance, within a reasonable period of time after the date of the objection with assistance from an alternative provider that is accessible to the individual. The value of the assistance offered by the alternative provider may not be less than the value of the assistance which the individual would have received from the religious organization.

(5) EMPLOYMENT PRACTICES. To the extent permitted under federal law, a religious organization's exemption provided under 42 USC 2000e−la regarding employment practices is not affected by its participation in, or receipt of funds from, programs administered by the department.

(6) NONDISCRIMINATION AGAINST BENEFICIARIES. A religious organization may not discriminate against an individual in regard to rendering assistance funded under any program administered by the department on the basis of religion, a religious belief or refusal to actively participate in a religious practice.

(7) FISCAL ACCOUNTABILITY. (a) Except as provided in par. (b), any religious organization that contracts with, or receives a grant from, the department is subject to the same laws and rules as other contractors to account in accord with generally accepted auditing principles for the use of such funds provided under such programs.

(b) If the religious organization segregates funds provided under programs administered by the department into separate accounts, then only the financial assistance provided with those funds shall be subject to audit.

(8) COMPLIANCE. Any party that seeks to enforce its rights under this section may assert a civil action for injunctive relief against the entity or agency that allegedly commits the violation.

(9) LIMITATIONS ON USE OF FUNDS FOR CERTAIN PURPOSES. No funds provided directly to religious organizations by the depart-

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ment may be expended for sectarian worship, instruction or proselytization.

(10) PREEMPTION. Nothing in this section may be construed to preempt any provision of federal law, the U.S. Constitution, the Wisconsin Constitution or any other statute that prohibits or restricts the expenditure of federal or state funds in or by religious organizations.

History: 1997 a. 27.

46.028 Electronic benefit transfer. The department may deliver benefits that are administered by the department to recipients of the benefits by an electronic benefit transfer system if all of the following conditions are satisfied:

(1) The department obtains any authorization from a federal agency that is required under federal law to deliver the benefits by an electronic benefit transfer system.

(2) The department promulgates an administrative rule to deliver the benefits by an electronic benefits transfer system.

(3) The department does not require a county or tribal governing body to use the electronic benefit transfer system if the costs to the county or tribal government of delivering the benefits by the electronic benefit transfer system would be greater than the costs to the county or tribal government of delivering the benefits by means other than an electronic benefit transfer system.

History: 2009 a. 28.

46.03 Department, powers and duties. The department shall:

(1) INSTITUTIONS GOVERNED. Maintain and govern the Mendota and the Winnebago mental health institutes; the secure mental health facility established under s. 46.055; and the centers for the developmentally disabled.

(2) SUPERVISION OVER PROPERTY. Supervise, manage, preserve and care for the buildings, grounds and other property pertaining to said institutions, and promote the objects for which they are established.

Cross−reference: See also ch. DHS 60, Wis. adm. code.

(2a) GIFTS. Be authorized to accept gifts, grants or donations of money or of property from private sources to be administered by the department for the execution of its functions.

(3) TRUSTEE DUTY. Take and hold in trust, whenever it considers acceptance advantageous, all property transferred to the state to be applied to any specified purpose, use or benefit pertaining to any of the institutions under its control or the inmates thereof, and apply the same in accordance with the trust; and when ordered by the court, act as trustee of funds paid for the support of any child if appointed by the court or a circuit court commissioner under s. 767.82 (7).

(4) EDUCATION AND PREVENTION. (a) Develop and maintain education and prevention programs that it considers to be proper.

(b) In order to discharge more effectively its responsibilities under this chapter and other relevant provisions of the statutes, be authorized to study causes and methods of prevention and treatment of mental illness, mental deficiency, mental infirmity, and related social problems, including establishment of demonstration projects to apply and evaluate such methods in actual cases. The department is directed and authorized to utilize all powers provided by the statutes, including the authority under sub. (2a), to accept grants of money or property from federal, state, or private sources, and to enlist the cooperation of other appropriate agencies and state departments. The department may enter into agreements with local government subdivisions, departments, and agencies for the joint conduct of these projects, and it may purchase services when considered appropriate.

(5) MENTAL HYGIENE. (a) Execute the laws relating to the custody, care and treatment of mentally ill, mentally infirm and mentally deficient persons, inebriates and drug addicts. It shall examine all institutions, public and private, authorized to receive and care for such persons, and inquire into the method of government and the management of persons therein, and examine into the condition of buildings, grounds and other property connected with any such institution and into matters relating to its management.

(b) Direct the psychiatric field work, aftercare and community supervision and exercise such powers in relation to prevention as the department deems appropriate.

(7) CHILDREN AND YOUTH. (a) Promote the enforcement of laws for the protection of developmentally disabled children; and to this end cooperate with courts assigned to exercise jurisdiction under chs. 48 and 938, licensed child welfare agencies, and public and private institutions and take the initiative in all matters involving the interests of those children when adequate provision for those interests has not already been made, including the establishment and enforcement of standards for services provided under ss. 48.345 and 48.347.

(bm) Maintain a file containing records of artificial inseminations under s. 891.40 and statements acknowledging paternity under s. 69.15 (3) (b). The department may release those records and statements only upon an order of the court except that the department may use nonidentifying information concerning artificial inseminations for the purpose of compiling statistics, and statements acknowledging paternity shall be released without a court order to the department of children and families or a county child support agency under s. 59.53 (5) upon the request of that department or county child support agency pursuant to the program responsibilities under s. 49.22 or to any other person with a direct and tangible interest in the statement.

(10) TRAINING STAFF. In its discretion, conduct a training program of in−service training and staff development; and, in cooperation with educational institutions, provide facilities for work experience for students, including subsistence.

(13) CHARGES. In compliance with the compensation plan established under s. 230.12 (3), have authority to make and determine charges for meals, living quarters, laundry and other services furnished to employees of the several institutions and members of the employee's family maintained as such. All moneys received from each person on account of these services shall be used for operation of the institutions under s. 20.435 (2) (a) and (gk). If a chaplain employed in any state institution administered by the department is not furnished a residence by the state, $1,800 or 20% of the chaplain's salary, whichever is greater, is designated as his or her housing allowance.

(14) VENDING STANDS. Establish and maintain a revolving fund not exceeding $60,000 in any of the state institutions administered by the department, for the education, recreation and convenience of the patients, inmates and employees, to be used for the operation of vending stands, canteen operations, reading clubs, musical organizations, religious programs, athletics and similar projects. The funds are exempt from s. 20.906, but are subject to audit by the department and the legislative audit bureau in its discretion.

(15) COMMISSARY. Pursuant to its rules the department may, with the approval of the governor and the director of personnel, provide employees in its institutions with laundry, food, housing and necessary furnishings.

(17) PURCHASE OF CARE AND SERVICES. Be empowered to contract with public or voluntary agencies or others:

(a) To purchase in full or in part care and services which it is authorized by any statute to provide as an alternative to providing such care and services itself.

(b) To purchase or provide in full or in part the care and services which county agencies may provide or purchase under any statute and to sell to county agencies such portions thereof as the county agency may desire to purchase.

(d) To sell services, under contract, which the department is authorized to provide by statute, to any federally recognized tribal governing body.

(18) UNIFORM FEE SCHEDULE, LIABILITY AND COLLECTIONS. (a) Except as provided in s. 46.10 (14) (b) and (c), the department

shall establish a uniform system of fees for services provided or purchased by the department, or a county department under s. 46.215, 46.22, 51.42, or 51.437, except for services provided under ch. 48 and subch. III of ch. 49; services provided to courts; outreach, information and referral services; or when, as determined by the department, a fee is administratively unfeasible or would significantly prevent accomplishing the purpose of the service. A county department under s. 46.215, 46.22, 51.42, or 51.437 shall apply the fees that it collects under this program to cover the cost of those services.

(am) Paragraph (a) also does not prevent a county department under s. 51.42 or 51.437 from charging and collecting the cost of an examination ordered under s. 938.295 (2) (a) as authorized under s. 938.295 (2) (c).

(ar) Subject to s. 46.995, a county may retain fees that it collects under this subsection for services the county provides without state funding under the disabled children's long−term support program.

(b) Except as provided in s. 46.10 (14) (b) and (c), any person receiving services provided or purchased under par. (a) or the spouse of the person and, in the case of a minor, the parents of the person, and, in the case of a foreign child described in s. 48.839 (1) who became dependent on public funds for his or her primary support before an order granting his or her adoption, the resident of this state appointed guardian of the child by a foreign court who brought the child into this state for the purpose of adoption, shall be liable for the services in the amount of the fee established under par. (a). If a minor receives services without consent of a parent or guardian under s. 51.47, the department shall base the fee solely on the minor's ability to pay.

(c) The department shall make collections from the person who in the opinion of the department is best able to pay, giving due regard to the present needs of the person or of his or her lawful dependents. The department may bring action in the name of the department to enforce the liability established under par. (b). The department may not collect from the parent of a minor receiving treatment for alcohol or drug abuse, except as provided in s. 51.47. This paragraph does not apply to the recovery of fees for the care and services specified under s. 46.10.

(d) The department may compromise or waive all or part of the liability for services received. The sworn statement of the collection and deportation counsel appointed under s. 46.10 (7) or the department secretary, shall be evidence of the services provided and the fees charged for such services.

(e) The department may delegate to county departments under s. 46.215, 46.22, 51.42 or 51.437 and other providers of care and services the powers and duties vested in the department by pars. (c) and (d) as it deems necessary to efficiently administer this subsection, subject to such conditions as the department deems appropriate.

(f) Notwithstanding par. (a), any person who submits to an assessment or airman or driver safety plan under s. 23.33 (13) (e), 30.80 (6) (d), 114.09 (2) (bm), 343.16 (5) (a), 343.30 (1q), 343.305 (10) or 350.11 (3) (d) shall pay a reasonable fee therefor to the appropriate county department under s. 51.42 or traffic safety school under s. 345.60. A county may allow the person to pay the assessment fee in 1, 2, 3 or 4 equal installments. The fee for the airman or driver safety plan may be reduced or waived if the person is unable to pay the complete fee, but no fee for assessment or attendance at a traffic safety school under s. 345.60 may be reduced or waived. Nonpayment of the assessment fee is noncompliance with the court order that required completion of an assessment and airman or driver safety plan. Upon a finding that the person has the ability to pay, nonpayment of the airman or driver safety plan fee is noncompliance with the court order that required completion of an assessment and airman or driver safety plan.

(fm) Notwithstanding par. (a), any person who submits to an assessment under s. 961.472 shall pay a fee to the appropriate county department under s. 51.42. The department of health services shall set fees for each county department under s. 51.42 designed to offset all the costs to the county in providing the assessment program. The department of health services shall provide for the reduction or waiver of the fee for persons who are unable to pay the complete fee.

(g) The department shall return to county departments under s. 46.215, 46.22, 51.42 or 51.437 50% of collections made by the department on and after January 1, 1978, for delinquent accounts previously delegated under par. (e) and then referred back to the department for collections.

(19) PROTECTIVE SERVICES. Administer the statewide program of protective services under ch. 55.

(20) PAYMENT OF BENEFITS. (a) Except for payments provided under ch. 48 or subch. III of ch. 49, the department may make payments directly to recipients of public assistance or to such persons authorized to receive such payments in accordance with law and rules of the department on behalf of the counties. Except for payments provided under ch. 48 or subch. III of ch. 49, the department may charge the counties for the cost of operating public assistance systems which make such payments.

(b) The department may make social service payments directly to recipients, vendors or providers in accordance with law and rules of the department on behalf of the counties which have contracts to have such payments made on their behalf.

(c) The county department under s. 46.215, 46.22 or 46.23 shall provide the department with information which the department shall use to determine each person's eligibility and amount of payment. The county department under s. 46.215, 46.22 or 46.23 shall provide the department all necessary information in the manner prescribed by the department.

(d) The department shall disburse from state or federal funds or both the entire amount and charge the county for its share under s. 46.495.

(22) COMMUNITY LIVING ARRANGEMENTS FOR ADULTS. (a) In this subsection, "community living arrangement for adults" means a community−based residential facility, as defined in s. 50.01 (1g).

(b) Community living arrangements for adults shall be subject to the same building and housing ordinances, codes, and regulations of the municipality or county as similar residences located in the area in which the facility is located.

(c) The department shall designate a subunit to keep records and supply information on community living arrangements for adults under ss. 59.69 (15) (f), 60.63 (7), and 62.23 (7) (i) 6. The subunit shall be responsible for receiving all complaints regarding community living arrangements for adults and for coordinating all necessary investigatory and disciplinary actions under the laws of this state and under the rules of the department relating to the licensing of community living arrangements for adults.

(d) A community living arrangement for adults with a capacity for 8 or fewer persons shall be a permissible use for purposes of any deed covenant which limits use of property to single−family or 2−family residences. A community living arrangement for adults with a capacity for 15 or fewer persons shall be a permissible use for purposes of any deed covenant which limits use of property to more than 2−family residences. Covenants in deeds which expressly prohibit use of property for community living arrangements for adults are void as against public policy.

(e) If a community living arrangement for adults is required to obtain special zoning permission, as defined in s. 59.69 (15) (g), the department shall, at the request of the unit of government responsible for granting the special zoning permission, inspect the proposed facility and review the program proposed for the facility. After such inspection and review, the department shall transmit to the unit of government responsible for granting the special zoning permission a statement that the proposed facility and its proposed

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program have been examined and are either approved or disapproved by the department.

(25) UNIFORM REGULATION AND LICENSING. The department shall promulgate rules to establish licensing and program compliance standards for care and residential facilities, hospitals, hotels, restaurants and the vending of food and beverages after due consideration of the relationship of a licensing code to other related licensing codes, the need for uniform administration, the need to maximize the use of federal funds and the need to encourage the development and operation of needed facilities statewide. In establishing licensing standards designed to ensure that the facility qualifies for federal financial participation, the department shall establish federal regulations as the base requirement. The department may promulgate such additional health and safety standards as it determines to be in the public interest.

(26) DATA PROCESSING PROJECTS. Submit a report each December 31 to the joint committee on finance and to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3), regarding the data processing projects under development. The report shall include:

(a) The schedule for implementation;

(b) Estimates of development and operating costs; and

(c) Proposed methods of determining charges for service where applicable.

(30) PRIMARY PSYCHIATRIC CARE CONTRACTS. (a) To provide for an orderly reduction of state institutional primary psychiatric services the department may approve the institutes entering into contracts with county departments under s. 51.42 for providing primary psychiatric care. If excess capacity exists at state operated mental health institutes, the department shall, subject to s. 16.848, explore the possible sale or lease of such excess facilities to a county department under s. 51.42.

(b) No contract may be approved for a period of time greater than one year, and no contract shall be approved except under par. (c).

(c) The counties where the mental health institutes are located may contract with the institutes for primary psychiatric care on an ongoing basis, which contracts shall be approved by the department and shall be renewed annually.

(33) RELIEF; AMERICAN INDIANS. The department may negotiate and enter into an agreement with any appropriate agency of the federal government for provision of relief to needy American Indians.

(34) FETAL ALCOHOL SYNDROME AND DRUG DANGER PAMPHLETS. The department shall acquire, without cost if possible, pamphlets that describe the causes and effects of fetal alcohol syndrome and the dangers to a fetus of the mother's use of cocaine or other drugs during pregnancy and shall distribute the pamphlets free of charge to each county clerk in sufficient quantities so that each county clerk may provide pamphlets to marriage license applicants under s. 765.12 (1) (a).

(37) FIRST AID INSTRUCTION. In connection with first aid and cardiopulmonary resuscitation instruction to fitness center employees required under s. 100.178, do all of the following:

(a) Promulgate rules establishing standards and procedures under s. 100.178 (5) (a) to (c).

(b) Approve individuals, organizations or institutions of higher education which teach fitness center employees basic first aid and basic cardiopulmonary resuscitation under s. 100.178 (2).

(38) AUTOMATIC EXTERNAL DEFIBRILLATOR INSTRUCTION. Approve individuals, organizations, or institutions of higher education to provide instruction in the use of an automated external defibrillator, as defined in s. 256.15 (1) (cr), for persons who are required as a condition of licensure, certification, or registration to have current proficiency in the use of an automatic external defibrillator.

(40) GRANTS FOR PILOT PROGRAMS OR DEMONSTRATION PROJECTS. Comply with all of the following whenever the department provides a grant after August 15, 1991, for a pilot program or demonstration project:

(a) State on the grant application that the funding for the program or project will be provided by the department once or for a limited period of time, whichever is applicable.

(b) Require the applicant to provide, as part of the grant application, a plan that describes:

1. How activities funded by the grant will be phased out or how the program or project will be eliminated; or

2. What other funding sources will be available to support the program or project when state funding is eliminated.

(41) CONSOLIDATION OF ALLOCATED TRIBAL FUNDS. The department may consolidate funds appropriated under s. 20.435 that are authorized or required to be allocated to federally recognized American Indian tribes or bands into a single distribution for each tribe or band in each fiscal year.

(42) ADMINISTRATIVE HEARINGS AND APPEALS. Any hearing under s. 227.42 granted by the department may be conducted before the division of hearings and appeals in the department of administration.

(43) COMPULSIVE GAMBLING AWARENESS CAMPAIGNS. From the appropriation account under s. 20.435 (5) (kg), award grants to one or more individuals or organizations in the private sector to conduct compulsive gambling awareness campaigns.

(44) SEXUALLY TRANSMITTED DISEASE TREATMENT INFORMATION. Prepare and keep current an information sheet to be distributed to a patient by a physician, physician assistant, or certified advanced practice nurse prescriber providing expedited partner therapy to that patient under s. 448.035. The information sheet shall include information about sexually transmitted diseases and their treatment and about the risk of drug allergies. The information sheet shall also include a statement advising a person with questions about the information to contact his or her physician, pharmacist, or local health department, as defined in s. 250.01 (4).

History: 1971 c. 270 s. 104; 1973 c. 90; 1973 c. 284 ss. 2, 32; 1973 c. 333; 1975 c. 39, 82; 1975 c. 189 s. 99 (1), (2); 1975 c. 224, 377, 413, 422; 1977 c. 29, 193; 1977 c. 196 s. 131; 1977 c. 203, 205, 271, 354; 1977 c. 418 ss. 287 to 289m, 924 (18) (d); 1977 c. 447, 449; 1979 c. 32 s. 92 (1); 1979 c. 34; 1979 c. 175 s. 46; 1979 c. 221, 331, 352; 1981 c. 20, 81; 1981 c. 314 s. 144; 1981 c. 390; 1983 a. 27, 193; 1983 a. 435 s. 7; 1983 a. 447, 474; 1983 a. 532 s. 36; 1985 a. 19, 29, 120, 176, 234, 285, 328, 331; 1985 a. 332 s. 251 (3); 1987 a. 3, 5, 27, 161, 186, 307, 339, 385, 399, 403, 413; 1989 a. 31 ss. 938m to 951, 2909g, 2909i; 1989 a. 56, 105, 107, 122; 1991 a. 39, 277; 1993 a. 16 ss. 851 to 859, 3072d; 1993 a. 98, 377, 385, 446, 481; 1995 a. 27 ss. 2026m to 2038b, 9126 (19); 1995 a. 77, 201, 225, 352, 370, 404, 448; 1997 a. 3, 27, 111, 283, 292; 1999 a. 9, 83; 2001 a. 16, 59, 61, 109; 2003 a. 33; 2005 a. 25, 293, 406; 2005 a. 443 s. 265; 2007 a. 20 ss. 800 to 823, 9121 (6) (a); 2007 a. 96, 104; 2009 a. 28, 180, 280; 2011 a. 32.

Cross−reference: See also DHS 1− and DHS 30−, Wis. adm. code.

The legislative intent underlying sub. (22) (d) supports a holding that a community living arrangement with a capacity of 10 persons was not barred by a deed covenant limiting use to a single−family residence. Crowley v. Knapp, 94 Wis. 2d 421, 288 N.W.2d 815 (1980).

Sections 46.03 (18) and 46.10 do not constitute an unlawful delegation of legislative power. In Matter of Guardianship of Klisurich, 98 Wis. 2d 274, 296 N.W.2d 742 (1980).

Retroactive application of sub. (22) is constitutional. Overlook Farms v. Alternative Living, 143 Wis. 2d 485, 422 N.W.2d 131 (Ct. App. 1988).

Sub. (18) and s. 46.10 (3) permit the department to promulgate rules that consider non−liable family members' incomes in determining a liable family member's ability to pay. In Interest of A.L.W. 153 Wis. 2d 412, 451 N.W.2d 416 (1990).

Sub. (18) (b) imposes liability upon minors and parents for the costs of services, but does not give counties an automatic right of recovery. Section 46.10 governs enforcement procedure and allows courts to exercise discretion. In Matter of S.E. Trust, 159 Wis. 2d 709, 465 N.W.2d 231 (Ct. App. 1990).

The uniform fee system under sub. (18) and s. 46.10 allows imputing income and, consequently, looking beyond tax returns to determine ability to pay. Interest of Kevin C. 181 Wis. 2d 146, 510 N.W.2d 746 (Ct. App. 1993).

"Prisons and jails" as used in sub. (22) (a) are defined. 69 Atty. Gen. 52.

46.031 County social service and mental hygiene budget and contract. (1) BUDGET. (a) Each county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 shall submit to the department by December 31 annually its final budget for services directly provided or purchased.

(b) The department shall submit a model of the contract under sub. (2g) (a) to each county department under s. 46.215, 46.22, 46.23, 51.42 and 51.437 by May 1 annually.

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(2) ASSESSMENT OF NEEDS. Before developing and submitting a proposed budget to the county executive or county administrator or the county board, the county departments listed in sub. (1) shall assess needs and inventory resources and services, using an open public participation process.

(2g) CONTRACT. (a) The department shall annually submit to the county board of supervisors in a county with a single−county department or the county boards of supervisors in counties with a multicounty department a proposed written contract containing the allocation of funds and such administrative requirements as necessary. The contract as approved may contain conditions of participation consistent with federal and state law. The contract may also include provisions necessary to ensure uniform cost accounting of services. Any changes to the proposed contract shall be mutually agreed upon. The county board of supervisors in a county with a single−county department or the county boards of supervisors in counties with a multicounty department shall approve the contract before January 1 of the year in which it takes effect unless the department grants an extension. The county board of supervisors in a county with a single−county department or the county boards of supervisors in counties with a multicounty department may designate an agent to approve addenda to any contract after the contract has been approved.

(b) The department may not approve contracts for amounts in excess of available revenues. The county board of supervisors in a county with a single−county department or the county boards of supervisors in counties with a multicounty department may appropriate funds not used to match state funds under ss. 46.495 (1) (d) and 51.423. Actual expenditure of county funds shall be reported in compliance with procedures developed by the department, and shall comply with standards guaranteeing quality of care comparable to similar facilities.

(c) The joint committee on finance may require the department to submit contracts between county departments under ss. 46.215, 46.22, 46.23, 51.42 and 51.437 and providers of service to the committee for review and approval.

(2r) WITHHOLDING FUNDS. (a) The department, after reasonable notice, may withhold a portion of the appropriation allocated to a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 if the department determines that that portion of the allocated appropriation:

1. Is for services which duplicate or are inconsistent with services being provided or purchased by the department or other county departments receiving grants−in−aid or reimbursement from the department.

2. Is inconsistent with state or federal statutes, rules or regulations, in which case the department may also arrange for provision of services by an alternate agency. The department may not arrange for provision of services by an alternate agency unless the joint committee on finance or a review body designated by the committee reviews and approves the department's determination.

3. Is for the treatment of alcoholics in treatment facilities which have not been approved by the department in accordance with s. 51.45 (8).

4. Is for inpatient treatment in excess of an average of 21 days, as provided in s. 51.423 (12), excluding care for patients at the centers for the developmentally disabled.

5. Is inconsistent with the provisions of the county department's contract under sub. (2g).

(b) If the department withholds a portion of the allocable appropriation under par. (a), the county department affected by the action of the department may submit to the county board of supervisors in a county with a single−county department or to its designated agent or the county boards of supervisors in counties with a multicounty department or their designated agents a plan to rectify the deficiency found by the department. The county board of supervisors or its designated agent in a county with a single−county department or the county boards of supervisors in counties with a multicounty department or their designated agents may approve or amend the plan and may submit for departmental approval the plan as adopted. If a multicounty department is administering a program, the plan may not be submitted unless each county board of supervisors which participated in the establishment of the multicounty department, or its designated agent, adopts it.

(3) OPEN PUBLIC PARTICIPATION PROCESS. (a) *Citizen advisory committee.* Except as provided in par. (b), the county board of supervisors of each county or the county boards of supervisors of 2 or more counties jointly shall establish a citizen advisory committee to the county departments under ss. 46.215, 46.22, 46.23, 51.42, and 51.437. The citizen advisory committee shall advise in the formulation of the budget under sub. (1). Membership on the committee shall be determined by the county board of supervisors in a county with a single−county committee or by the county boards of supervisors in counties with a multicounty committee and shall include representatives of those persons receiving services, providers of service and citizens. A majority of the members of the committee shall be citizen and service consumers. The committee's membership may not consist of more than 25% county supervisors, nor of more than 20% service providers. The chairperson of the committee shall be appointed by the county board of supervisors establishing it. In the case of a multicounty committee, the chairperson shall be nominated by the committee and approved by the county boards of supervisors establishing it. The county board of supervisors in a county with a single−county committee or the county boards of supervisors in counties with a multicounty committee may designate an agent to determine the membership of the committee and to appoint the committee chairperson or approve the nominee.

(b) *Alternate process.* The county board of supervisors or the boards of 2 or more counties acting jointly may submit a report to the department on the open public participation process used under sub. (2). The county board of supervisors may designate an agent, or the boards of 2 or more counties acting jointly may designate an agent, to submit the report. If the department approves the report, establishment of a citizen advisory committee under par. (a) is not required.

(c) *Yearly report.* The county board of supervisors or its designated agent, or the boards of 2 or more counties acting jointly or their designated agent, shall submit to the department a list of members of the citizen advisory committee under par. (a) or a report on the open public participation process under par. (b) on or before July 1 of each year.

History: 1977 c. 29 ss. 543, 544b; 1977 c. 418; 1979 c. 34 s. 2102 (20) (b); 1979 c. 221 ss. 337 to 347m, 2202 (20); 1979 c. 336, 355; 1981 c. 20 ss. 741 to 745, 2202 (20) (a); 1983 a. 27; 1985 a. 29 ss. 808, 3200 (56), 3202 (23); 1985 a. 120, 176, 332; 1993 a. 16; 1995 a. 27, 225; 2007 a. 20.

46.034 Authority to establish services integration and coordination pilot programs. (1) The department, in order to discharge more effectively its responsibilities under this chapter and chs. 51, 250, and 251 and other relevant provisions of the statutes, may establish community human services pilot programs for the study, implementation, and evaluation of improved human services delivery systems. In the implementation of those pilot programs, the requirement of statewide uniformity with respect to the organization and governance of human services shall not apply. The department and local governmental bodies may establish such departments, boards, committees, organizational structures, and procedures as may be needed to implement the pilot programs. The departments, boards, committees, and organizational structures may assume responsibilities currently assigned by statute to the departments, boards, committees, or organizational structures that are replaced.

(2) The number of pilot programs shall be limited by the department's capacity to coordinate and adequately monitor pilot activities and by the availability of state and federal funds.

(3) With the agreement of the affected county board of supervisors in a county with a single−county department or boards of supervisors in counties with a multicounty department, effective

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for the contract period beginning January 1, 1980, the department may approve a county with a single−county department or counties participating in a multicounty department to administer a single consolidated aid consisting of the state and federal financial aid available to that county or those counties from appropriations under s. 20.435 (7) (b) and (o) for services provided and purchased by county departments under ss. 46.215, 46.22, 46.23, 51.42, and 51.437. Under such an agreement, in the interest of improved service coordination and effectiveness, the county board of supervisors in a county with a single−county department or county boards of supervisors in counties with a multicounty department may reallocate among county departments under ss. 46.215, 46.22, 46.23, 51.42, and 51.437 funds that otherwise would be specified for use by a single county department. The budget under s. 46.031 (1) shall be the vehicle for expressing the proposed use of the single consolidated fund by the county board of supervisors in a county with a single−county department or county boards of supervisors in counties with a multicounty department. Approval by the department of this use of the fund shall be in the contract under s. 46.031 (2g). Counties that were selected by the department to pilot test consolidated aids for contract periods beginning January 1, 1978, may continue or terminate consolidation with the agreement of the affected county board of supervisors in a county with a single−county department or county boards of supervisors in counties with a multicounty department.

History: 1975 c. 39; 1977 c. 29, 418; 1979 c. 34; 1981 c. 20, 390; 1983 a. 27 s. 2202 (20); 1985 a. 120, 176, 332; 1987 a. 27 s. 724e; Stats. 1987 s. 46.034; 1989 a. 31; 1993 a. 27; 1997 a. 27; 2001 a. 16; 2005 a. 25; 2007 a. 20.

46.035 Department, additional powers to provide structures, facilities and permanent improvements. (1) As used in this section unless the context requires otherwise:

(a) The term "existing building" in relation to any conveyance, lease or sublease made under sub. (2) (a), (b), and (c) means all detention, treatment, administrative, recreational, infirmary, hospital, vocational and academic buildings; all dormitories and cottages; all storage facilities, heating plants, sewage disposal plants, and such other buildings, structures, facilities and permanent improvements as in the judgment of the secretary are needed or useful for the purposes of the department, and all equipment therefor and all improvements and additions thereto which were erected, constructed or installed prior to the making of such conveyance, lease or sublease.

(b) The term "new building" in relation to any conveyance, lease or sublease made under sub. (2) (a), (b), and (c) means all detention, treatment, administrative, recreational, infirmary, hospital, vocational and academic buildings; all dormitories and cottages; all storage facilities, heating plants, sewage disposal plants, and such other buildings, structures, facilities and permanent improvements as in the judgment of the secretary are needed or useful for the purposes of the department, and all equipment therefor and all improvements and additions thereto which are erected, constructed or installed after the making of such conveyance, lease or sublease.

(c) The term "nonprofit corporation" means a nonstock corporation that is organized under ch. 181 and that is a nonprofit corporation, as defined in s. 181.0103 (17).

(2) In order to provide new buildings and to enable the construction and financing thereof, to refinance indebtedness hereafter created by a nonprofit corporation for the purpose of providing a new building or buildings or additions or improvements thereto which are located on land owned by, or owned by the state and held for, the department or on lands of the institutions under the jurisdiction of the department or by the nonprofit corporation, or for any one or more of said purposes, but for no other purpose unless authorized by law, the department has, subject to s. 16.848, the following powers and duties:

(a) Without limitation by reason of any other provisions of the statutes except s. 16.848, the power to sell and to convey title in fee simple to a nonprofit corporation any land and any existing buildings thereon owned by, or owned by the state and held for, the department or of any of the institutions under the jurisdiction of the department for such consideration and upon such terms and conditions as in the judgment of the secretary are in the public interest.

(b) The power to lease to a nonprofit corporation for a term or terms not exceeding 50 years each any land and any existing buildings thereon owned by, or owned by the state and held for, the department or of any of the institutions under the jurisdiction of the department upon such terms and conditions as in the judgment of the secretary are in the public interest.

(c) The power to lease or sublease from such nonprofit corporation, and to make available for public use, any such land and existing buildings conveyed or leased to such nonprofit corporation under pars. (a) and (b), and any new buildings erected upon such land or upon any other land owned by such nonprofit corporation, upon such terms, conditions and rentals, subject to available appropriations, as in the judgment of the secretary are in the public interest. With respect to any property conveyed to such nonprofit corporation under par. (a), such lease from such nonprofit corporation may be subject or subordinated to one or more mortgages of such property granted by such nonprofit corporation.

(d) The duty to submit the plans and specifications for all such new buildings and all conveyances, leases and subleases made under this subsection to the department of administration and the governor for written approval before they are finally adopted, executed and delivered.

(e) The power to pledge and assign all or any part of the revenues derived from the operation of such new buildings as security for the payment of rentals due and to become due under any lease or sublease of such new buildings under par. (c).

(f) The power to covenant and agree in any lease or sublease of such new buildings made under par. (c) to impose fees, rentals or other charges for the use and occupancy or other operation of such new buildings in an amount calculated to produce net revenues sufficient to pay the rentals due and to become due under such lease or sublease.

(g) The power to apply all or any part of the revenues derived from the operation of existing buildings to the payment of rentals due and to become due under any lease or sublease made under par. (c).

(h) The power to pledge and assign all or any part of the revenues derived from the operation of existing buildings to the payment of rentals due and to become due under any lease or sublease made under par. (c).

(i) The power to covenant and agree in any lease or sublease made under par. (c) to impose fees, rentals or other charges for the use and occupancy or other operation of existing buildings in an amount calculated to produce net revenues sufficient to pay the rentals due and to become due under such lease or sublease.

(j) The power and duty, upon receipt of notice of any assignment by any such nonprofit corporation of any lease or sublease made under par. (c), or of any of its rights under any such sublease, to recognize and give effect to such assignment, and to pay to the assignee thereof rentals or other payments then due or which may become due under any such lease or sublease which has been so assigned by such nonprofit corporation.

(3) The state is liable for accrued rentals and for any other default under any lease or sublease made under sub. (2) (c), and may be sued therefor on contract as in other contract actions pursuant to ch. 775, except that it is not necessary for the lessor under any such lease or sublease or any assignee of such lessor or any person or other legal entity proceeding on behalf of such lessor to file any claim with the legislature prior to the commencement of any such action.

(4) Nothing in this section empowers the secretary or the department to incur any state debt.

(5) All laws, except s. 16.848 and ch. 150, that conflict with any provisions of this section, are, insofar as they conflict with this section and no further, superseded by this section.

History: 1975 c. 39 ss. 341, 732 (2); 1977 c. 29; 1979 c. 32 s. 92 (5); 1989 a. 31, 107; 1997 a. 79; 2005 a. 25.

46.036 Purchase of care and services. (1) All care and services purchased by the department or by a county department under s. 46.215, 46.22, 46.23, 51.42, or 51.437, except as provided under subch. III of ch. 49 and s. 301.08 (2), shall be authorized and contracted for under the standards established under this section. The department may require the county departments to submit the contracts to the department for review and approval. For purchases of $10,000 or less the requirement for a written contract may be waived by the department. When the department directly contracts for services, it shall follow the procedures in this section in addition to meeting purchasing requirements established in s. 16.75.

(2) All care and services purchased shall meet standards established by the department and other requirements specified by purchaser in the contract. Based on these standards the department shall establish standards for cost accounting and management information systems that shall monitor the utilization of such services, and document the specific services in meeting the service plan for the client and the objective of the service.

(3) (a) Purchase of service contracts shall be written in accordance with rules promulgated and procedures established by the department. Contracts for client services shall show the total dollar amount to be purchased and for each service the number of clients to be served, number of client service units, the unit rate per client service and the total dollar amount for each service.

(b) Payments under a contract may be made on the basis of actual allowable costs or on the basis of a unit rate per client service multiplied by the actual client units furnished each month. The contract may be renegotiated when units vary from the contracted number. The purchaser shall determine actual marginal costs for each service unit less than or in addition to the contracted number.

(c) For proprietary agencies, contracts may include a percentage add−on for profit according to rules promulgated by the department.

(d) Reimbursement to an agency may be based on total costs agreed to by the parties regardless of the actual number of service units to be furnished, when the agency is entering into a contract for a new or expanded service that the purchaser recognizes will require a start−up period not to exceed 180 days. Such reimbursement applies only if identified client needs necessitate the establishment of a new service or expansion of an existing service.

(e) If the purchaser finds it necessary to terminate a contract prior to the contract expiration date for reasons other than nonperformance by the provider, actual cost incurred by the provider may be reimbursed for an amount determined by mutual agreement of the parties.

(f) Advance payments of up to one−twelfth of an annual contract may be allowed under the contract. If the advance payment exceeds $10,000, the provider shall supply a surety bond for an amount equal to the amount of the advance payment applied for. No surety bond is required if the provider is a state agency. The cost of the surety bond shall be allowable as an expense.

(g) Notwithstanding pars. (b) and (d), if a county has an existing system, approved by the department, to monitor and assess the outcomes of a contract and if the county is so authorized by the department, the county may contract with providers to pay in advance or after provision of services a fixed amount for each person served by the provider in return for a defined set of expected outcomes that are determined by the county.

(4) For purposes of this section and as a condition of reimbursement, each provider under contract shall:

(a) Except as provided in this paragraph, maintain a uniform double entry accounting system and a management information system which are compatible with cost accounting and control systems prescribed by the department.

(b) Cooperate with the department and purchaser in establishing costs for reimbursement purposes.

(c) Unless waived by the department, biennially, or annually if required under federal law, provide the purchaser with a certified financial and compliance audit report if the care and services purchased exceed $25,000. The audit shall follow standards that the department prescribes.

(d) Transfer a client from one category of care or service to another only with the approval of the purchaser.

(e) Charge a uniform schedule of fees as defined under s. 46.03 (18) unless waived by the purchaser with approval of the department. Whenever providers recover funds attributed to the client, such funds shall offset the amount paid under the contract.

(5) Except as provided under sub. (5m), the purchaser shall recover from provider agencies money paid in excess of the conditions of the contract from subsequent payments made to the provider.

(5m) (a) In this subsection:

1. "Provider" means a nonstock corporation organized under ch. 181 that is a nonprofit corporation, as defined in s. 181.0103 (17), and that contracts under this section to provide client services on the basis of a unit rate per client service or a county department under s. 46.215, 46.22, 46.23, 51.42, or 51.437 that contracts under this section to provide client services on the basis of a unit rate per client service.

2. "Rate−based service" means a service or a group of services, as determined by the department, that is reimbursed through a prospectively set rate and that is distinguishable from other services or groups of services by the purpose for which funds are provided for that service or group of services and by the source of funding for that service or group of services.

(b) 1. Subject to subd. 2. and pars. (e) and (em), if revenue under a contract for the provision of a rate−based service exceeds allowable costs incurred in the contract period, the provider may retain from the surplus generated by that rate−based service up to 5% of the revenue received under the contract. A provider that retains a surplus under this subdivision shall use that retained surplus to cover a deficit between revenue and allowable costs incurred in any preceding or future contract period for the same rate−based service that generated the surplus or to address the programmatic needs of clients served by the same rate−based service that generated the surplus.

2. Subject to pars. (e) and (em), a provider may accumulate funds from more than one contract period under this paragraph, except that, if at the end of a contract period the amount accumulated from all contract periods for a rate−based service exceeds 10% of the revenue received under all current contracts for that rate−based service, the provider shall, at the request of a purchaser, return to that purchaser the purchaser's proportional share of that excess and use any of that excess that is not returned to a purchaser to reduce the provider's unit rate per client for that rate−based service in the next contract period. If a provider has held for 4 consecutive contract periods an accumulated reserve for a rate−based service that is equal to or exceeds 10% of the revenue received under all current contracts for that rate−based service, the provider shall apply 50% of that accumulated amount to reducing its unit rate per client for that rate−based service in the next contract period.

(e) Notwithstanding par. (b) 1. and 2., the department or a county department under s. 46.215, 46.22, 46.23, 51.42, or 51.437 that purchases care and services from an inpatient alcohol and other drug abuse treatment program that is not affiliated with a hospital and that is licensed as a community−based residential

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facility, may allocate to the program an amount that is equal to the amount of revenues received by the program that are in excess of the allowable costs incurred in the period of a contract between the program and the department or the county department for purchase of care and services under this section. The department or the county department may make the allocation under this paragraph only if the funds so allocated do not reduce any amount of unencumbered state aid to the department or the county department that otherwise would lapse to the general fund.

(em) Notwithstanding pars. (b) 1. and 2. and (e), a county department under s. 46.215, 51.42, or 51.437 providing client services in a county having a population of 500,000 or more or a nonstock, nonprofit corporation providing client services in such a county may not retain a surplus under par. (b) 1., accumulate funds under par. (b) 2., or allocate an amount under par. (e) from revenues that are used to meet the maintenance−of−effort requirement under the federal temporary assistance for needy families program under 42 USC 601 to 619.

(f) All providers that are subject to this subsection shall comply with any financial reporting and auditing requirements that the department may prescribe. Those requirements shall include a requirement that a provider provide to any purchaser and the department any information that the department needs to claim federal reimbursement for the cost of any services purchased from the provider and a requirement that a provider provide audit reports to any purchaser and the department according to standards specified in the provider's contract and any other standards that the department may prescribe.

(6) Contracts may be renegotiated by the purchaser under conditions specified in the contract.

(7) The service provider under this section may appeal decisions of the purchaser in accordance with terms and conditions of the contract and ch. 68 or 227.

History: 1973 c. 90, 333; 1975 c. 39; 1975 c. 198 s. 65; 1977 c. 29, 418; 1981 c. 20; 1983 a. 27, 116, 192; 1985 a. 176; 1985 a. 332 s. 251 (3); 1987 a. 27; 1987 a. 161 s. 13m; 1989 a. 31, 122, 359; 1993 a. 375, 380, 446; 1995 a. 27; 1997 a. 27, 79, 237; 1999 a. 9, 103; 2001 a. 16; 2007 a. 20.

46.04 Anchorage program. (1) DEFINITIONS. In this section:

(a) "Adolescent" means an individual who is at least 12 years of age and under 18 years of age.

(b) "Drug dependent" has the meaning specified under s. 51.01 (8).

(c) "Mental illness" has the meaning given in s. 51.01 (13).

(2) PROGRAM. From the appropriations under s. 20.435 (2) (a) and (gk), the department shall establish at the Winnebago Mental Health Institute a program of inpatient assessment and treatment to be known as the "Anchorage program," which is designed primarily to meet the needs of adolescents who are drug dependent, who evidence drug−related behavior that may be dangerous to the adolescent or to others, and who have a history of drug dependency and resistance to less restrictive forms of treatment, but that also may be used by the department to provide inpatient assessment and treatment of adolescents who have mental illness, who evidence mental illness−related behavior that may be dangerous to the adolescent or to others, and who have a history of mental illness and resistance to less restrictive forms of treatment. A county department under s. 51.42 may refer an adolescent for assessment or treatment under this section and shall approve all admissions to the program under this section of adolescents committed under s. 51.20 or 51.45 or admitted under s. 51.13. Transfers under s. 51.35 (3) or 51.37 (5) may also be made to the program under this section.

History: 1987 a. 96; 1993 a. 16; 2001 a. 103.

46.041 Children's consultation service; establishment; purposes. (1) A program to be known as the "children's consultation service" shall be provided. The service shall be established at the Mendota Mental Health Institute or the Winnebago Mental Health Institute, or at both institutions. The service shall:

(a) Provide for the temporary residence and evaluation of children referred from courts assigned to exercise jurisdiction under chs. 48 and 938, the institutions and services under the jurisdiction of the department, University of Wisconsin Hospitals and Clinics Authority, county departments under s. 46.215, 46.22 or 46.23, private child welfare agencies, the Wisconsin Educational Services Program for the Deaf and Hard of Hearing, the Wisconsin Center for the Blind and Visually Impaired, and mental health facilities within the state at the discretion of the director of the institution providing services under this section.

(b) Promote the development of preventive mental health services to children in communities by participating in the training of mental health personnel, by demonstration of methods of evaluation, care and treatment, by assisting in the assessment of community services and the development of the most effective coordination between the institution and the community, and by offering services when community resources need to be supplemented.

History: 1973 c. 90 s. 560 (3); 1977 c. 418 s. 924 (50); 1977 c. 447 s. 206; 1977 c. 449; 1985 a. 29, 176; 1995 a. 27, 77; 1999 a. 9; 2001 a. 57, 103.

46.042 Treatment program for emotionally disturbed children. The department shall establish a program for the intensive treatment of emotionally disturbed children. The program shall be operated by the Mendota Mental Health Institute and be subject to all federal and state laws, rules, and regulations that apply to the institute. Operational planning shall provide close interrelationship between the department and the University of Wisconsin Medical School for conduct of educational and research programs.

History: 1975 c. 224; 1977 c. 29; 2001 a. 103.

46.043 Additional services of mental health institutes. (1) In addition to inpatient and outpatient services provided at mental health institutes under ss. 51.05 and 51.07, the department may authorize mental health institutes to offer services other than inpatient mental health services when the department determines that community services need to be supplemented. Services that may be offered under this section include mental health outpatient treatment and services, day programming, consultation and services in residential facilities, including group homes, residential care centers for children and youth, and community−based residential facilities.

(2) Services under this section may be provided only under contract between the department and a county department under s. 46. 215, 46.22 or 46.23, a school district or another public or private entity within the state to persons referred from those entities, at the discretion of the department. The department shall charge the referring entity all costs associated with providing the services. Unless a referral is made, the department may not offer services under this section to the person who is to receive the services or his or her family. The department may not impose a charge for services under this section upon the person receiving the services or his or her family. The department shall credit any revenues received under this section to the appropriation account under s. 20.435 (2) (g).

(3) (a) Except as provided in par. (b), services under this section are governed by all of the following:

1. The terms of the contract between the department and the referring entity.

2. Subchapter XVI of ch. 48 and ss. 50.03, 50.032, 50.033, 50.034 (1) to (3), 50.035, 50.04, 50.09, 51.04, 51.42 (7) (b) and 51.61. In applying these statutes, the services shall be considered to be provided by a private entity.

3. Rules promulgated under the statutes specified in subd. 2.

(b) In the event of a conflict between par. (a) 1. and 2. or 3., the services shall comply with the contractual, statutory or rules pro-

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vision that is most protective of the service recipient's health, safety, welfare or rights.

(c) Sections 46.03 (18), 46.10, 51.15 (2), 51.20 (13) (c) 1. and 51.42 (3) (as), other similar provisions in chs. 46 and 51 and zoning or other ordinances or regulations of the county, city, town or village in which the services are provided or the facility is located do not apply to the services under this section.

(d) The department may not be required, by court order or otherwise, to offer services under this section.

(4) Services in a residential facility operated by a mental health institute that are authorized by the department under this section shall be provided only in a facility that is situated on the grounds of a mental health institute. The facility may not be considered to be a hospital, as defined in s. 50.33 (2), an inpatient facility, as defined in s. 51.01 (10), a state treatment facility, as defined in s. 51.01 (15), or a treatment facility, as defined in s. 51.01 (19).

History: 1999 a. 9; 2001 a. 16; 2007 a. 20, 97.

46.044 State psychiatric institute. There is established the state psychiatric institute to be maintained as a department of the University of Wisconsin−Madison. The statutes relating to admission, commitment, placement, transfer, custody and discharge of mentally ill persons are applicable to the psychiatric institute.

History: 1975 c. 430; 1977 c. 26.

46.047 State−operated residential facilities and support services. The department may establish and operate nonintitutional residential facilities for persons who are relocated from any center for the developmentally disabled, as defined in s. 51.01 (3), and may provide necessary support services for the persons.

History: 1993 a. 16.

46.048 Central Wisconsin Center for the Developmentally Disabled. There is established a new institution to be located near the city of Madison and to be known as the Central Wisconsin Center for the Developmentally Disabled. The department, with the approval of the governor, is authorized to purchase lands for a suitable site and to erect and equip such buildings as it deems necessary from funds appropriated for the long−range building program. Such institution when constructed shall be maintained and operated by the department and all laws pertaining to the care of mentally deficient patients shall apply.

History: 1975 c. 189 s. 99 (2); 1975 c. 430 s. 78.

46.055 Secure mental health facility for sexually violent persons. The department shall establish and operate a secure mental health facility for the detention, evaluation and institutional care of persons under ch. 980.

History: 1999 a. 9.

Cross−reference: See also ch. DHS 95, Wis. adm. code.

46.056 Wisconsin Resource Center. (1) The department shall establish the Wisconsin Resource Center on the grounds of the Winnebago Mental Health Institute near Oshkosh. Notwithstanding s. 301.03, the department shall have responsibility for administering the center as a correctional institution that provides psychological evaluations, specialized learning programs, training and supervision for inmates whose behavior presents a serious problem to themselves or others in state prisons and whose mental health needs can be met at the center.

(2) Notwithstanding sub. (1), the correctional officers providing security at the Wisconsin resource center are employees of the department of corrections.

History: 1981 c. 20; 1989 a. 31, 107.

Cross−reference: See also ch. DHS 97, Wis. adm. code.

The rights and responsibilities of counties in prisoner transfers to the Wisconsin resource center are discussed. 71 Atty. Gen. 170.

46.057 Mendota juvenile treatment center. (1) The department shall establish, maintain, and operate the Mendota juvenile treatment center on the grounds of the Mendota Mental Health Institute. The department may designate staff at the Mendota Mental Health Institute as responsible for administering, and providing services at, the center. Notwithstanding ss. 301.02, 301.03, and 301.36 (1), the department shall operate the Mendota juvenile treatment center as a juvenile correctional facility, as defined in s. 938.02 (10p). The center shall not be considered a hospital, as defined in s. 50.33 (2), an inpatient facility, as defined in s. 51.01 (10), a state treatment facility, as defined in s. 51.01 (15), or a treatment facility, as defined in s. 51.01 (19). The center shall provide psychological and psychiatric evaluations and treatment for juveniles whose behavior presents a serious problem to themselves or others in other juvenile correctional facilities and whose mental health needs can be met at the center. With the approval of the department of health services, the department of corrections may transfer to the center any juvenile who has been placed in a juvenile correctional facility under the supervision of the department of corrections under s. 938.183, 938.34 (4h) or (4m), or 938.357 (4) or (5) (e) in the same manner that the department of corrections transfers juveniles between other juvenile correctional facilities.

(2) From the appropriation account under s. 20.410 (3) (ba), the department of corrections shall transfer to the appropriation account under s. 20.435 (2) (kx) $1,365,500 in each fiscal year and, from the appropriation account under s. 20.410 (3) (hm), the department of corrections shall transfer to the appropriation account under s. 20.435 (2) (kx) $2,890,700 in fiscal year 2011−12 and $2,964,000 in fiscal year 2012−13, for services for juveniles placed at the Mendota juvenile treatment center. The department of health services may charge the department of corrections not more than the actual cost of providing those services.

History: 1995 a. 216; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 33; 2005 a. 25, 344; 2007 a. 20 ss. 832, 9121 (6) (a); 2009 a. 28; 2011 a. 32.

46.058 Bonds of employees; police powers; investigation of complaints. (1) The steward of each institution under the control of the department shall execute and file an official bond in such sum and with such sureties as the secretary prescribes. The steward shall also require any other officer or other person having the possession or custody of any money or property belonging to the state or any institution under its control or supervision to give an official bond, and from time to time renew the bond. The secretary may require a position bond whenever it appears advisable to him or her. The position bond shall have the same coverage as the official bond.

(2) The superintendents of all institutions administered by the department and of all county hospitals and county homes, and the employees under them to whom they delegate police power, may arrest any person within or upon the grounds of such institutions whom they have reason to believe is guilty of any offense against the laws or regulations governing the institutions; and for that purpose they shall possess the powers of constables.

(2m) The superintendents of the secure mental health facility established under s. 46.055, the Wisconsin resource center established under s. 46.056 and any secure mental health unit or facility provided by the department of corrections under s. 980.065 (2) shall adopt proper means to prevent escapes of persons detained or committed to the facility, center or unit under ch. 980 and may adopt proper means to pursue and capture persons detained or committed to the facility, center or unit under ch. 980 who have escaped. In adopting means under this subsection to prevent escape and pursue and capture persons who have escaped, a superintendent may delegate to designated staff members of the facility, center or unit the power to use necessary and appropriate force, as defined by the department by rule, to prevent escapes and capture escaped persons.

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(3) The department shall investigate complaints against any institution under its jurisdiction or against the officers or employees thereof. For that purpose the secretary and such officers and employees as the secretary authorizes may summon and swear witnesses, take testimony and compel the production of books and papers. The department may, on its own initiative, investigate the affairs of any institution. Any written communication or complaint addressed to the secretary by any inmate, employee or subordinate of any such institution shall be forthwith forwarded unopened to the addressee.

History: 1975 c. 39; 1975 c. 199 s. 138; 1979 c. 221 s. 352; Stats. 1979 s. 46.058; 1989 a. 31, 107; 1993 a. 209; 1999 a. 9.

Cross−reference: See also ch. DHS 95, Wis. adm. code.

46.06 Lands; condemnation, easements, leases, sales, purchases. Subject to s. 16.848:

(1) CONDEMNATION. When the department is authorized and desires to acquire land and is unable to agree with the owner upon the terms of purchase, or when such agreement cannot be had without unreasonable delay, the department may condemn the land in the manner prescribed in ch. 32.

(2) EASEMENTS. The department may grant easements for the extension of municipal and public utilities onto the lands of the institutions under its jurisdiction, for the purpose of connecting railroads, roads, water systems, sewers, electric lines and similar facilities, to serve such institutions.

(3) LEASES. The department may rent additional lands for the operation of the institutions under its jurisdiction.

(4) SALES. The department may, with the approval of the building commission, sell and convey such lands under the jurisdiction of the department as the secretary deems to be in excess of the present or future requirements of the department for either the operation of its facilities or programs, for the maintenance of buffer zones adjacent to its facilities or for other public purposes. The proceeds of such sales are subject to s. 13.48 (14) (c).

(5) PURCHASES. The department may, with the approval of and release of state building trust fund by the building commission, acquire by purchase such lands, together with such improvements as are situated thereon, as the secretary deems necessary for the department's farm programs, or for the purpose of providing adequate buffer zones to its existing facilities, or for the purpose of eliminating flexuous boundaries in cooperation with owners of lands adjoining lands under the department's jurisdiction.

History: 1973 c. 12 s. 10; 1973 c. 90; 1975 c. 39 ss. 346, 732 (2); 1987 a. 5, 27; 1989 a. 31; 1995 a. 378; 2005 a. 25.

46.064 Client wages, allowances and release payments. The department may pay a wage or an allowance and a release payment to clients at its institutions. The department shall prescribe the amounts of pay and such hours, health and other conditions in connection with employment as are reasonable.

History: 1971 c. 125, 215; 1973 c. 333.

46.066 Freedom of worship; religious ministration. (1) Subject to reasonable exercise of the privilege, members of the clergy of all religious faiths shall be given an opportunity, at least once each week, to conduct religious services within the state institutions under the control of the department. Attendance at the services is voluntary.

(2) Religious ministration and sacraments according to the inmate's faith shall be allowed to every inmate who requests them.

(3) Every inmate who requests it shall have the use of the Bible.

History: 1989 a. 31; 1991 a. 316.

The state must make copies of the Quran available to prisoners to the same extent that Bibles are made available. Pitts v. Knowles, 339 F. Supp. 1183 (1972).

46.07 Property of patients or residents. All money including wages and other property delivered to an officer or employee of any institution for the benefit of a patient or resident shall immediately be delivered to the steward, who shall enter the money upon the steward's books to the credit of the patient or resident. The property shall be used only under the direction and with the approval of the superintendent and for the crime victim and witness assistance surcharge under s. 973.045 (4), the delinquency victim and witness assistance surcharge under s. 938.34 (8d) (c), the deoxyribonucleic acid analysis surcharge under s. 973.046, the child pornography surcharge under s. 973.042, the drug offender diversion surcharge under s. 973.043, or the benefit of the patient or resident. If the money remains uncalled for for one year after the patient's or resident's death or departure from the institution, the superintendent shall deposit the money in the general fund. If any patient or resident leaves property, other than money, uncalled for at an institution for one year, the superintendent shall sell the property, and the proceeds shall be deposited in the general fund. If any person satisfies the department, within 5 years after the deposit, of his or her right to the deposit, the department shall direct the department of administration to draw its warrant in favor of the claimant and it shall charge the same to the appropriation made by s. 20.913 (3) (c).

History: 1979 c. 221 s. 2202 (20); 1983 a. 27; 1989 a. 31, 107; 1993 a. 16; 1997 a. 27; 2005 a. 25, 254, 433.

Diversion of 15% into a savings account of all money sent to a prisoner, to be given to the prisoner upon release, did not violate due process. Sahagian v. Dickey, 646 F. Supp. 1502 (1986).

46.09 Purchases, bills, audits, payments. Subject to s. 16.848:

(1) STEWARD AS BUSINESS MANAGER. The steward of each institution under the control of the department is the local business manager and requisitioning officer, subject to the direction and rules of the department, and within the limits of the approved monthly estimates shall purchase all necessary materials and supplies, as provided in ss. 16.70 to 16.82. The steward shall have the immediate charge of all books, accounts, papers and records relating to the institution's financial management, shall keep detailed accounts of all receipts and expenditures, and shall be responsible for the safekeeping and economical use of all stores and supplies.

(2) BUTTER AND CHEESE. No butter or cheese not made wholly and directly from pure milk or cream, salt and harmless coloring matter may be used in any of the institutions of the department.

(3) PUBLIC WELFARE INSTITUTIONS PREAUDIT; PAYMENTS. Unless otherwise provided by law, no bills may be incurred in the management of such institutions nor be paid until they have been audited by the department of health services under the supervision of the department of administration. All payments shall be made on the warrant of the department of administration drawn in accordance with the certificate of the proper designated officer of the department of health services. All claims and accounts before being certified to the department of administration by the department of health services, shall be verified and approved in the same manner as provided in s. 16.53.

History: 1973 c. 335 s. 13; 1985 a. 176; 1989 a. 31; 1995 a. 27 s. 9126 (19); 2005 a. 25; 2007 a. 20 s. 9121 (6) (a).

46.10 Cost of care and maintenance, liability; collection and deportation counsel; collections; court actions; recovery. (1) Liability and the collection and enforcement of such liability for the care, maintenance, services and supplies specified in this section is governed exclusively by this section, except in cases of child support ordered by a court under s. 48.355 (2) (b) 4., 48.357 (5m) (a) or 48.363 (2) or ch. 767.

(2) Except as provided in subs. (2m) and (14) (b) and (c), any person, including but not limited to a person admitted, committed, protected, or placed under s. 975.01, 1977 stats., s. 975.02, 1977 stats., s. 975.17, 1977 stats., s. 55.05 (5), 2003 stats., and 55.06, 2003 stats., and ss. 51.10, 51.13, 51.15, 51.20, 51.35 (3), 51.37 (5), 51.45 (10), (11), (12) and (13), 55.05, 55.055, 55.12, 55.13, 55.135, 971.14 (2) and (5), 971.17 (1), 975.06 and 980.06, receiving care, maintenance, services and supplies provided by any institution in this state including University of Wisconsin Hospitals and Clinics, in which the state is chargeable with all or part of the person's care, maintenance, services and supplies, any person

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receiving care and services from a county department established under s. 51.42 or 51.437 or from a facility established under s. 49.73, and any person receiving treatment and services from a public or private agency under s. 980.06 (2) (c), 1997 stats., s. 980.08 (5), 2003 stats., or s. 971.17 (3) (d) or (4) (e) or 980.08 (4) (g) and the person's property and estate, including the homestead, and the spouse of the person, and the spouse's property and estate, including the homestead, and, in the case of a minor child, the parents of the person, and their property and estates, including their homestead, and, in the case of a foreign child described in s. 48.839 (1) who became dependent on public funds for his or her primary support before an order granting his or her adoption, the resident of this state appointed guardian of the child by a foreign court who brought the child into this state for the purpose of adoption, and his or her property and estate, including his or her homestead, shall be liable for the cost of the care, maintenance, services and supplies in accordance with the fee schedule established by the department under s. 46.03 (18). If a spouse, widow or minor, or an incapacitated person may be lawfully dependent upon the property for their support, the court shall release all or such part of the property and estate from the charges that may be necessary to provide for those persons. The department shall make every reasonable effort to notify the liable persons as soon as possible after the beginning of the maintenance, but the notice or the receipt thereof is not a condition of liability.

(2m) The liability specified in sub. (2) shall not apply to tuberculosis patients receiving care, maintenance, services and supplies under ss. 252.07 to 252.10, to persons 18 and older receiving care, maintenance, services and supplies provided by prisons named in s. 302.01 or to parents of a minor who receives care for alcohol or drug abuse under s. 51.47 (1) without consent of the minor's parent or guardian.

(3) After investigation of the liable persons' ability to pay, the department shall make collection from the person who in the opinion of the department under all of the circumstances is best able to pay, giving due regard to relationship and the present needs of the person or of the lawful dependents. However, the liability of relatives for maintenance shall be in the following order: first, the spouse of the patient; then, in the case of a minor, the parent or parents.

(4) (a) If a person liable under sub. (2) fails to make payment or enter into or comply with an agreement for payment, the department may bring an action to enforce the liability or may issue an order to compel payment of the liability. Any person aggrieved by an order issued by the department under this paragraph may appeal the order as a contested case under ch. 227 by filing with the department a request for a hearing within 30 days after the date of the order.

(b) If judgment is rendered in an action brought under par. (a) for any balance that is 90 or more days past due, interest at the rate of 12% per year shall be computed by the clerk and added to the liable person's costs. That interest shall begin on the date on which payment was due and shall end on the day before the date of any interest that is computed under s. 814.04 (4).

(c) If the department issues an order to compel payment under par. (a), interest at the rate of 12% per year shall be computed by the department and added at the time of payment to the person's liability. That interest shall begin on the date on which payment was due and shall end on the day before the date of final payment.

(5) If any person named in an order to compel payment issued under sub. (4) (a) fails to pay the department any amount due under the terms of the order and no contested case to review the order is pending and the time for filing for a contested case review has expired, the department may present a certified copy of the order to the circuit court for any county. The circuit court shall, without notice, render judgment in accordance with the order. A judgment rendered under this subsection shall have the same effect and shall be entered in the judgment and lien docket and may be enforced in the same manner as if the judgment had been rendered in an action tried and determined by the circuit court.

(6) The sworn statement of the collection and deportation counsel, or of the secretary, shall be evidence of the fee and of the care and services received by the patient.

(7) The department shall administer and enforce this section. It shall appoint an attorney to be designated "collection and deportation counsel" and other necessary assistants. The department may delegate to the collection and deportation counsel such other powers and duties as it considers advisable. The collection and deportation counsel or any of the assistants may administer oaths, take affidavits and testimony, examine public records, subpoena witnesses and the production of books, papers, records, and documents material to any matter of proceeding relating to payments for the cost of maintenance. The department shall encourage agreements or settlements with the liable person, having due regard to ability to pay and the present needs of lawful dependents.

(8) The department may:

(a) Appear for the state in any and all collection and deportation matters arising in the several courts, and may commence suit in the name of the department to recover the cost of maintenance against the person liable therefor.

(b) Determine whether any patients are subject to deportation; and on behalf of this state enter into reciprocal agreements with other states for deportation and importation of persons who are public charges, upon such terms as will protect the state's interests and promote mutual amicable relations with other states.

(c) From time to time investigate the financial condition and needs of persons liable under sub. (2), their ability to presently maintain themselves, the persons legally dependent upon them for support, the protection of the property and investments from which they derive their living and their care and protection, for the purpose of ascertaining the person's ability to make payment in whole or in part.

(d) After due regard to the case and to a spouse and minor children who are lawfully dependent on the property for support, compromise or waive any portion of any claim of the state or county for which a person specified under sub. (2) is liable, but not any claim payable by an insurer under s. 632.89 (2) or (4m) or by any other 3rd party.

(e) Make an agreement with a person who is liable under sub. (2), or who may be willing to assume the cost of maintenance of any patient, providing for the payment of such costs at a specified rate or amount.

(f) 1. Make adjustment and settlement with the several counties for their proper share of all moneys collected.

(h) Ensure that all moneys collected under sub. (12) on and after January 1, 1974, be credited under ss. 46.036 and 51.423.

(i) Pay quarterly from the appropriation accounts under s. 20.435 (2) (gk) and (5) (gg) the collection moneys due county departments under ss. 51.42 and 51.437. Payments shall be made as soon after the close of each quarter as is practicable.

(8m) (a) Except as provided in par. (b), for county departments under s. 51.42 or 51.437, the department shall do all of the following:

1. Deduct 100% of all money collected on or after January 1, 1975, from the chargeable cost of care at the mental health institutes.

2. Deduct or remit, through the appropriation under s. 20.435 (2) (gk), all money collected for persons ineligible for medical assistance benefits and who lack other means of full payment for care provided on or after January 1, 1982, by centers for the developmentally disabled. The deduction or remittance under this subdivision may not exceed the amount chargeable under s. 51.437 (4rm) (c) 2. a.

3. Return to boards 70% of all collections made for county hospitals.

4. Return to boards 50% of collections made by the department for services other than those specified under par. (a) 1., 2. or 3.

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(b) 1. Paragraph (a) 1. and 2. does not apply to primary psychiatric care, which shall be billed on the basis of total chargeable cost. Collections for primary care shall be deducted from the chargeable cost of other types of care provided at the institutes.

2. Paragraph (a) 2. and 4. does not apply to services provided under s. 51.06 (1m) (d) that are billed under s. 51.437 (4rm) (c) 2m. and does not apply to treatment and services provided under s. 51.42 (3) (aw) 1. d.

(9) Any person who willfully testifies falsely as to any material matter in an investigation or proceeding under this section shall be guilty of perjury. Banks, employers, insurers, savings banks, savings and loan associations, brokers and fiduciaries, upon request of the department, shall furnish in writing and duly certified, full information regarding the property, earnings or income or any funds deposited to the credit of or owing to any person liable under sub. (2). Such certified statement shall be admissible in evidence in any action or proceeding to compel payment under this section, and shall be evidence of the facts therein stated, provided a copy of such statement be served upon the party sought to be charged not less than 3 days before the hearing.

(10) The department shall make all reasonable and proper efforts to collect all claims for maintenance, to keep payments current, and to periodically review all unpaid claims.

(11) (a) Except as provided in par. (b), in any action to recover from a person liable under this section, the statute of limitations may be pleaded in defense.

(b) If a person who is liable under this section is deceased, a claim may be filed against the decedent's estate and the statute of limitations specified in s. 859.02 shall be exclusively applicable. This paragraph applies to liability incurred on or after July 20, 1985.

(12) The district attorney or his or her assistants in a county having a population of 500,000 or more shall, in matters pertaining to the recovery of the cost of maintenance of persons in county institutions in that county, have the same authority as granted in this section to the department.

(13) This section does not impair any rights or liability existing prior to June 19, 1947.

(14) (a) Except as provided in pars. (b) and (c), liability of a person specified in sub. (2) or s. 46.03 (18) for inpatient care and maintenance of persons under 18 years of age at community mental health centers, a county mental health complex under s. 51.08, the centers for the developmentally disabled, the Mendota Mental Health Institute, and the Winnebago Mental Health Institute or care and maintenance of persons under 18 years of age in residential, nonmedical facilities such as group homes, foster homes, subsidized guardianship homes, residential care centers for children and youth, and juvenile correctional institutions is determined in accordance with the cost−based fee established under s. 46.03 (18). The department shall bill the liable person up to any amount of liability not paid by an insurer under s. 632.89 (2) or (4m) or by other 3rd−party benefits, subject to rules that include formulas governing ability to pay promulgated by the department under s. 46.03 (18). Any liability of the patient not payable by any other person terminates when the patient reaches age 18, unless the liable person has prevented payment by any act or omission.

(b) Except as provided in par. (c) and subject to par. (cm), liability of a parent specified in sub. (2) or s. 46.03 (18) for the care and maintenance of the parent's minor child who has been placed by a court order under s. 48.355 or 48.357 in a residential, nonmedical facility such as a group home, foster home, subsidized guardianship home, or residential care center for children and youth shall be determined by the court by using the percentage standard established by the department of children and families under s. 49.22 (9) and by applying the percentage standard in the manner established by the department under par. (g).

(c) Upon request by a parent, the court may modify the amount of child support payments determined under par. (b), subject to par. (cm), if, after considering the following factors, the court finds by the greater weight of the credible evidence that the use of the percentage standard is unfair to the child or to either of the parents:

1. The needs of the child.

2. The physical, mental and emotional health needs of the child, including any costs for the child's health insurance provided by a parent.

3. The standard of living and circumstances of the parents, including the needs of each parent to support himself or herself at a level equal to or greater than that established under 42 USC 9902 (2).

4. The financial resources of the parents.

5. The earning capacity of each parent, based on each parent's education, training and work experience and based on the availability of work in or near the parent's community.

6. The need and capacity of the child for education, including higher education.

7. The age of the child.

8. The financial resources and the earning ability of the child.

9. The needs of any person, including dependent children other than the child, whom either parent is legally obligated to support.

10. The best interests of the child, including, but not limited to, the impact on the child of expenditures by the family for improvement of any conditions in the home that would facilitate the reunification of the child with the child's family, if appropriate, and the importance of a placement that is the least restrictive of the rights of the child and the parents and the most appropriate for meeting the needs of the child and the family.

11. Any other factors that the court in each case determines are relevant.

(cm) 1. Except as provided in subd. 2., if a parent who is required to pay child support under par. (b) or (c) is receiving adoption assistance under s. 48.975 for the child for whom support is ordered, the amount of the child support payments determined under par. (b) or (c) may not exceed the amount of the adoption assistance maintenance payments under s. 48.975 (3) (a). If an agreement under s. 48.975 (4) is in effect that provides for a payment of $0 under s. 48.975 (3) (a), the payment of $0 shall be considered to be an adoption assistance maintenance payment for purposes of this subdivision.

2. Subdivision 1. does not apply if, after considering the factors under par. (c) 1. to 11., the court finds by the greater weight of the credible evidence that limiting the amount of the child support payments to the amount of the adoption assistance maintenance payments under s. 48.975 (3) (a) is unfair to the child or to either of the parents.

(d) If the court finds under par. (c) that use of the percentage standard is unfair to the minor child or either of the parents, the court shall state in writing or on the record the amount of support that would be required by using the percentage standard, the amount by which the court's order deviates from that amount, its reasons for finding that use of the percentage standard is unfair to the child or the parent, its reasons for the amount of the modification and the basis for the modification.

(e) 1. An order issued under s. 48.355 (2) (b) 4., 48.357 (5m) (a) or 48.363 (2) for support determined under this subsection constitutes an assignment of all commissions, earnings, salaries, wages, pension benefits, benefits under ch. 102 or 108 and other money due or to be due in the future to the county department under s. 46.22 or 46.23 in the county where the order was entered or to the department, depending upon the placement of the child as specified by rules promulgated under subd. 5. The assignment shall be for an amount sufficient to ensure payment under the order.

2. Except as provided in subd. 3., for each payment made under the assignment, the person from whom the payer under the order receives money shall receive an amount equal to the per-

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son's necessary disbursements, not to exceed $3, which shall be deducted from the money to be paid to the payer.

3. Benefits under ch. 108 may be assigned and withheld only in the manner provided in s. 108.13 (4). Any order to withhold benefits under ch. 108 shall be for an amount certain. When money is to be withheld from these benefits, no fee may be deducted from the amount withheld and no fine may be levied for failure to withhold the money.

4. No employer may use an assignment under this paragraph as a basis for the denial of employment to a person, the discharge of an employee or any disciplinary action against an employee. An employer who denies employment or discharges or disciplines an employee in violation of this subdivision may be fined not more than $500 and may be required to make full restitution to the aggrieved person, including reinstatement and back pay. Except as provided in this subdivision, restitution shall be in accordance with s. 973.20. An aggrieved person may apply to the district attorney or to the department of workforce development for enforcement of this subdivision.

5. The department shall promulgate rules for the operation and implementation of assignments under this paragraph.

(f) If the amount of the child support determined under this subsection is greater than the cost for the care and maintenance of the minor child in the residential, nonmedical facility, the assignee under par. (e) 1. shall expend or otherwise dispose of any funds that are collected in excess of the cost of such care and maintenance in a manner that the assignee determines will serve the best interests of the minor child.

(g) For purposes of determining child support under par. (b), the department shall promulgate rules related to the application of the standard established by the department of children and families under s. 49.22 (9) to a child support obligation for the care and maintenance of a child who is placed by a court order under s. 48.355 or 48.357 in a residential, nonmedical facility. The rules shall take into account the needs of any person, including dependent children other than the child, whom either parent is legally obligated to support.

(16) The department shall delegate to county departments under ss. 51.42 and 51.437 or the local providers of care and services meeting the standards established by the department under s. 46.036, the responsibilities vested in the department under this section for collection of patient fees for services other than those provided at state facilities, those provided to children that are reimbursed under a waiver under s. 46.27 (11), 46.275, 46.278, or 46.2785, or those provided under the disabled children's long−term support program if the county departments or providers meet the conditions that the department determines are appropriate. The department may delegate to county departments under ss. 51.42 and 51.437 the responsibilities vested in the department under this section for collection of patient fees for services provided at the state facilities if the necessary conditions are met.

History: 1971 c. 125; 1971 c. 213 s. 5; 1973 c. 90 ss. 223, 223m, 560 (3); 1973 c. 198, 333; 1975 c. 39 ss. 347 to 350, 734; 1975 c. 41, 94; 1975 c. 189 s. 99 (2); 1975 c. 198, 199, 224; 1975 c. 413 s. 18; 1975 c. 428; 1975 c. 430 ss. 6, 80; 1977 c. 29, 203; 1977 c. 418 ss. 294 to 295, 924 (50), 929 (18); 1977 c. 428; 1977 c. 447 s. 206; 1977 c. 449 ss. 75, 497; 1979 c. 34; 1979 c. 102 ss. 236 (4), 237; 1979 c. 117, 221, 331; 1981 c. 20 ss. 755 to 758, 2202 (20) (i), (n); 1981 c. 81; 1983 a. 27 ss. 955m, 2202 (20); 1985 a. 29, 176, 281, 332; 1987 a. 307; 1989 a. 31, 56, 96, 212; 1991 a. 39, 221, 315, 316; 1993 a. 16, 27, 385, 437, 446, 479, 481; 1995 a. 27 ss. 2054, 2055, 9130 (4); 1995 a. 77, 224, 404; 1997 a. 3, 27, 35, 237, 308; 1999 a. 9, 103; 2001 a. 16, 59, 103; 2003 a. 33; 2005 a. 25, 264, 434; 2007 a. 20, 97; 2009 a. 28, 218; 2011 a. 260.

Cross−reference: See also s. DHS 1.01, Wis. adm. code.

Before there can be recovery by the department for care and hospitalization of an individual committed to one of its institutions by reason of lack of competency to stand trial, the nature of the confinement must be changed to a civil commitment. Conservatorship of Grams, 63 Wis. 2d 194, 216 N.W.2d 889.

Liability under sub. (2) for the cost of institutionalization is constitutional. In Matter of Guardianship of Nelson, 98 Wis. 2d 261, 296 N.W.2d 736 (1980).

Sections 46.03 (18) and 46.10 do not constitute an unlawful delegation of legislative power. In Matter of Guardianship of Klisurich, 98 Wis. 2d 274, 296 N.W.2d 742 (1980).

The statute imposing liability for costs of care and services on persons committed to state institutions did not apply to persons committed in violation of due process. Jankowski v. Milwaukee County, 104 Wis. 2d 431, 312 N.W.2d 45 (1981).

Subs. (2) and (2m) violate neither the guarantees of equal protection nor due process. Matter of Care & Maintenance of K.C., 142 Wis. 2d 906, 420 N.W.2d 337 (1988).

Sub. (3) and s. 46.03 (18) permit the department to promulgate rules that consider non−liable family members' incomes in determining a liable family member's ability to pay. In Interest of A.L.W. 153 Wis. 2d 412, 451 N.W.2d 416 (1990).

Section 46.03 (18) (b) imposes liability upon minors and parents for the costs of services, but does not give counties an automatic right of recovery; Section 46.10 governs enforcement procedure and allows courts to exercise discretion. In Matter of S.E. Trust, 159 Wis. 2d 709, 465 N.W.2d 231 (Ct. App. 1990).

The uniform fee system under ss. 46.03 (18) and 46.10 allows imputing income and, consequently, looking beyond tax returns to determine ability to pay. In Interest of Kevin C. 181 Wis. 2d 146, 510 N.W.2d 746 (Ct. App. 1993).

A circuit court may order parents to pay toward a child's support when a CHIPS child is placed in residential treatment, but the court may not assess any of the facility's education−related costs against the parents. Calumet County Department of Human Services v. Randall H. 2002 WI 126, 257 Wis. 2d 57, 653 N.W.2d 503, 01−1272.

46.13 Wassermann tests. The department may arrange with the laboratory of hygiene to secure the Wassermann test for any person confined in any state or county institution.

46.14 Reports of state institutions. (1) MONTHLY. The officer in charge of each state institution under the control of the department shall report monthly to the department, an itemized statement of all receipts and disbursements, and of the daily number of inmates, officers, teachers and employees, and of the wages paid to each.

(2) BIENNIAL. On July 1 in each even−numbered year such officer shall report to the department, covering the preceding biennial fiscal term, a summarized statement of the management of every department of the institution and of all receipts and disbursements, and such other information as may be required by the department.

46.15 Institutions subject to chapter 150. Nursing homes or hospitals under ss. 46.16, 46.17, 46.175, 46.20 and 46.205 are subject to ch. 150.

History: 1977 c. 29; 1983 a. 27.

46.16 General supervision and inspection by department. (1) GENERALLY. The department shall investigate and supervise all the charitable and curative institutions, including county infirmaries, of every county and municipality, except tuberculosis sanatoriums, and all hospitals, asylums, and institutions organized for the purpose set forth in s. 58.01, and familiarize itself with all the circumstances affecting their management and usefulness.

(3) COUNTY HOMES, POOR RELIEF. The department shall visit the county homes and ascertain the number of each sex and the number of mentally ill, mentally deficient, deaf, or blind persons supported in each, at what cost and under what circumstances affecting their health, comfort, morals, and education; collect statistics of the cost of support, and other important facts, of the poor relieved at public expense outside of county homes; and collect information as to the adequacy and efficiency of existing laws for the support and relief of the poor, and the causes of pauperism in the state.

(4) MENTAL HEALTH INSTITUTIONS. The department shall visit all places in which mentally ill persons are committed or admitted; collect statistics concerning the residents, their treatment and employment; and collect information of other facts and considerations affecting the increase or decrease of mental illness.

(5) INSPECTIONS. It shall inquire into the methods of treatment, instruction, government and management of inmates of the institutions mentioned in this section; the conduct of their trustees, managers, directors, superintendents and other officers and employees; the condition of the buildings, grounds and all other property pertaining to said institutions, and all other matters pertaining to their usefulness and management; and recommend to the officers in charge such changes and additional provisions as it deems proper.

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(6) FREQUENCY OF INSPECTIONS. It shall inspect and investigate each institution annually, or oftener; and, when directed by the governor, it shall make special investigation into its management, or anything connected therewith, and report to the governor the testimony taken, the facts found and conclusions thereon.

(7) ENFORCEMENT BY ATTORNEY GENERAL AND DISTRICT ATTORNEYS. Upon request of the department, the attorney general or the district attorney of the proper county shall aid in any investigation, inspection, hearing, or trial had under the provisions of this chapter relating to powers of the department, and shall institute and prosecute all necessary actions or proceedings for the enforcement of those provisions and for the punishment of violations of those provisions. The attorney general or district attorney so requested shall report or confer with the department regarding the request, within 30 days after the receipt of the request.

(8) OPPORTUNITY TO INSPECT. All trustees, managers, directors, superintendents and other officers or employees of such institutions shall at all times afford to every member of the department and its agents, unrestrained facility for inspection of and free access to all parts of the buildings and grounds and to all books and papers of such institutions; and shall give, either verbally or in writing, such information as the department requires; and if any person offends against this requirement the person shall forfeit not less than $10 nor more than $100.

(9) TESTIMONIAL POWER; EXPENSES. The director or any person delegated by the director may administer oaths and take testimony; and may cause depositions to be taken. All expenses of the investigations, including fees of officers and witnesses, shall be charged to the appropriation for the department.

(10) STATISTICS TO BE FURNISHED. Wherever the department is required to collect statistics, the person or agency shall furnish the required statistics on request.

History: 1989 a. 31, 107, 120; 1991 a. 316; 1993 a. 27, 209, 446, 450, 491; 1995 a. 27; 2007 a. 20.

This section does not convey authority to the department to order methods of operation, numbers, and qualifications of staff, standards for food service, and the nature of treatment and training programs in local places of confinement. Section 46.17 relates to construction and maintenance of buildings and provides no additional authority to the department under this section. 63 Atty. Gen. 267.

46.17 County buildings; establishment, approval, inspection. (1) The department shall fix reasonable standards and regulations for the design, construction, repair, and maintenance of county homes, county infirmaries, county hospitals, and mental health facilities, with respect to their adequacy and fitness for the needs which they are to serve.

(2) The selection and purchase of the site, and the plans, specifications and erection of buildings for such institutions shall be subject to the review and approval of the department. Department review shall include review of the proposed program to be carried out by the institution and the program's ability to meet the mental health service requirements of the county and the area it serves.

(3) Before any such building is occupied, and annually or oftener thereafter, the department shall inspect it with respect to safety, sanitation, adequacy and fitness, and report to the authorities conducting the institution any deficiency found, and order the necessary work to correct it or a new building. If within 6 months thereafter such work is not commenced, or not completed within a reasonable period thereafter, to the satisfaction of the department, it shall suspend the allowance of state aid for, and prohibit the use of such building until said order is complied with.

History: 1971 c. 125, 215; 1983 a. 254; 1989 a. 31; 2007 a. 20.

This section relates to construction and maintenance of buildings and provides no authority to the department applicable to the management of inmates under s. 46.16. 63 Atty. Gen. 267.

46.175 County institutions: minimum standards. Notwithstanding any other provision of law, any county currently operating an institution established under s. 49.70, 49.71, 49.72, 51.08 or 51.09 may, by resolution of the county board, designate such institution or distinct part of such institution as a facility to be operated under s. 50.02, 50.03 or 50.33. Any county institution or part thereof, where so designated, shall be required to meet those licensure standards established by the department for the type of facility designated by the county. Any designation under this section may be made only if such designation will not result in any additional cost to the state.

History: 1971 c. 215; 1975 c. 413 s. 18; 1975 c. 430 s. 80; 1995 a. 27.

46.18 Trustees of county institutions. (1) TRUSTEES. Every county home, infirmary, hospital, or similar institution, shall, subject to regulations approved by the county board, be managed by a board of trustees, electors of the county, chosen by ballot by the county board. At its annual meeting, the county board shall appoint an uneven number of trustees, from 3 to 9 at the option of the board, for staggered 3−year terms ending the first Monday in January. Any vacancy shall be filled for the unexpired term by the county board; but the chairperson of the county board may appoint a trustee to fill the vacancy until the county board acts.

(2) ELIGIBILITY. No trustee is eligible, during the term for which he or she was elected, to the office of superintendent or administrator of the institution in his or her charge.

(3) REMOVAL OF TRUSTEE. Any trustee may be removed from office for misconduct or neglect, by a two−thirds vote of the county board, on due notice in writing and hearing of the charges against the trustee.

(4) OATH OF OFFICE, BOND, EXPENSES, PAY. Each trustee shall take and file the official oath and execute and file an official bond to the county, in the amount determined by the county board, and the sufficiency of the sureties shall be approved by the chairperson of the board. Each trustee shall be reimbursed for traveling expenses necessarily incurred in the discharge of the duties, and shall receive the compensation fixed by the county board, unless otherwise provided by law.

(5) OFFICERS. The trustees shall elect a president. The superintendent of the institution shall be the secretary.

(6) MONTHLY AUDIT; SUITS. At least once each month the trustees shall audit all claims against the county incurred on behalf of said institutions, when presented to them verified under oath by the claimant or the claimant's agent and, when allowed, the president and secretary shall certify such claims to the county clerk who shall thereupon issue county orders for their payment. The trustees may sue and defend in the name of the county any cause for action involving the interest of said institution and may employ counsel for that purpose. All receipts on account of said institutions shall be paid into the county treasury within one week after receipt.

(7) FISCAL YEAR. The fiscal year of each institution shall commence July 1 and end June 30 of the following year.

(8) BOOKKEEPING. For the institutions listed in sub. (1), the department of health services shall formulate a system of keeping the books, accounts, and reports, and shall furnish forms for reports, and reports shall be made accordingly.

(9) REPORTS; ACCOUNTS. The trustees shall install a system of accounting and reporting, under the supervision of the department of health services, and the trustees shall conduct business in conformity with that system. The department of health services may from time to time audit the books, records, documents, accounts and transactions of each institution.

(10) ANNUAL REPORT. On July 1 of each year the trustees shall prepare a report for the preceding fiscal year and shall transmit a copy to the department of health services and a copy to the county clerk, and keep a copy on file at the institution. The report shall be accompanied by an inventory of all properties on hand on the last day of the fiscal year, an estimate of the receipts and expenditures for the current fiscal year, and the reports of the superintendent and visiting physician, of the institution.

(11) COUNTY APPROPRIATION. The county board shall annually appropriate for operation and maintenance of each such institution not less than the amount of state aid estimated by the trustees

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to accrue to said institution; or such lesser sum as may be estimated by the trustees to be necessary for operation and maintenance.

(12) ADDITIONAL DUTIES. The county board may provide that the trustees and superintendent of any institution shall be the trustees and superintendent of any other institution.

(13) BUILDING RESERVE FUND. The county board shall maintain as a segregated cash reserve an annual charge of 2% of the original cost of new construction or purchase or of the appraised value of existing infirmary structures and equipment. If the infirmary or any of its equipment is replaced, any net cost of replacement in excess of the original cost is subject to an annual charge of 2%. No contributions to the cash reserve in excess of the amount required under this subsection may be included in the calculation under s. 49.726 (1). The county board may from time to time appropriate from such reserve sums to be expended solely for the enlargement, modernization or replacement of such infirmary and its equipment.

(14) INCENTIVE PAYMENTS TO PATIENTS IN MENTAL HOSPITALS. The county board may authorize the board of trustees of any county mental hospital to establish a program of incentive payments so as to provide incentive and encouragement to patients by the disbursement of small weekly payments but not restricted to work allowances. Incentive payments paid to inmates shall not be included as costs in arriving at the per capita rate for state aids or charges to other counties and the state for care of inmates. In counties having a population of 500,000 or more the county board of supervisors may establish a similar program.

(15) JOINT OPERATION OF HEALTH−RELATED SERVICE. If the county board of supervisors so authorizes, the trustees of the county hospital may, together with a private or public organization or affiliation, organize, establish and participate in the governance and operation of an entity to operate, wholly or in part, any health−related service, may participate in the financing of the entity and may provide administrative and financial services or resources for its operation on terms prescribed by the county board of supervisors.

History: 1971 c. 50; 1971 c. 108 s. 6; 1979 c. 34, 110; 1981 c. 329; 1983 a. 192; 1985 a. 29; 1989 a. 31; 1991 a. 316; 1993 a. 89, 231; 1995 a. 27 ss. 2057, 9126 (19); 1999 a. 9; 2001 a. 107; 2007 a. 20 s. 9121 (6) (a).

The county board in a county having a county executive could require that 4 of 7 trustees be county supervisors. 70 Atty. Gen. 181.

The county board, not the board of trustees, determines the disposition of bequests made to an institution under this section. 73 Atty. Gen. 125.

46.19 Officers and employees of county institutions. **(1)** The trustees shall appoint a superintendent of each institution and may remove the superintendent for cause, as defined in s. 17.001, on due notice in writing and hearing of the charges against the superintendent.

(2) The trustees shall prescribe the duties of the superintendent. The superintendent shall execute and file an official bond with sureties approved by the trustees.

(3) Subject to the approval of the trustees, the superintendent shall appoint and prescribe the duties of necessary additional officers and employees of the institution, and may remove them at the superintendent's discretion, subject to the county civil service law.

(4) The salaries of the superintendent, visiting physician and all necessary additional officers and employees shall be fixed by the county board.

History: 1991 a. 316; 2001 a. 103.

46.20 Joint county institutions. **(1)** Any 2 or more counties may jointly, by majority vote of all the members of each county board, provide for a county home, infirmary, hospital, or similar institution, or juvenile detention home, which shall be established, maintained and operated pursuant to all the statutes relating to the establishment, maintenance and operation of similar institutions, respectively, by any single county whose population is less than 250,000, except as otherwise provided in this section; and in all respects, except as herein specified, each such institution shall be the county institution of each of the counties so joining.

(2) The county board of each such county shall elect 3 of its members to represent the county in a joint committee to select the site, anywhere within either of said counties, and prepare the plans and specifications of the buildings, for such institution; and said joint committee shall be vested with all functions, relative to the establishment of such institution, possessed by the county board relative to like county institutions.

(3) Upon approval of the site, plans and specifications, as provided in ss. 46.17 and 301.37, as to other institutions, the joint committee shall report to the several county boards the estimated cost of the site and buildings, and the amount thereof chargeable to each county on the basis set forth in sub. (6) (a), appending to each report a copy of the plans and specifications and all matter relating to the site and buildings. If the report is approved by each county board, the joint committee shall purchase the site and cause the buildings to be erected in accordance with the plans and specifications.

(4) The functions of the joint committee shall terminate upon completion of said buildings; and the board of trustees thereupon elected shall be composed of 2 electors from each county when 2 counties join, and of one elector from each county in all other cases; which trustees, except those elected at first elections, shall hold during terms of 4 years in the former case, and as many years as there are counties joining in the other cases. Trustees elected at first elections shall hold for terms beginning at once and so ending that the terms of one member only will expire on the first Monday of each succeeding January, beginning with January of the second year thereafter; which terms shall be allotted to the respective trustees at their first meeting. The county board of each county joining shall at an annual meeting elect a successor to any trustee from such county whose term will expire on the first Monday of the next following January. The trustees shall have the qualifications and functions and be subject to the limitations and restrictions of trustees elected pursuant to s. 46.18. They shall be reimbursed their traveling expenses necessarily incurred in the discharge of their functions, and shall receive compensation similar to that of the trustees, respectively, of like county institutions; and if the county board is empowered to fix the latter, the compensation of the joint trustees shall be fixed by joint action of the county boards.

(5) All receipts on account of such institution shall be paid into the treasury of the county in which said institution is located.

(6) Prior to the election of the trustees the joint committee, and thereafter the board of trustees, shall audit all claims against said counties on account of such institution; and all such claims shall, in the first instance, be certified to and paid by the county in which said institution is located, subject to apportionment and adjustment among the several counties as follows:

(a) All expenditures for the site, buildings, furniture, equipment, and permanent improvements, after deducting all receipts therefor except county appropriations, shall immediately upon payment be apportioned by the clerk of the county in which the institution is located and certified to the clerks of the other counties, on the basis of the percentage which the valuation of the taxable property in each county bears to the valuation of the aggregate taxable property in all said counties, as determined pursuant to s. 70.57.

(b) All expenditures for repairs, maintenance, and operation, after deducting all receipts therefor except county appropriations, shall be so apportioned for each month, on the first day of the next succeeding month, on the basis of the percentage which the aggregate cost of keeping the inmates at public charge from each such county bears to the aggregate cost of keeping the inmates at public charge from all such counties, adopting as the unit of cost the total

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average cost per capita per week of keeping all the inmates, at public charge and otherwise, in said institution.

(c) Immediately upon receipt of such certified apportionment each such other county shall pay over to the county in which said institution is located its proportion of said expense.

(7) (a) If any net profit shall arise from the operation of said institution it shall be apportioned among the several counties on the basis prescribed in sub. (6) (b); and the county in which said institution is located shall pay over to the other counties, respectively, their proportions of such profit.

(b) The board of trustees shall maintain as a segregated cash reserve the 2% charge required under s. 46.18 (13). It may from time to time appropriate from such reserve sums to be expended solely for the enlargement, modernization or replacement of such infirmary and its equipment.

(9) At any time after the organization of any such institution, any additional county or counties may join in the support and conduct thereof upon payment of such equitable proportion of the original cost of its establishment, and any joint county may withdraw upon such terms, as may be agreed upon among the county boards of the counties interested; and thereupon the board of trustees of such institution shall be reorganized, in such manner as may be determined by the county boards of the participating counties, to conform to sub. (4).

History: 1971 c. 108 s. 6; 1975 c. 413 s. 18; 1985 a. 29; 1989 a. 31; 1993 a. 27, 89; 1995 a. 27 s. 9126 (19); 1999 a. 9.

46.205 County home in adjoining county. The county board of any county may by a majority vote of all of its members provide for a home for the aged and physically disabled in an adjoining county and all bonds heretofore issued for the construction or other acquisition of such a home in any county or an adjoining county are hereby validated and the proceeds from the bonds may be used in the construction or other acquisition of a home in such county or an adjoining county. When any county shall establish such home in an adjoining county it shall be maintained and operated under the same statutes which would be applicable to the maintenance and operation of the home if it were established in such first county.

History: 1977 c. 83.

46.206 Welfare services; supervisory functions of state department. (1) (a) The department shall supervise the administration of social services, except as provided under ch. 48 and subch. III of ch. 49 and except for juvenile delinquency−related services. The department shall submit to the federal authorities state plans for the administration of social services, except as provided under ch. 48 and subch. III of ch. 49 and except for juvenile delinquency−related services, in such form and containing such information as the federal authorities require, and shall comply with all requirements prescribed to ensure their correctness.

(b) All records of the department and all county records relating to social services shall be open to inspection at all reasonable hours by authorized representatives of the federal government. Notwithstanding ss. 48.396 (2) and 938.396 (2), all county records relating to the administration of the services and public assistance shall be open to inspection at all reasonable hours by authorized representatives of the department.

(bm) All records of the department relating to aid provided under s. 49.46, 49.465, 49.468, 49.47, 49.471, or 49.77 are open to inspection at reasonable hours by members of the legislature who require the information contained in the records in pursuit of a specific state legislative purpose. All records of any county relating to aid provided under s. 49.46, 49.465, 49.468, 49.47, 49.471, or 49.77 are open to inspection at reasonable hours by members of the board of supervisors of the county or the governing body of a city, village or town located in the county who require the information contained in the records in pursuit of a specific county or municipal legislative purpose. The right to records access provided by this paragraph does not apply if access is prohibited by federal law or regulation or if this state is required to prohibit such access as a condition precedent to participation in a federal program in which this state participates.

(c) The department may at any time audit all county records relating to the administration of the services and public assistance specified in this section and may at any time conduct administrative reviews of county departments under ss. 46.215 and 46.22. If the department conducts an audit or administrative review in a county, the department shall furnish a copy of the audit or administrative review report to the chairperson of the county board of supervisors and the county clerk in a county with a single−county department or to the county boards of supervisors and the county clerks in counties with a multicounty department, and to the director of the county department under s. 46.21 or 46.22.

(2) The county administration of all laws relating to social services, except with respect to the programs under ch. 48 and subch. III of ch. 49 and to juvenile delinquency−related programs, shall be vested in the officers and agencies designated in the statutes.

History: 1973 c. 147; 1977 c. 271, 449; 1981 c. 329, 335; 1983 a. 27, 239, 487; 1985 a. 176; 1987 a. 27 s. 3202 (24); 1987 a. 403 s. 256; 1989 a. 31; 1995 a. 27, 77; 1997 a. 35; 2007 a. 20.

46.208 Relief block grants; functions of state department. (1) All records of the county or tribal governing body relating to the administration of relief funded by a relief block grant, as defined in s. 49.001 (5p), shall be open to inspection at all reasonable hours by authorized representatives of the department.

(2m) The department may at any time audit all records of the relief agency relating to the administration of relief funded by a relief block grant, as defined in s. 49.001 (5p), and may at any time conduct administrative reviews of a county department under s. 46.215, 46.22, or 46.23. The department shall furnish a copy of the county audit or administrative review report to the chairperson of the county board of supervisors and the county clerk in a county with a single−county department or to the county boards of supervisors and the county clerks in counties with a multicounty department, and to the county director of the county department under s. 46.215, 46.22, or 46.23.

History: 1985 a. 29 ss. 831, 3200 (23); 1985 a. 120, 176; 1989 a. 359; 1995 a. 27; 2009 a. 28.

46.21 Institutions and department of human services in populous counties. (1) DEFINITIONS. In this section:

(a) "Administrator" means the administrator of the county hospital who is appointed under sub. (1m) (am).

(am) "County board of supervisors" means the county board of supervisors in a county with a population of 500,000 or more.

(b) "County department of human services" means the county department of human services that is created under sub. (2m) (a).

(c) "Director" means the director of the county department of human services who is appointed under sub. (1m) (a).

(d) "Human services" means the total range of services to people, including mental illness treatment, developmental disabilities services, physical disabilities services, income maintenance, youth probation, extended supervision and parole services, alcohol and drug abuse services, services to children, youth and families, family counseling, early intervention services for children from birth to the age of 3, and manpower services. "Human services" does not include child welfare services under s. 48.48 (17) administered by the department in a county having a population of 500,000 or more.

(1m) DIRECTOR AND ADMINISTRATOR; APPOINTMENTS. (a) The county executive shall appoint under ss. 63.01 to 63.17 a director of the county department of human services. The appointment shall be made on the basis of recognized and demonstrated public interest in and knowledge of the problems of human services, and with due regard to training, experience, executive and administrative ability and efficiency, and general qualifications and fitness for performing the duties of the office. The director shall file an official oath and bond in the amount determined by the county

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board of supervisors. The county board of supervisors may create a position of deputy director of the county department of human services. The director shall be appointed by the county executive in the unclassified civil service and is subject to confirmation by the county board of supervisors under s. 59.17 (2) (bm).

(am) The county executive shall appoint under ss. 63.01 to 63.17 an administrator of the county hospital. The appointment shall be made on the basis of recognized and demonstrated public interest in and knowledge of the problems of delivery of medical care and treatment, and with due regard to training, experience, executive and administrative ability and efficiency, and general qualifications and fitness for performing the duties of the office. The administrator shall file an official oath and bond in the amount determined by the county board of supervisors. The county board of supervisors may create positions to assist the administrator. The administrator shall be appointed by the county executive in the unclassified civil service and the appointment is subject to confirmation by the county board of supervisors under s. 59.17 (2) (bm).

(b) Provisions shall be made in the organization of the office of the director and in the office of the administrator for the devolution of the director's or administrator's authority in the case of his or her temporary absence, illness or other disability to act.

(2) POWERS AND DUTIES OF THE COUNTY BOARD OF SUPERVISORS. The county board of supervisors:

(a) Shall adopt policies for the management, operation, maintenance and improvement of the county hospital; the detention center; the probation section of the children's court center; the provision and maintenance of the physical facilities for the children's court and its intake section under the supervision and operation of the judges assigned to exercise jurisdiction under chs. 48 and 938 and as provided in s. 938.06 (1); the mental health complex; the county department of human services; the central service departments; and all buildings and land used in connection with any institution under this section. The powers and duties of the county board of supervisors are policy forming only, and not administrative or executive.

(b) May make such arrangements with the University of Wisconsin−Madison Medical School or the Medical College of Wisconsin, or any other duly accredited medical colleges and medical societies for teaching and research in such institutions as in its judgment will best promote the purpose of hospitals and sanatoriums under sub. (4m).

(e) May pay a reasonable fee and the actual travel expense of persons called into consultation by the county board of supervisors as to matters within the field of human services or health care delivery.

(i) May designate an amount as and appropriate funds for a work allowance to inmates at its institutions. The county board of supervisors shall prescribe the amount of such work allowance after the director determines reasonable hours and health and other conditions, as shall be observed in connection with the employment. Such employment is not within the provisions of ss. 63.01 to 63.17 nor is it subject to ch. 102. Work allowances or wages paid to inmates shall not be included as costs in arriving at the per capita rate for state aids or charges to other counties and the state for care of inmates.

(j) May exercise approval or disapproval power over contracts and purchases of the director that are for $50,000 or more, except that the county board of supervisors may not exercise approval or disapproval power over any personal service contract or over any contract or purchase of the director that relates to community living arrangements, adult family homes, or foster homes and that was entered into pursuant to a contract under s. 46.031 (2g) or 301.031 (2g), regardless of whether the contract mentions the provider, except as provided in par. (m). This paragraph does not preclude the county board of supervisors from creating a central purchasing department for all county purchases.

(k) Shall make sufficient appropriation annually for the support, maintenance, salaries, repairs and improvements to the county department of human services and the institutions. The appropriations shall be used subject to the order of the director or administrator and as the policies adopted by the county board of supervisors provide. The director or administrator may not incur any expense or contract for new buildings, additions to present buildings or the purchase of land until the county board of supervisors has appropriated or provided for the money to defray such expense.

(L) May establish and maintain a public health and medical dispensary and conduct same as may be proper and necessary for the preservation of the public health and the prevention of disease in the county.

(m) May establish and maintain in connection with such county hospital, an emergency unit or department for the treatment, subject to such rules as may be prescribed by the county board of supervisors, of persons in the county who may meet with accidents or be suddenly afflicted with illness not contagious; provided that medical care and treatment shall only be furnished in such unit or department until such time as the patient may be safely removed to another hospital or to his or her place of abode, or regularly admitted to the county hospital. The county board of supervisors may also contract with any private hospital or nonprofit hospital within the county for the use of its facilities and for medical service to be furnished by a licensed physician or physicians to patients who require emergency medical treatment or first aid as a result of any accident, injury or sudden affliction of illness occurring within the county, except that reasonable compensation may only be authorized until the patient is regularly admitted as an inpatient or safely removed to another hospital or to his place of abode. In this paragraph, "hospital" includes, without limitation due to enumeration, public health centers, medical facilities and general, tuberculosis, mental, chronic disease and other types of hospitals and related facilities, such as laboratories, outpatient departments, nurses' home and training facilities, and central service facilities operated in connection with hospitals. In this paragraph, "hospital" does not include any hospital furnishing primarily domiciliary care. In this paragraph "nonprofit hospital" means any hospital owned and operated by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(n) May establish and maintain, in connection with the institutions and departments under the control of the county board of supervisors, a training school for nurses, to purchase and take over all property, to assume all obligations and to conduct any training school now operated in connection with those institutions or departments.

(nm) May, together with a nonstock corporation organized under ch. 181 that is a nonprofit corporation, as defined in s. 181.0103 (17), and that is organized solely for the purpose of operating duly accredited educational programs offering baccalaureate and associate degrees in nursing and allied health fields, maintain and fund the programs.

(o) May establish and maintain in connection with or separate from the county hospital a unit or department for the treatment, subject to the adopted policies of the county board of supervisors, of persons in the county who may be afflicted with contagious diseases.

(p) May, on such terms as it prescribes, make its land, buildings, facilities and supportive services available to organizations for the construction and operation of medical, hospital and health−related activities at the site of the institutions under this section.

(q) May, together with a private or public organization or affiliation, organize, establish and participate in the governance and operation of an entity to operate, wholly or in part, any health−related service, may participate in the financing of the entity and may provide administrative and financial services or resources for

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its operation on terms prescribed by the county board of supervisors.

(2m) COUNTY DEPARTMENT OF HUMAN SERVICES. (a) *Creation.* The management, operation, maintenance and improvement of human services in a county with a population of 500,000 or more is vested in a county department of human services under the jurisdiction, as to policy, of the county board of supervisors. The county department of human services shall consist of the director appointed under sub. (1m), any division administrator appointed under sub. (4) and necessary personnel appointed by the director or appointed by a division administrator and approved by the director.

(am) *Multicounty department.* A county board of supervisors may establish with one or more other counties a county department of human services on a multicounty basis. A multicounty department of human services established under this paragraph shall meet the requirements for a county department of human services under this section.

(b) *Powers and duties.* 1. The county board of supervisors may transfer the powers and duties of any human services program under the control of the county and shall transfer all of the following to the county department of human services:

a. The powers and duties of the county departments under ss. 46.215, 51.42 and 51.437, including the administration of the long−term support community options program under s. 46.27, if the county department under s. 46.215 is designated as the administering agency under s. 46.27 (3) (b) 1.

b. The administration of the long−term support community options program under s. 46.27, if the director is designated as the administering agent under s. 46.27 (3) (b) 4.

c. The management, operation, maintenance and improvement of the county mental health complex under s. 51.08.

2. a. Any reference in any law to a county department under s. 46.215, 51.42 or 51.437 applies to the county department of human services under sub. (2m) in its administration of the powers and duties of the county department to which the reference is made.

b. Any reference in any law to a county director appointed under s. 51.42 (6m) (intro.) or 51.437 (10m) (intro.) applies to the director appointed under sub. (1m) (a) in his or her administration of the powers and duties of the county director to which the reference is made.

c. Any reference in any law to the county board appointed under s. 51.42 (4) (a) 2. or 51.437 (7) (a) 2. is limited, with respect to the county department of human services under this subsection, to the powers and duties of the county board to which the reference is made.

(c) *Exchange of information.* Notwithstanding ss. 46.2895 (9), 48.78 (2) (a), 49.45 (4), 49.83, 51.30, 51.45 (14) (a), 55.22 (3), 146.82, 252.11 (7), and 253.07 (3) (c), a subunit of a county department of human services or tribal agency acting under this subsection may exchange confidential information about a client, without the informed consent of the client, with any other subunit of the same county department of human services or tribal agency, with a resource center, a care management organization, or a long−term care district, with an elder−adult−at−risk agency, an adult−at−risk agency, or any agency to which referral for investigation is made under s. 46.90 (5) (a) 1. or 55.043 (1r) (a) 1g., or with a person providing services to the client under a purchase of services contract with the county department of human services or tribal agency or with a resource center, a care management organization, or a long−term care district, if necessary to enable an employee or service provider to perform his or her duties, or to enable the county department of human services or tribal agency to coordinate the delivery of services to the client. An agency that releases information under this paragraph shall document that a request for information was received and what information was provided.

(d) *Limitation.* The powers and duties of the county department of human services under s. 46.23 do not apply to this section.

(3) POWERS AND DUTIES OF THE DIRECTOR. All of the administrative and executive powers and duties of managing, operating, maintaining and improving the county department of human services and other institutions and departments that the county board of supervisors may place under the jurisdiction of the director are vested in the director, subject to the policies and in accordance with the principles adopted by the county board of supervisors.

(3g) POWERS AND DUTIES OF THE ADMINISTRATOR. All of the administrative and executive powers and duties of managing, operating, maintaining and improving the county hospital and other institutions and departments that the county board of supervisors may place under the jurisdiction of the administrator are vested in the administrator, subject to the policies and in accordance with the principles adopted by the county board of supervisors.

(3r) OTHER POWERS AND DUTIES. The county board of supervisors may place under the jurisdiction of county entities not specified under this section the administrative and executive powers and duties of managing, operating, maintaining and improving institutions and departments or other responsibilities that are specified in sub. (2), including functions related to the central service departments and buildings and land used in connection with any institution under sub. (2).

(4) MANAGEMENT PERSONNEL. The director may appoint personnel to manage the county department of human services and the administrator may appoint personnel to manage the county hospital, in accordance with ordinances of the county board of supervisors.

(4m) HOSPITALS AND SANATORIUMS. (a) The county hospitals and county sanatoriums of a county with a population of 500,000 or more shall be devoted to hospital service and the treatment of patients upon such terms and conditions as the county board of supervisors establishes. The hospitals and sanatoriums may be utilized for instruction of medical students, physicians and nurses and for scientific and clinical research that will promote the welfare of the patients and assist the application of science to the alleviation of human suffering.

(b) Professional staff responsible for the care of patients under this subsection may submit bills for professional services under policies adopted by the county board of supervisors.

(5) ADMISSION OF INMATES FOR PAY. (a) Any resident of this state, not indigent, may be received into an infirmary to be treated, cared for, and maintained upon such terms and conditions and at such rate of pay as may be established by the county board of supervisors; but indigent and destitute persons shall have preference in admission to and care in such institution.

(b) Sections 46.10, 49.08, 49.345, 49.90, and 301.12 govern the support and maintenance of persons in any of the institutions specified in sub. (2) (a).

(6) REPORTS; EXPENDITURES. The director and the administrator shall submit annually to the county board of supervisors reports, including itemized statements of receipts and disbursements, at the times and in the manner that the county board of supervisors specifies and as are required to comply with applicable federal statutes and regulations and state statutes and rules. Disbursements shall be made in the manner that the county board of supervisors adopts, consistent with sound accounting and auditing procedure and with applicable federal statutes and regulations, state statutes and rules and requirements of the county auditor and county department of administration.

(7) APPLICABILITY. Except as provided in s. 59.79 (10), this section does not apply, with respect to the county hospital under s. 49.71 (2), if the county board of supervisors acts under s. 59.79 (10).

History: 1973 c. 136, 153, 262; 1975 c. 224; 1975 c. 413 s. 18; 1977 c. 271, 272, 449; 1979 c. 34; 1981 c. 217, 329, 391; 1983 a. 27, 239, 368, 524; 1985 a. 29 s. 3202 (23); 1985 a. 120, 176, 332; 1987 a. 399; 1989 a. 31, 112, 319; 1991 a. 274; 1993 a.

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27, 186, 213, 446; 1995 a. 27, 77, 201; 1997 a. 27, 79, 164, 237, 283; 1999 a. 9; 2005 a. 264, 388, 443; 2007 a. 20, 45; 2009 a. 28, 180; 2011 a. 32.

46.215 County department of social services in populous counties. (1) CREATION; POWERS AND DUTIES. In a county with a population of 500,000 or more the administration of welfare services, other than child welfare services under s. 48.48 (17) administered by the department and except as provided in ss. 49.155 (3g), 49.78 (1r), 49.825, and 49.826, is vested in a county department of social services under the jurisdiction of the county board of supervisors under s. 46.21 (2m) (b) 1. a. Any reference in any law to a county department of social services under this section applies to a county department under s. 46.21 (2m) in its administration under s. 46.21 (2m) of the powers and duties of the county department of social services. Except as provided in ss. 49.155 (3g), 49.78 (1r), 49.825, and 49.826, the county department of social services shall have the following functions, duties, and powers, and such other welfare functions as may be delegated to it:

(a) To make investigations relating to relief or welfare administration and admissions to state, county and other institutions upon request of court, superintendent, district attorney, veterans' service commission or any other county official.

(b) To furnish services to families or persons other than the granting of financial or material aid where such services may prevent such families or persons from becoming public charges or restore them to a condition of self−support.

(c) To make certification or referral of eligibles for state or federal works or other assistance programs, eligibility for which is based on need, when designated to perform such certification or referral services.

(d) To make investigations that relate to services under subchs. IV and V of ch. 49 upon request by the department of health services, to make investigations that relate to juvenile delinquency−related services at the request of the department of corrections, and to make investigations that relate to programs under ch. 48 and subch. III of ch. 49 upon request by the department of children and families.

(e) To maintain administrative and reporting relationships with all pertinent state departments.

(g) To administer aid to families with dependent children under s. 49.19.

(h) To administer juvenile welfare services under s. 938.57; and, if contracted to do so by the department, to accept custody and guardianship of children upon the order of a competent court, to place children for adoption and to make recommendations relating to the adoption of children under s. 48.85.

(i) To make such investigations as are provided for in s. 48.88 (2) (a) and (c), if contracted to do so by the department and if the court having jurisdiction so directs.

(j) To make payments in such manner as the department of children and families may determine for training of recipients, former recipients, and potential recipients of aid in programs established under s. 49.193, 1997 stats., and s. 49.26 (1).

(k) Certify eligibility for and issue food coupons to needy households in conformity with the federal food stamp act of 1964 as amended, and, in addition, the county department of social services may certify eligibility for and distribute surplus commodities and food stuffs.

(L) Within the limits of available state and federal funds and of county funds appropriated to match state funds, to provide social services for persons eligible for or receiving benefits under the supplementary security income program under federal Title XVI, the supplemental payments program under s. 49.77 or aid to families with dependent children under s. 49.19.

(m) To administer the long−term support community options program under s. 46.27, if the county board of supervisors designates the county department of social services as the administrative agency.

(n) To collect and transmit information to the department of administration so that a federal energy assistance payment may be made to an eligible household; to collect and transmit information to the department of administration so that weatherization services may be made available to an eligible household; to receive applications from individuals seeking low−income energy assistance under s. 16.27 (4) or weatherization services under s. 16.26; to provide information on the income eligibility for weatherization of a recipient of low−income energy assistance to an entity with which the department of administration contracts for provision of weatherization under s. 16.26; and to receive a request, determine a correct payment amount, if any, and provide payment, if any, for emergency assistance under s. 16.27 (8).

(p) To administer the child care program under s. 49.155, if the department of children and families contracts with the county department of social services to do so.

(q) If the county board of supervisors establishes an initiative to provide coordinated services under s. 59.53 (7), to participate in and administer the initiative, including entering into any written interagency agreements or contracts.

(r) If authorized under s. 46.283 (1) (a) 1., to apply to the department of health services to operate a resource center under s. 46.283 and, if the department contracts with the county under s. 46.283 (2), to operate the resource center.

(s) If authorized under s. 46.284 (1) (a) 1., to apply to the department of health services to operate a care management organization under s. 46.284 and, if the department contracts with the county under s. 46.284 (2), to operate the care management organization and, if appropriate, place funds in a risk reserve.

(t) At the discretion of the county board of supervisors, to combine with one or more other counties to establish a county department of social services on a multicounty basis. A multicounty department of social services established under this paragraph shall meet the requirements for a county department of social services under this section.

(1m) EXCHANGE OF INFORMATION; LONG−TERM CARE. Notwithstanding ss. 46.2895 (9), 48.78 (2) (a), 49.45 (4), 49.83, 51.30, 51.45 (14) (a), 55.22 (3), 146.82, 252.11 (7), 253.07 (3) (c), and 938.78 (2) (a), a subunit of a county department of social services or tribal agency acting under this section may exchange confidential information about a client, without the informed consent of the client, with any other subunit of the same county department of social services or tribal agency, with a resource center, a care management organization, or a long−term care district, with an elder−adult−at−risk agency, an adult−at−risk agency, or any agency to which referral for investigation is made under s. 46.90 (5) (a) 1. or 55.043 (1r) (a) 1g., or with a person providing services to the client under a purchase of services contract with the county department of social services or tribal agency or with a resource center, a care management organization, or a long−term care district, if necessary to enable an employee or service provider to perform his or her duties, or to enable the county department of social services or tribal agency to coordinate the delivery of services to the client. An agency that releases information under this subsection shall document that a request for information was received and what information was provided.

(1p) EXCHANGE OF INFORMATION; STATEWIDE AUTOMATED CHILD WELFARE INFORMATION SYSTEM. Notwithstanding ss. 46.2895 (9), 48.396 (1) and (2) (a), 48.78 (2) (a), 48.981 (7), 49.45 (4), 49.83, 51.30, 51.45 (14) (a), 55.22 (3), 146.82, 252.11 (7), 252.15, 253.07 (3) (c), 938.396 (1) (a) and (2), and 938.78 (2) (a), a county department under this section may enter the content of any record kept or information received by that county department into the statewide automated child welfare information system established under s. 48.47 (7g).

(2) PURCHASE OF CARE AND SERVICES. (a) 1. In order to ensure the availability of a full range of care and services, the county department of social services may contract, either directly or through the department of health services, with public or volun-

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tary agencies or others to purchase, in full or in part, care and services, except as provided under subch. III of ch. 49 and s. 301.08 (2), which the county department of social services is authorized by any statute to furnish in any manner. This care and these services may be purchased from the department of health services if the department of health services has staff to furnish the care and services. If the county department of social services has adequate staff, it may sell the care and services directly to another county or state agency.

2. In order to ensure the availability of a full range of care and services, the county department of social services may contract, either directly or through the department of children and families, with public or voluntary agencies or others to purchase, in full or in part, care and services under ch. 48 and subch. III of ch. 49 which the county department of social services is authorized to furnish. This care and these services may be purchased from the department of children and families if the department of children and families has staff to furnish the services. If the county department of social services has adequate staff, it may sell the care and services directly to another county or state agency.

3. In order to ensure the availability of a full range of care and services, the county department of social services may contract, either directly or through the department of corrections, with public or voluntary agencies or others to purchase, in full or in part, juvenile delinquency−related care and services which the county department of social services is authorized by any statute to furnish in any manner. Such services may be purchased from the department of corrections if the department of corrections has staff to furnish the services. If the county department of social services has adequate staff, it may sell the care and services directly to another county or state agency.

(b) A county department of social services may purchase development and training services from the department of health services, from the department of children and families, from the department of corrections or from other county agencies when the services are available. A county department of social services may sell the development and staff training services to another county or state agency if the county department has adequate staff to provide the services.

(c) 1. A county department of social services shall develop, under the requirements of s. 46.036, plans and contracts for care and services to be purchased, except for care and services under subch. III of ch. 49 or s. 301.08 (2). The department of health services may review the contracts and approve them if they are consistent with s. 46.036 and if state or federal funds are available for such purposes. The joint committee on finance may require the department of health services to submit the contracts to the committee for review and approval. The department of health services may not make any payments to a county for programs included in a contract under review by the committee. The department of health services shall reimburse each county for the contracts from the appropriations under s. 20.435 (7) (b) and (o), as appropriate, under s. 46.495.

2. A county department of social services shall develop, under the requirements of s. 49.34, plans and contracts for care and services to be purchased under ch. 48 and subch. III of ch. 49. The department of children and families may review the contracts and approve them if they are consistent with s. 49.34 and if state or federal funds are available for such purposes. The joint committee on finance may require the department of children and families to submit the contracts to the committee for review and approval. The department of children and families may not make any payments to a county for programs included in a contract under review by the committee.

3. A county department of social services shall develop, under the requirements of s. 301.08 (2), plans and contracts for juvenile delinquency−related care and services to be purchased. The department of corrections may review the contracts and approve them if they are consistent with s. 301.08 (2) and if state or federal funds are available for such purposes. The joint committee on finance may require the department of corrections to submit the contracts to the committee for review and approval. The department of corrections may not make any payments to a county for programs included in a contract under review by the committee. The department of corrections shall reimburse each county for the contracts from the appropriations under s. 20.410 (3) (cd) and (ko) as appropriate.

(3) PROGRAM BUDGETS. The county department of social services shall submit a final budget to the department of health services under s. 46.031 (1), to the department of corrections under s. 301.031 (1), and to the department of children and families under s. 49.325 (1), for authorized services.

History: 1971 c. 218; 1973 c. 90, 147, 333, 336; 1975 c. 39, 307, 421; 1977 c. 29, 271, 418; 1979 c. 34; 1981 c. 20 ss. 867m to 870, 2202 (20) (j); 1981 c. 81, 329; 1983 a. 27 ss. 1080, 2202 (20); 1983 a. 190 s. 7; 1983 a. 193; 1985 a. 29, 120; 1985 a. 176 ss. 322 to 332; Stats. 1985 s. 46.215; 1987 a. 27; 1987 a. 403 s. 256; 1989 a. 31, 107, 336, 359; 1991 a. 39, 274; 1993 a. 16; 1995 a. 27 ss. 2063 to 2076, 9126 (19), 9130 (4); 1995 a. 64, 77, 201, 225, 289, 352, 404, 417; 1997 a. 3, 27, 35, 252; 1999 a. 9; 2001 a. 16; 2003 a. 33; 2005 a. 25, 264, 388, 406; 2007 a. 20 ss. 848 to 856, 9121 (6) (a); 2007 a. 45, 96; 2009 a. 15, 28, 180, 334; 2011 a. 32.

Counties have authority to provide the funding of services under s. 49.51 (3) (c) [now 46.215 (2) (c)] on their own but are not required to do so when reimbursement is unavailable. 63 Atty. Gen. 584.

46.22 County social services. (1) COUNTY DEPARTMENT OF SOCIAL SERVICES. (a) *Creation.* Except as provided under s. 46.23 (3) (b), the county board of supervisors of any county with a population of less than 500,000, or the county boards of 2 or more counties, shall establish a county department of social services on a single−county or multicounty basis. The county department of social services shall consist of a county social services board, a county social services director and necessary personnel.

(am) *Funding for multicounties.* State social services funding under s. 20.435 (7) (b) is not available to counties which establish a multicounty department of social services until the counties have drafted a contractual agreement, approved by the secretary, setting forth the plans for direct sponsorship and have drafted a budget under par. (b) 1. d.

(b) *Powers and duties.* 1. The county department of social services shall have the following functions, duties and powers in accordance with the rules promulgated by the department of health services and subject to the supervision of the department of health services:

a. To maintain administrative and reporting relationships with all pertinent state departments.

b. To make investigations which relate to welfare services, except as provided under ch. 48 and subch. III of ch. 49, upon request by the department of health services.

c. Within the limits of available state and federal funds and of county funds appropriated to match state funds, to provide social services for persons eligible for or receiving supplemental security aids under Title XVI of the social security act, eligible for or receiving state supplemental payments under s. 49.77 or eligible for or receiving aid to families with dependent children under s. 49.19.

d. To submit a final budget in accordance with s. 46.031 (1) for services authorized in this section, except for the administration of and cost of aid granted under ss. 49.19 and 49.45 to 49.471.

e. To administer the long−term support community options program singly under s. 46.27 (3) (b) 1. or jointly under s. 46.27 (3) (b) 5., as designated by the county board of supervisors in a county with a single−county department of social services or the county boards of supervisors in counties with a multicounty department of social services.

g. To make certification or referral of eligibles for state or federal assistance programs under subch. V of ch. 49, eligibility for which is based on need.

i. If the county board of supervisors establishes an initiative to provide coordinated services under s. 59.53 (7), to participate

in and administer the initiative, including entering into any written interagency agreements or contracts.

j. If authorized under s. 46.283 (1) (a) 1., to apply to the department of health services to operate a resource center under s. 46.283 and, if the department contracts with the county under s. 46.283 (2), to operate the resource center.

k. If authorized under s. 46.284 (1) (a) 1., to apply to the department of health services to operate a care management organization under s. 46.284 and, if the department contracts with the county under s. 46.284 (2), to operate the care management organization and, if appropriate, place funds in a risk reserve.

2. A county department of social services shall have the following functions, duties, and powers in accordance with the rules promulgated by the department of children and families and subject to the supervision of the department of children and families:

b. To maintain administrative and reporting relationships with all pertinent state departments.

c. To make investigations as provided under ch. 48 and subch. III of ch. 49 upon request by the department of children and families.

d. To certify eligibility for and issue food coupons to needy households in conformity with 7 USC 2011 to 2036, subject to s. 49.78.

e. To make payments in such manner as the department of children and families may determine for training of recipients, former recipients and potential recipients of aid in programs established under s. 49.193, 1997 stats., and s. 49.26 (1).

f. To submit a final budget in accordance with s. 49.325 (1) for services authorized in this subdivision.

fm. To administer the child care program under s. 49.155, if the department of children and families contracts with the county department of social services to do so.

g. To make certification or referral of eligibles for state or federal works or other assistance programs under ch. 48 and subch. III of ch. 49, eligibility for which is based on need.

3. A county department of social services shall have the following functions, duties, and powers in accordance with the rules promulgated and standards established by the department of health services and subject to the supervision of the department of children and families:

a. To maintain administrative and reporting relationships with all pertinent state departments.

b. To make investigations which relate to programs under s. 49.046, 1993 stats., upon request by the department of health services.

d. To submit a final budget to the department of children and families in accordance with s. 49.325 for services authorized in this subdivision.

4m. A county department of social services shall have the following functions, duties and powers in accordance with the rules promulgated by the department of administration and subject to the supervision of the department of administration:

a. To collect and transmit information to the department of administration so that a federal energy assistance payment may be made to an eligible household.

b. To collect and transmit information to the department of administration so that weatherization services may be made available to an eligible household.

c. To receive applications from individuals seeking low−income energy assistance under s. 16.27 (4) or weatherization services under s. 16.26.

d. To provide information on the income eligibility for weatherization of a recipient of low−income energy assistance to an entity with which the department of administration contracts for provision of weatherization under s. 16.26.

e. To receive a request, determine a correct payment amount, if any, and provide payment, if any, for emergency assistance under s. 16.27 (8).

5m. A county department of social services shall have the following functions, duties and powers in accordance with the rules promulgated by the department of corrections and subject to the supervision of the department of corrections:

a. To administer juvenile delinquency−related services under s. 301.26.

b. To maintain administrative and reporting relationships with all pertinent state departments.

c. To make investigations relating to juvenile delinquency−related services upon request by the department of corrections.

d. To submit a final budget in accordance with s. 301.031 (1) for services authorized in this subdivision.

(c) *Other powers and duties.* The county board of supervisors in a county with a single−county department of social services and the county boards of supervisors in counties with a multicounty department of social services may provide that the county department of social services shall, in addition to exercising the mandatory functions, duties and powers under par. (b), have any or all of the following functions, duties and powers and such other welfare functions as may be delegated to it by the county board of supervisors in a county with a single−county department of social services and the county boards of supervisors in counties with a multicounty department of social services:

1. Make investigations in cooperation with the court, institution superintendent, district attorney and other agencies and officials operating in the welfare field regarding admissions to and release or conditional release from the following institutions:

a. 'County institutions.' Any county infirmary, home, asylum or hospital for mental diseases, tuberculosis or otherwise.

b. 'State institutions.' The Mendota Mental Health Institute, the Winnebago Mental Health Institute, centers for the developmentally disabled, and Type 1 juvenile correctional facilities, as defined in s. 938.02 (19).

c. 'Other institution.' University of Wisconsin Hospitals and Clinics and secured residential care centers for children and youth, as defined in s. 938.02 (15g).

2. Subdivision 1. does not authorize the county department of social services to make investigations regarding admission to or release from state prisons under s. 302.01, county houses of correction, jails, detention homes or reforestation camps.

4. Make investigations which are provided for under s. 48.88 (2) (a) and (c), if the court having jurisdiction so directs.

5. Perform the duties and functions prescribed in ss. 48.08 and 938.08 when requested to do so by the judge assigned to exercise jurisdiction under chs. 48 and 938.

6. To furnish services to families or persons other than the granting of financial or material aid where such services may prevent such families or persons from becoming public charges or restore them to a condition of self−support.

7. To certify eligibility for and distribute surplus commodities and foodstuffs.

8. To administer child welfare services including services to juveniles who are delinquent and to children who have an intellectual disability or are dependent, neglected or nonmarital, and to other children who are in need of such services. In administering child welfare services the county department of social services shall be governed by the following:

a. The county department of social services may avail itself of the cooperation of any individual or private agency or organization interested in the social welfare of children in the county with a single−county department of social services or in the counties with a multicounty department of social services.

b. The county department of social services shall administer and expend such amounts as may be necessary out of any moneys which may be appropriated for child welfare purposes by the county board of supervisors in a county with a single−county department of social services or by the county boards of supervi-

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sors in counties with a multicounty department of social services or donated by individuals or private organizations.

c. Upon the request of the judge assigned to exercise jurisdiction under chs. 48 and 938, the county department of social services shall investigate the home environment and other factors in the life of any child brought to the attention of the court for alleged dependency or neglect, or any juvenile brought to the attention of the court for alleged delinquency, and to assume guidance and supervision of any juvenile placed on probation by that court.

d. Upon the request of the department of corrections and under its direction, the county department of social services shall assume the oversight of any juvenile under parole from or otherwise subject to the supervision of any state institution.

e. The county department of social services shall have the powers and duties specified in ss. 48.57 and 938.57.

f. The county department of social services shall implement the statewide automated child welfare information system established under s. 48.47 (7g).

9. The authority given to the county department of social services under subd. 8. to function as an authorized child welfare agency shall not be interpreted as excluding agencies licensed under s. 48.60 from also exercising such functions.

(d) *Merit system; records.* The county department of social services is subject to s. 49.78 (4) to (7). The county department of social services and all county officers and employees performing any duties in connection with the administration of aid to families with dependent children shall observe all rules promulgated by the department of children and families under s. 49.78 (4) and shall keep records and furnish reports as the department of children and families requires in relation to their performance of such duties.

(dm) *Exchange of information; long−term care.* Notwithstanding ss. 46.2895 (9), 48.78 (2) (a), 49.45 (4), 49.83, 51.30, 51.45 (14) (a), 55.22 (3), 146.82, 252.11 (7), 253.07 (3) (c), and 938.78 (2) (a), a subunit of a county department of social services or tribal agency acting under this subsection may exchange confidential information about a client, without the informed consent of the client, with any other subunit of the same county department of social services or tribal agency, with a resource center, a care management organization, or a long−term care district, with an elder−adult−at−risk agency, an adult−at−risk agency, or any agency to which referral for investigation is made under s. 46.90 (5) (a) 1. or 55.043 (1r) (a) 1g., or with a person providing services to the client under a purchase of services contract with the county department of social services or tribal agency or with a resource center, a care management organization, or a long−term care district, if necessary to enable an employee or service provider to perform his or her duties, or to enable the county department of social services or tribal agency to coordinate the delivery of services to the client. An agency that releases information under this paragraph shall document that a request for information was received and what information was provided.

(dp) *Exchange of information; statewide automated child welfare information system.* Notwithstanding ss. 46.2895 (9), 48.396 (1) and (2) (a), 48.78 (2) (a), 48.981 (7), 49.45 (4), 49.83, 51.30, 51.45 (14) (a), 55.22 (3), 146.82, 252.11 (7), 252.15, 253.07 (3) (c), 938.396 (1) (a) and (2), and 938.78 (2) (a), a county department under this section may enter the content of any record kept or information received by that county department into the statewide automated child welfare information system established under s. 48.47 (7g).

(e) *Purchase of care and services.* 1. In order to ensure the availability of a full range of care and services, a county department of social services may contract, either directly or through the department of health services, the department of children and families, or the department of corrections, with public or voluntary agencies or others to purchase, in full or in part, care and services which the county department of social services is authorized by any statute to furnish in any manner. The services may be purchased from the department of health services, the department of children and families, or the department of corrections if the department of health services, the department of children and families, or the department of corrections has staff to furnish the services. The county department of social services, if it has adequate staff, may sell the care and services directly to another county or state agency.

2. A county department of social services may purchase development and training services from the department of health services, the department of children and families, or the department of corrections or from other county agencies if the services are available or sell the development and staff training services to another county or state agency if the county department of social services has adequate staff to provide the services.

3. a. A county department of social services shall develop, under the requirements of s. 46.036, plans and contracts for care and services, except under ch. 48, subch. III of ch. 49, and s. 301.08 (2), to be purchased. The department of health services may review the contracts and approve them if they are consistent with s. 46.036 and to the extent that state or federal funds are available for such purposes. The joint committee on finance may require the department of health services to submit the contracts to the committee for review and approval. The department of health services may not make any payments to a county for programs included in the contract that is under review by the committee. The department of health services shall reimburse each county for the contracts from the appropriations under s. 20.435 (7) (b) and (o) according to s. 46.495.

b. A county department of social services shall develop, under the requirements of s. 49.34, plans and contracts for care and services under ch. 48 and subch. III of ch. 49 to be purchased. The department of children and families may review the contracts and approve them if they are consistent with s. 49.34 and to the extent that state or federal funds are available for such purposes. The joint committee on finance may require the department of children and families to submit the contracts to the committee for review and approval. The department of children and families may not make any payments to a county for programs included in the contract that is under review by the committee.

c. A county department of social services shall develop, under the requirements of s. 301.08 (2), plans and contracts for juvenile delinquency−related care and services to be purchased. The department of corrections may review the contracts and approve them if they are consistent with s. 301.08 (2) and to the extent that state or federal funds are available for such purposes. The joint committee on finance may require the department of corrections to submit the contracts to the committee for review and approval. The department of corrections may not make any payments to a county for programs included in the contract that is under review by the committee. The department of corrections shall reimburse each county for the contracts from the appropriations under s. 20.410 (3) (cd) and (ko) as appropriate.

(1m) COUNTY SOCIAL SERVICES BOARD. (a) *Composition.* 1. In any single−county department of social services, the county social services board shall consist of 3, 5 or 7 residents of the county, as determined by the county board of supervisors.

2. In any multicounty department of social services, the county social services board shall be composed of 11 members plus 3 additional members for each county in a multicounty department of social services in excess of 2.

(b) *Appointment, election.* The members of the county social services board shall be elected or appointed either from members of the county board of supervisors or from the county at large, or both, on the basis of knowledge and interest in public welfare as follows:

1. In a single−county department of social services in a county without a county executive or county administrator, the county board of supervisors shall elect, or the chairperson of the county

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board of supervisors under rules of the county board of supervisors shall appoint, the county social services board.

2. In any county with a county executive or county administrator which has established a single−county department of social services, the county executive or county administrator shall appoint, subject to confirmation by the county board of supervisors, the county social services board, which shall be only a policy−making body determining the broad outlines and principles governing the administration of programs under this section.

3. The county boards of supervisors of the counties in a multicounty department of social services shall make appointments in a manner acceptable to the counties in a multicounty department of social services, but each of the counties in a multicounty department of social services may appoint to the county social services board not more than 3 members from its county board of supervisors.

(c) *Compensation; terms; removal.* The members of the county social services board shall receive compensation and hold office for a term as fixed by the county board of supervisors in a county with a single−county department or by the county boards of supervisors in counties with a multicounty department, except as follows:

1. A member of the county social services board appointed under par. (b) 2. may be removed by the county executive or county administrator for cause.

2. The term of office of any member of the county social services board appointed under par. (b) 3. shall be 3 years, but of the members first appointed, at least one−third shall be appointed for one year; at least one−third for 2 years; and the remainder for 3 years. Vacancies shall be filled for the residue of the unexpired term in the manner that original appointments are made. Any county social services board member may be removed from office for cause by a two−thirds vote of the appointing authority, on due notice in writing and hearing of the charges against the member.

(2) POWERS AND DUTIES OF COUNTY SOCIAL SERVICES BOARD IN CERTAIN COUNTIES. A county social services board elected or appointed under sub. (1m) (b) 1. and 3. shall:

(a) At the first meeting of the county social services board, elect from their number, a chairperson, a secretary and other officers as deemed necessary. Vacancies in these offices shall be filled for the unexpired terms. The chairperson presides at all meetings when present, and countersigns all actions taken by the county social services board. In case of the absence of the chairperson for any meeting the members present shall choose a temporary chairperson.

(b) Appoint the county social services director under sub. (3) subject to s. 49.78 (4) to (7) and the rules promulgated thereunder and subject to the approval of the county board of supervisors in a county with a single−county department of social services or the county boards of supervisors in counties with a multicounty department of social services.

(c) Supervise the working of the county department of social services and shall be a policy−making body determining the broad outlines and principles governing the administration of the functions, duties and powers assigned to the county department of social services under sub. (1) (b) and (c).

(d) As it determines necessary, appoint committees consisting of residents of the county, which shall advise the county social services board on any matters for which they are created. Members of such committees shall serve without compensation.

(e) Consult with the county social services director appointed under par. (b) concerning the preparation of the annual budget, the annual report of the operation of the county department of social services and the appointment of necessary personnel.

(f) Recommend program priorities, identify unmet service needs and prepare short−term and long−term plans and budgets for meeting such priorities and needs.

(g) Determine, subject to the approval of the county board of supervisors in a county with a single−county department of social services or the county boards of supervisors in counties with a multicounty department of social services and with the advice of the county social services director appointed under par. (b), whether services are to be provided directly by the county department of social services or contracted for with other providers and make such contracts. The county board of supervisors in a county with a single−county department of social services or the county boards of supervisors in counties with a multicounty department of social services may elect to require the approval of any such contract by the county board of supervisors in a county with a single−county department of social services or the county boards of supervisors in counties with a multicounty department of social services.

(h) Develop county social services board operating procedures.

(i) Comply with state requirements.

(j) Assist in arranging cooperative working agreements with persons providing health, education, vocational or welfare services related to services provided under this section.

(k) Establish priorities in addition to those mandated by the department.

(L) Evaluate services delivery.

(m) Cooperate to the extent feasible with the school board, health planning agencies, law enforcement agencies, and other human service agencies, committees and planning bodies in the geographic area served by the county department of social services.

(n) Assume the powers and duties of the county department of social services under sub. (1) (b) to (e).

(2g) POWERS AND DUTIES OF COUNTY SOCIAL SERVICES BOARD IN CERTAIN COUNTIES WITH A COUNTY EXECUTIVE OR COUNTY ADMINISTRATOR. A county social services board appointed under sub. (1m) (b) 2. shall:

(a) At the first meeting of the county social services board, elect from their number, a chairperson, a secretary and other officers as deemed necessary. Vacancies in these offices shall be filled for the unexpired terms. The chairperson presides at all meetings when present, and countersigns all actions taken by the county social services board. In case of the absence of the chairperson for any meeting the members present shall choose a temporary chairperson.

(b) Appoint committees consisting of residents of the county to advise the county social services board as it deems necessary. Members of such committees shall serve without compensation.

(c) Recommend program priorities, identify unmet service needs and prepare short−term and long−term plans and budgets for meeting such priorities and needs.

(d) Prepare, with the assistance of the county social services director under sub. (3m) (b) 5., a proposed budget for submission to the county executive or county administrator, a final budget for submission to the department of health services in accordance with s. 46.031 (1) for authorized services, except services under ch. 48, subch. III of ch. 49, or s. 301.08 (2), a final budget for submission to the department of children and families in accordance with s. 49.325 for authorized services under ch. 48 and subch. III of ch. 49, and a final budget for submission to the department of corrections in accordance with s. 301.031 (1) for authorized juvenile delinquency−related services.

(e) Advise the county social services director under sub. (3m) (b) 3. regarding purchasing and providing services and the selection of purchase of service vendors, and make recommendations to the county executive or county administrator regarding modifications in such purchasing, providing and selection.

(f) Develop county social services board operating procedures.

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(g) Comply with state requirements.

(h) Assist in arranging cooperative working agreements with persons providing health, education, vocational or welfare services related to services provided under this section.

(3) COUNTY SOCIAL SERVICES DIRECTOR IN CERTAIN COUNTIES. A county social services director appointed under sub. (2) (b) shall:

(a) Serve as the executive and administrative officer of the county department of social services.

(b) In consultation and agreement with the county social services board under sub. (2), prepare and submit to the county board of supervisors an annual budget of all funds necessary for the county department of social services, and prepare annually a full report of the operations and administration of the county department of social services. The county board of supervisors shall review and approve, reject or revise by majority vote the annual budget of the county department of social services.

(c) Recommend to the county social services board under sub. (2) the appointment of employees necessary to administer the functions of the county department of social services.

(d) Make recommendations to the county board of supervisors in a county with a single−county department of social services or the county boards of supervisors in counties with a multicounty department of social services who shall fix the salary of such employees.

(f) Comply with state requirements.

(g) Cooperate to the extent feasible with the school board, health planning agencies, law enforcement agencies, and other human service agencies, committees and planning bodies in the geographic area served by the county department of social services.

(3m) COUNTY SOCIAL SERVICES DIRECTOR IN CERTAIN COUNTIES WITH A COUNTY EXECUTIVE OR COUNTY ADMINISTRATOR. (a) In any county with a county executive or a county administrator that has established a single−county department of social services, the county executive or county administrator, subject to s. 49.78 (4) to (7) and the rules promulgated thereunder, shall appoint and supervise the county social services director. The appointment is subject to the confirmation of the county board of supervisors unless the county board of supervisors, by ordinance, elects to waive confirmation or unless the appointment is made under a civil service system competitive examination procedure established under s. 59.52 (8) or ch. 63.

(b) A county social services director appointed under par. (a) shall:

1. Supervise and administer any program established by the county department of social services.

1m. Supervise the operations and administration of the county department of social services.

2. Determine administrative and program procedures.

3. Determine, subject to the approval of the county board of supervisors and with the advice of the county social services board under sub. (2g) (e), whether services are to be provided directly by the county department of social services or contracted for with other providers and make such contracts. The county board of supervisors may elect to require the approval of any such contract by the county board of supervisors.

5. Assist the county social services board in the preparation of the budgets required under sub. (2g) (d).

6. Make recommendations to the county executive or county administrator regarding modifications to the proposed budget prepared by the county social services board under sub. (2g) (d).

7. Evaluate service delivery.

9. Establish salaries and personnel policies of the county department of social services subject to approval of the county executive or county administrator and county board of supervisors.

10. Perform other functions necessary to manage, operate, maintain and improve programs.

11. Comply with state requirements.

12. Establish priorities in addition to those mandated by the department of health services, by the department of children and families, or by the department of corrections.

13. Determine the number and location of outstations when appropriate to meet service demands.

15. Prepare annually a full report of the operations and administration of the county department of social services.

16. Cooperate to the extent feasible with the school board, health planning agencies, law enforcement agencies, and other human service agencies, committees and planning bodies in the geographic area served by the county department of social services.

17. In consultation with the county social services board under sub. (2g), prepare:

a. Intermediate−range plans and budget.

b. Such other reports as are required by the secretary of health services, the secretary of children and families, the secretary of corrections, and the county board of supervisors.

(4) CONSTRUCTION. (a) Any reference in any law to a county department of social services under this section applies to a county department under s. 46.23 in its administration of the powers and duties of the county department of social services under s. 46.23 (3) (b).

(b) 1. Any reference in any law to a county social services director appointed under sub. (2) (b) applies to the director of a county department appointed under s. 46.23 (5) (f) in his or her administration of the powers and duties of that county social services director.

2. Any reference in any law to a county social services director appointed under sub. (3m) (a) applies to the director of a county department appointed under s. 46.23 (6m) (intro.) in his or her administration of the powers and duties of that county social services director.

(c) 1. Any reference in any law to a county social services board appointed under sub. (1m) (b) 1. and 3. applies to the board of a county department appointed under s. 46.23 (4) (b) 1. in its administration of the powers and duties of that county social services board.

2. Any reference in any law to a county social services board appointed under sub. (1m) (b) 2. applies to the board of a county department appointed under s. 46.23 (4) (b) 2. in its administration of the powers and duties of that county social services board.

History: 1971 c. 164, 218; 1973 c. 90 ss. 226, 560 (3); 1973 c. 147, 333; 1975 c. 39; 1975 c. 189 s. 99 (1), (2); 1975 c. 224 ss. 52p, 146m; 1975 c. 307, 422; 1975 c. 430 s. 78; 1977 c. 29 ss. 560, 1656 (18); 1977 c. 83 s. 26; 1977 c. 418, 449; 1979 c. 34, 221; 1981 c. 20 ss. 759 to 763m, 2202 (20) (j); 1981 c. 329; 1981 c. 390 s. 252; 1983 a. 27 s. 2202 (20); 1983 a. 190 s. 7; 1983 a. 192, 193, 447; 1985 a. 29, 120; 1985 a. 176 ss. 28, 30, 59 to 105; 1985 a. 332; 1987 a. 5, 27; 1989 a. 31, 107, 336, 359; 1991 a. 39, 274; 1993 a. 16; 1995 a. 27 ss. 2077 to 2111, 9126 (19), 9130 (4); 1995 a. 64, 77, 201, 289, 352, 404, 417; 1997 a. 3, 27, 35, 252; 1999 a. 9, 83; 2001 a. 16, 103; 2003 a. 33; 2005 a. 25, 264, 344, 388, 406; 2007 a. 20 ss. 857 to 877, 9121 (6) (a); 2007 a. 45, 96; 2009 a. 28, 180, 334; 2011 a. 32, 126.

Members of a social services board in a county with a county executive or a county administrator may be granted access to child abuse and neglect files under s. 48.981 if access is necessary for the performance of their statutory duties. 79 Atty. Gen. 212.

46.225 Indigency determinations. If applicable under s. 977.07 (1), a county department under s. 46.21, 46.22 or 46.23 shall make indigency determinations.

History: 1979 c. 356; 1985 a. 176.

46.23 County department of human services. (1) INTENT. The intent of this section is to enable and encourage counties to develop and make available to all citizens of this state a comprehensive range of human services in an integrated and efficient manner; to utilize and expand existing governmental, voluntary and private community resources for the provision of services to prevent or ameliorate social, mental and physical disabilities; to provide for the integration of administration of those

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services and facilities organized under this section through the establishment of a unified administrative structure and of a unified policy−making body; and to authorize state consultative services, reviews and establishments of standards and grants−in−aid for such programs of services and facilities.

(2) DEFINITIONS. Except as otherwise provided, in this section:

(a) "Human services" means the total range of services to people including, but not limited to, health care, mental illness treatment, developmental disabilities services, income maintenance, probation, extended supervision and parole services, alcohol and drug abuse services, services to children, youth and aging, family counseling, special education services, and manpower services.

(b) "Program" means community services and facilities for the prevention and amelioration of social, mental and physical disabilities.

(3) COUNTY DEPARTMENT OF HUMAN SERVICES. (a) *Creation.* Upon approval by the secretary of health services, by the secretary of corrections, and by the secretary of children and families of a feasibility study and a program implementation plan, the county board of supervisors of any county with a population of less than 500,000, or the county boards of supervisors of 2 or more counties, may establish by resolution a county department of human services on a single−county or multicounty basis to provide the services required under this section. The county department of human services shall consist of the county human services board, the county human services director and necessary personnel.

(am) *Delivery of services plan.* 1. The county department of human services shall prepare a local plan for the delivery of human services which includes an inventory of all existing resources, identifies needed new resources and services and contains a plan for meeting the health, mental health and social needs of individuals and families. The plan shall be based on an annual need survey of the prevalence and incidence of the various disabilities within the geographic boundaries of the county department of human services. The plan shall also include the establishment of long−range goals and intermediate−range plans, detailing priorities and estimated costs and providing for coordination of local services and continuity of care.

2. Prior to adoption of the plan by the county department of human services under subd. 1., it shall hold a public hearing on the plan. As far as practicable, the county department of human services shall annually publish or otherwise circulate notice of its proposed plan and afford interested persons opportunity to submit data or views orally or in writing.

3. The county board of supervisors in a county with a single−county department of human services and the county boards of supervisors in counties with a multicounty department of human services shall review and approve the overall plan, program and budgets proposed by the county department of human services.

4. No funds may be allocated to any multicounty department of human services until the counties have drawn up a detailed contractual agreement, approved by the secretary of health services, by the secretary of corrections, and by the secretary of children and families, setting forth the plan for joint sponsorship.

(b) *Transfer of other county powers and duties.* 1. If a county department of human services is established under par. (a), the county board of supervisors in a county with a single−county department of human services or the county boards of supervisors in counties with a multicounty department of human services shall transfer the powers and duties of the county departments under ss. 46.22 and 51.42 to the county department of human services. The county board of supervisors in a county with a single−county department of human services and the county boards of supervisors in counties with a multicounty department of human services may transfer the powers and duties of the following to the county department of human services established under par. (a):

a. A county unit created by the county board of supervisors exercising its authority under s. 59.03 (1).

am. A county department under s. 51.437.

b. A local board of health for a local health department, as defined in s. 250.01 (4) (a) 1. or 2. or (c).

bm. A local health officer for a local health department, as defined in s. 250.01 (4) (a) 1. or 2. or (c)

c. A local health department, as defined in s. 250.01 (4) (a) 1. or 2. or (c).

d. Any other human services program under county control.

2. a. Except as provided in s. 46.21 (2m) (b) 2. a., any reference in any law to a county department under s. 46.22, 51.42 or 51.437 applies to the county department of human services under this section in its administration of the powers and duties of the county department to which the reference is made.

b. Any reference in any law to a county director appointed under s. 46.22 (2) (b), 51.42 (5) (a) 4. or 51.437 (9) (a) applies to the county human services director appointed under sub. (5) (f) in his or her administration of the powers and duties of the county director to which the reference is made. Except as provided in s. 46.21 (2m) (b) 2. b., any reference in any law to a county director appointed under s. 46.22 (3m) (a), 51.42 (6m) (intro.) or 51.437 (10m) (intro.) applies to the county human services director appointed under sub. (6m) (intro.) in his or her administration of the powers and duties of the county director to which the reference is made.

c. Any reference to a county board appointed under s. 46.22 (1m) (b) 1., 51.42 (4) (a) 1. or 51.437 (7) (a) 1. applies to the county human services board appointed under sub. (4) (b) 1. in its administration of the powers and duties of the county board to which the reference is made. Except as provided in s. 46.21 (2m) (b) 2. c., any reference in any law to the county board appointed under s. 46.22 (1m) (b) 2., 51.42 (4) (a) 2. or 51.437 (7) (a) 2. applies to the county human services board appointed under sub. (4) (b) 2. in its administration of the powers and duties of the county board to which the reference is made.

d. The powers and duties of the county department of human services under s. 46.21 (2m) do not apply to this section.

(bm) *Long−term support community options program.* If the county board of supervisors in a county with a single−county department of human services or the county boards of supervisors in counties with a multicounty department of human services designate the county department of human services as the administrative agency under s. 46.27 (3) (b) 3., the county department of human services shall administer the long−term support community options program under s. 46.27.

(d) *Employee protections.* All persons employed by a county or by the state, whose functions are assumed by a county department of human services shall continue as employees of the county department of human services without loss in seniority, status or benefits, subject to the merit or civil service system.

(e) *Exchange of information; long−term care.* Notwithstanding ss. 46.2895 (9), 48.78 (2) (a), 49.45 (4), 49.83, 51.30, 51.45 (14) (a), 55.22 (3), 146.82, 252.11 (7), 253.07 (3) (c), and 938.78 (2) (a), a subunit of a county department of human services or tribal agency acting under this section may exchange confidential information about a client, without the informed consent of the client, with any other subunit of the same county department of human services or tribal agency, with a resource center, a care management organization, or a long−term care district, with an elder−adult−at−risk agency, an adult−at−risk agency, or any agency to which referral for investigation is made under s. 46.90 (5) (a) 1. or 55.043 (1r) (a) 1g., or with a person providing services to the client under a purchase of services contract with the county department of human services or tribal agency or with a resource center, a care management organization, or a long−term care district, if necessary to enable an employee or service provider to perform his or her duties, or to enable the county department of

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human services or tribal agency to coordinate the delivery of services to the client. An agency that releases information under this paragraph shall document that a request for information was received and what information was provided.

(ed) *Exchange of information; statewide automated child welfare information system.* Notwithstanding ss. 46.2895 (9), 48.396 (1) and (2) (a), 48.78 (2) (a), 48.981 (7), 49.45 (4), 49.83, 51.30, 51.45 (14) (a), 55.22 (3), 146.82, 252.11 (7), 252.15, 253.07 (3) (c), 938.396 (1) (a) and (2), and 938.78 (2) (a), a county department under this section may enter the content of any record kept or information received by that county department into the statewide automated child welfare information system established under s. 48.47 (7g).

(4) COUNTY HUMAN SERVICES BOARD. (a) *Composition.* 1. In any single−county or multicounty department of human services, the county human services board shall be composed of not less than 7 nor more than 15 persons of recognized ability and demonstrated interest in human services. Not less than one−third nor more than two−thirds of the county human services board members may be members of the county board of supervisors. At least one member appointed to a county human services board shall be an individual who receives or has received human services or shall be a family member of such an individual. The remainder of the county human services board members shall be consumers of services or citizens−at−large. No public or private provider of services may be appointed to the county human services board.

2. In a multicounty department of human services, the county human services board shall be constituted so that the representation shall be as equal as possible among the participating counties.

(b) *Appointment.* 1. Except as provided under subd. 2., the county board of supervisors in a county which has established a single−county department of human services or the county boards of supervisors in counties which have established a multicounty department of human services shall, before qualification under this section, appoint a governing and policy−making board to be known as the county human services board.

2. In any county with a county executive or county administrator and which has established a single−county department of human services, the county executive or county administrator shall appoint, subject to confirmation by the county board of supervisors, the county human services board, which shall be only a policy−making body determining the broad outlines and principles governing the administration of programs under this section. A member of a county human services board appointed under this subdivision may be removed by the county executive or county administrator for cause or, on due notice in writing, if the member when appointed was a member of the county board of supervisors and was not reelected to that office.

(c) *Terms.* Members of a county human services board 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. Vacancies shall be filled in the same manner as the original appointments. A county human services board member appointed under par. (b) 1. may be removed from office for the following reasons:

1. For cause, by a two−thirds vote of each county board of supervisors participating in the appointment, on due notice in writing and hearing of the charges against the member.

2. If the member when appointed was a member of the county board of supervisors and was not reelected to that office, on due notice in writing.

(5) POWERS AND DUTIES OF COUNTY HUMAN SERVICES BOARD IN CERTAIN COUNTIES. A county human services board appointed under sub. (4) (b) 1.:

(a) 1. Shall determine administrative and program policies, except as provided under ch. 48 and subch. III of ch. 49 and except for juvenile delinquency−related policies, within limits established by the department of health services. Policy decisions, except as provided under ch. 48 and subch. III of ch. 49 and except for juvenile delinquency−related policies, not reserved by statute for the department of health services may be delegated by the secretary to the county human services board.

2. Shall determine administrative and program policies under ch. 48 and subch. III of ch. 49 within limits established by the department of children and families. Policy decisions under ch. 48 and subch. III of ch. 49 not reserved by statute for the department of children and families may be delegated by the secretary of children and families to the county human services board.

3. Shall determine juvenile delinquency−related administrative programs and policies within limits established by the department of corrections. Juvenile delinquency−related policy decisions not reserved by statute for the department of corrections may be delegated by the secretary of corrections to the county human services board.

(b) Shall establish priorities in addition to those mandated by the department of health services, the department of corrections, or the department of children and families.

(c) 1. Shall determine whether state mandated services, except for services under ch. 48 and subch. III of ch. 49 and juvenile delinquency−related services, are provided or purchased or contracted for with local providers, and monitor the performance of such contracts. Purchase of services contracts shall be subject to the conditions specified in s. 46.036.

2. Shall determine whether state mandated services under ch. 48 and subch. III of ch. 49 are provided or purchased or contracted for with local providers, and monitor the performance of such contracts. Purchase of services contracts shall be subject to the conditions specified in s. 49.34.

3. Shall determine whether state mandated juvenile delinquency−related services are provided or purchased or contracted for with local providers, and monitor the performance of such contracts. Purchase of service contracts shall be subject to the conditions specified in s. 301.031.

(d) Shall determine, subject to the approval of the county board of supervisors in a county with a single−county department of human services or the county boards of supervisors in counties with a multicounty department of human services and with the advice of the county human services director appointed under par. (f), whether services are to be provided directly by the county department of human services or contracted for with other providers and make such contracts. The county board of supervisors in a county with a single−county department of human services or the county boards of supervisors in counties with a multicounty department of human services may elect to require the approval of any such contract by the county board of supervisors in a county with a single−county department of human services or the county boards of supervisors in counties with a multicounty department of human services.

(e) Shall represent human service agencies, professionals and consumers of services in negotiations with the state and federal governments.

(f) Shall appoint a county human services director on the basis of recognized and demonstrated interest in and knowledge of human services problems, with due regard to training, experience, executive and administrative ability and general qualification and fitness for the performance of the duties of the county human services director. The appointment is subject to the personnel policies and procedures established by each county board of supervisors which participated in the appointment of the county human services board.

(g) Shall appoint advisory committees for the purpose of receiving community, professional or technical information concerning particular policy considerations.

(h) Shall determine the number and location of outstations when appropriate to meet service demands.

(i) May recommend the removal of the county human services director for cause to each county board of supervisors which participated in the appointment of the county human services board,

and each such county board of supervisors may remove the county human services director for cause by a two−thirds vote of each such county, on due notice in writing and hearing of the charges against the county human services director.

(j) Shall develop county human services board operating procedures.

(k) Shall oversee the operation of one or more service delivery programs.

(L) Shall evaluate services delivery.

(m) May perform such other general functions necessary to administer the program.

(n) 1. Shall submit a final budget in accordance with s. 46.031 (1) for authorized services, except for services under ch. 48 and subch. III of ch. 49 and juvenile delinquency−related services. Notwithstanding the categorization of or limits specified for funds allocated under s. 46.495 or 51.423 (2), with the approval of the department of health services the county human services board may expend these funds consistent with any service provided under s. 46.495 or 51.42.

2. Shall submit a final budget in accordance with s. 49.325 (1) for authorized services under ch. 48 and subch. III of ch. 49. Notwithstanding the categorization of or limits specified for funds allocated under s. 48.569, with the approval of the department of children and families the county human services board may expend these funds consistent with any service provided under s. 48.569.

3. Shall submit a final budget in accordance with s. 301.031 (1) for authorized juvenile delinquency−related services.

(o) Shall cooperate to the extent feasible with the school board, health planning agencies, law enforcement agencies, and other human service agencies, committees and planning bodies in the geographic area served by the county human services board.

(p) Shall comply with state requirements.

(5m) POWERS AND DUTIES OF COUNTY HUMAN SERVICES BOARD IN CERTAIN COUNTIES WITH A COUNTY EXECUTIVE OR COUNTY ADMINISTRATOR. A county human services board appointed under sub. (4) (b) 2. shall:

(a) Appoint committees consisting of residents of the county to advise the county human services board as it deems necessary.

(b) Recommend program priorities and policies, identify unmet service needs and prepare short−term and long−term plans and budgets for meeting such priorities and needs.

(c) Prepare, with the assistance of the county human services director under sub. (6m) (e), a proposed budget for submission to the county executive or county administrator, a final budget for submission to the department of health services in accordance with s. 46.031 (1) for authorized services, except services under ch. 48 and subch. III of ch. 49 and juvenile delinquency−related services, a final budget for submission to the department of children and families in accordance with s. 49.325 for authorized services under ch. 48 and subch. III of ch. 49, and a final budget for submission to the department of corrections in accordance with s. 301.031 for authorized juvenile delinquency−related services.

(d) Advise the county human services director under sub. (6m) regarding purchasing and providing services and the selection of purchase of service vendors, and make recommendations to the county executive or county administrator regarding modifications in such purchasing, providing and selection.

(e) Develop county human services board operating procedures.

(f) Comply with state requirements.

(g) Assist in arranging cooperative working agreements with persons providing health, education, vocational or welfare services related to services provided under this section.

(6) POWERS AND DUTIES OF COUNTY HUMAN SERVICES DIRECTOR IN CERTAIN COUNTIES. (a) A county human services director appointed under sub. (5) (f) shall have all of the administrative and executive powers and duties of managing, operating, maintaining, and improving the programs of the county department of human services, subject to the rules promulgated by the department of health services for programs, except services or programs under ch. 48 and subch. III of ch. 49 and juvenile delinquency−related services or programs, subject to the rules promulgated by the department of children and families for services or programs under ch. 48 and subch. III of ch. 49, and subject to the rules promulgated by the department of corrections for juvenile delinquency−related services or programs. In consultation with the county human services board under sub. (5) and subject to its approval, the county human services director shall prepare:

1. An annual comprehensive plan and budget of all funds necessary for the program and services authorized by this section in which priorities and objectives for the year are established as well as any modifications of long−range objectives.

2. Intermediate−range plans and budget.

3. Such other reports as are required by the secretary of health services, by the secretary of corrections, or by the secretary of children and families and the county board of supervisors in a county with a single−county department of human services or the county boards of supervisors in counties with a multicounty department of human services.

(c) A county human services director under this subsection shall make recommendations to the county human services board under sub. (5) for:

1. Personnel and salaries of employees.

2. Changes in the organization and management of the program.

3. Changes in program services.

(e) A county human services director under this subsection shall comply with state requirements.

(6m) COUNTY HUMAN SERVICES DIRECTOR IN CERTAIN COUNTIES WITH A COUNTY EXECUTIVE OR COUNTY ADMINISTRATOR. In any county with a county executive or county administrator in which the county board of supervisors has established a single−county department of human services, the county executive or county administrator shall appoint a county human services director on the basis of recognized and demonstrated interest in and knowledge of human services problems, with due regard to training, experience, executive and administrative ability and general qualification and fitness for the performance of the duties of the director. The appointment is subject to confirmation by the county board of supervisors unless the county board of supervisors, by ordinance, elects to waive confirmation or unless the appointment is made under a civil service system competitive examination procedure established under s. 59.52 (8) or ch. 63. The county human services director, subject only to the supervision of the county executive or county administrator, shall:

(a) Supervise and administer any program for which supervision and administration is authorized under this section.

(b) Determine administrative and program procedures and administrative policies.

(c) Determine, subject to the approval of the county board of supervisors and with the advice of the county human services board under sub. (5m), whether services are to be provided directly by the county department of human services or contracted for with other providers and make such contracts. The county board of supervisors may elect to require the approval of any such contract by the county board of supervisors.

(e) Assist the county human services board under sub. (5m) (c) in the preparation of the budgets required under sub. (5m) (c).

(f) Make recommendations to the county executive or county administrator regarding modifications to the proposed budget prepared by the county human services board under sub. (5m) (c).

(g) Evaluate service delivery.

(j) Perform other functions necessary to manage, operate, maintain and improve programs.

(k) Comply with state requirements.

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(L) Represent human service agencies, professionals and consumers of services in negotiations with the state and federal governments.

(m) Determine the number and location of outstations when appropriate to meet service demands.

History: 1975 c. 39, 224; 1977 c. 29; 1981 c. 20, 93, 291; 1981 c. 329 s. 31; 1983 a. 27 ss. 962, 2202 (20); 1985 a. 29 ss. 844m to 860, 3200 (56) (a); 1985 a. 120, 176, 332; 1987 a. 186; 1987 a. 403 s. 256; 1989 a. 56, 359; 1991 a. 274; 1993 a. 16, 27, 83, 445, 491; 1995 a. 27 ss. 2112 to 2127, 9126 (19), 9130 (4); 1995 a. 64, 201, 352, 417; 1997 a. 3, 164, 268, 283; 1999 a. 9; 2005 a. 264, 388, 406; 2007 a. 20 ss. 878 to 891, 9121 (6) (a); 2007 a. 45, 96; 2009 a. 28, 180; 2011 a. 32.

There is no unconditional guarantee of continued employment under sub. (3) (d); employment is continued during a reorganization unless civil service rules provide otherwise. Dane County v. McCartney, 166 Wis. 2d 956, 480 N.W.2d 830 (Ct. App. 1992).

Boards and directors may view client information without written and informed consent for any purpose related to their powers and duties. 69 Atty. Gen. 273.

Officers, employees, and directors of public or private entities that furnish "human services" to a county may not be appointed to the board under sub. (4) (a); this provision does not extend to family members of "human services" providers. 80 Atty. Gen. 30.

Because there is no explicit statutory authority for county human services departments to accept gifts, the statutory scheme contemplates that gifts, grants, and donations to a county human services department created under this section may be accepted only by the county board of supervisors. OAG 1−08.

46.238 Infants and unborn children whose mothers abuse controlled substances or controlled substance analogs. If an agency, as defined in s. 48.981 (1) (ag), receives a report under s. 146.0255 (2) and that agency is a county department under s. 46.22 or 46.23 or a licensed child welfare agency under contract with that county department, the agency shall offer to provide appropriate services and treatment to the child and the child's mother or to the unborn child, as defined in s. 48.02 (19), and the expectant mother of the unborn child or the agency shall make arrangements for the provision of appropriate services and treatment. If an agency receives a report under s. 146.0255 (2) and that agency is the department or a licensed child welfare agency under contract with the department, the agency shall refer the report to the county department under s. 51.42 or 51.437 and that county department shall offer to provide, or make arrangements for the provision of, those services and that treatment.

History: 1989 a. 122; 1993 a. 16; 1995 a. 386, 448; 1997 a. 27, 292; 2009 a. 79.

46.245 Information for certain pregnant women. Upon request, a county department under s. 46.215, 46.22 or 46.23 shall distribute the materials described under s. 253.10 (3) (d), as prepared and distributed by the department. A physician who intends to perform or induce an abortion or another qualified physician, as defined in s. 253.10 (2) (g), who reasonably believes that he or she might have a patient for whom the information under s. 253.10 (3) (d) is required to be given, shall request a reasonably adequate number of the materials from the county department under this section or from the department under s. 253.10 (3) (d). An individual may request a reasonably adequate number of the materials.

History: 1985 a. 56, 176; 1993 a. 27; 1995 a. 309; 1997 a. 27.

46.266 Treatment funds for mentally ill persons. (1) Notwithstanding s. 49.45 (6m) (ag) and except as provided in sub. (3), if before July 1, 1989, the federal health care financing administration or the department found a skilled nursing facility or intermediate care facility in this state that provides care to medical assistance recipients for which the facility receives reimbursement under s. 49.45 (6m) to be an institution for mental diseases, the department shall allocate funds from the appropriation account under s. 20.435 (5) (be) for distribution under this section to a county department under s. 51.42 for the care, in the community or in a facility found to be an institution for mental diseases, of the following persons:

(a) A person who resided in the facility on the date of the finding whose care in the facility is disallowed for federal financial participation.

(b) A person who is aged 21 to 64, who has a primary diagnosis of mental illness, who would meet the level of care requirements for medical assistance reimbursement in a skilled nursing facility or intermediate care facility but for a finding that the facility is an institution for mental diseases, and for whom services would be provided in place of a person specified in par. (a) who discontinues services.

(c) A person who is provided services in the community under this subsection, who was relocated from a nursing home found to be an institution for mental diseases and who reenters, within 6 months following his or her first receipt of services under this subsection, a nursing home that was, before July 1, 1989, found to be an institution for mental diseases.

(d) A person in the facility who has been determined under s. 49.45 (6c) (b) to require active treatment for mental illness.

(2) Funds distributed under sub. (1) shall be all of the following:

(a) The amount of $10,914,700 in each fiscal year, subject to all of the following conditions:

1. Funding for treatment in an institution for mental diseases may not exceed 90% of the daily medical assistance reimbursement rate under s. 49.45 (6m) of the facility.

2. Funding for community care, for persons who were relocated by a county department to the community from an institution for mental diseases before January 1, 1993, may not exceed 60% of the daily medical assistance reimbursement rate under s. 49.45 (6m) of the facility.

3. Funding for community care, for persons who were relocated by a county department to the community from an institution for mental diseases after December 31, 1992, may not exceed 90% of the daily medical assistance reimbursement rate under s. 49.45 (6m) of the facility, if the facility closes a bed under sub. (8) (a).

4. Funding for community care, for persons who were relocated by a county department to the community from an institution for mental diseases after December 31, 1992, may not exceed 60% of the daily medical assistance reimbursement rate under s. 49.45 (6m) of the facility, if the requirement to close a bed under sub. (8) (a) is waived by the department under sub. (8) (b) or if sub. (9) applies.

5. Funding for services in the community is not authorized under s. 46.277 for the person or for a person receiving care under s. 46.40 and for whom care under s. 46.277 might be substituted.

6. If funding for treatment in institutions for mental diseases and for community care under this section is insufficient to reimburse all eligible costs, the department shall prorate the funds.

7. Funding under this paragraph shall be reduced by the amount of any funds provided as reimbursement to a skilled nursing facility or intermediate care facility under this paragraph after the date of a finding, if any, by the federal health care financing administration that the facility is no longer an institution for mental diseases and is eligible for reimbursement under s. 49.45 (6m).

8. Funding under this paragraph requires compliance by an institution for mental diseases with the requirements under s. 49.45 (6c).

(b) Funds, calculated according to a method specified by the department, equivalent to the state share of the average daily medical assistance payment for noninstitutional medical services for residents of skilled nursing facilities or intermediate care facilities found to be institutions for mental diseases whose care has been disallowed for federal financial participation.

(3) The total number of beds in skilled nursing facilities or intermediate care facilities that are funded at any one time under subs. (1) and (2) may not exceed the number of beds available for the persons specified in sub. (1) (a), minus the number of beds reduced under sub. (8) (a), plus the number of beds added for persons who are specified under sub. (1) (c) and (d). The department may redistribute funds for a vacant bed from one county to another county that is seeking to effect the placement of a person in an institution for mental diseases.

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(4) The county department under s. 51.42 to which funding shall be provided under sub. (1) is one of the following:

(a) The county department in the county of residence of the person whose care in the facility has been disallowed for federal financial participation.

(b) If the department is unable to determine the county of residence under par. (a), the county department of the county in which is located the facility where the person resided on the date of the finding by the federal health care financing administration or the department.

(5) The board under s. 51.42 (5) or, in a county with a county administrator or a county executive, the director under s. 51.42 (6m) shall use funds provided under this section to contribute to the cost of the person's continued care in an institution for mental diseases or in the community.

(6) No skilled nursing facility or intermediate care facility that has residents who are 21 to 64 years of age and have primary diagnoses of mental illness may receive funds under this section unless the skilled nursing facility or intermediate care facility has received distinct part or separate licensure under s. 50.03 (1m).

(7) The department is not required to decrease the statewide nursing home bed limit under s. 150.31 to account for institution for mental diseases beds closed under this section and, notwithstanding subch. II of ch. 150, may redistribute the institution for mental diseases beds made available by the provision of services under this section if the department promulgates rules establishing a method by which the beds will be redistributed.

(8) (a) Except as provided in sub. (9), if a county department seeks to relocate a person from an institution for mental diseases to the community using funds provided under sub. (1), the county department shall first obtain approval of the institution for mental diseases to terminate use of the bed occupied by the individual as part of a plan submitted by the institution for mental diseases and approved by the department.

(b) The department may waive the requirement under par. (a) for relocations that are part of a plan submitted by the institution for mental diseases and approved by the department that the department expects will result in all of the following:

1. A finding by the federal health care financing administration that the nursing home is no longer an institution for mental diseases.

2. Licensure of the institution for mental diseases as a nursing home under s. 50.03.

3. Certification by the department of the institution for mental diseases as a provider of medical assistance.

(9) If approved by the department, an institution for mental diseases may, instead of closing a bed, agree to receive a permanent limitation on payment as a facility under s. 49.45 (6m) for each person relocated under this section. The department shall promulgate rules to administer this subsection.

History: 1987 a. 27, 399; 1989 a. 31; 1991 a. 39; 1993 a. 16, 212; 1999 a. 9; 2009 a. 28.

46.268 Relocation services for individuals with mental illness. (1) Notwithstanding s. 49.45 (6m) (ag), from the appropriation account under s. 20.435 (5) (be), the department shall distribute not more than $830,000 in each fiscal year in order to provide funding of community services for an eligible individual, if all of the following apply:

(a) The individual:

1. Has mental illness, as defined in s. 49.45 (6c) (a) 7.

2. Is otherwise eligible for medical assistance.

3. Is determined under s. 49.45 (6c) (d) 1. to be in need of active treatment but whose treatment needs can be served in the community.

(b) Provision of services is not authorized under s. 46.277 for the individual or for an individual receiving care under s. 46.40 and for whom care under s. 46.277 might be substituted.

(c) 1. The amount of funds for an individual who was relocated by a county department to the community from a facility before January 1, 1993, does not exceed 60% of the daily medical assistance reimbursement rate of the facility under s. 49.45 (6m).

2. The amount of funds for an individual who was relocated by a county department to the community from a facility after December 31, 1992, does not exceed 90% of the daily medical assistance reimbursement rate of the facility under s. 49.45 (6m).

(2) If an individual who is provided services under sub. (1) discontinues service receipt, an individual may receive services in his or her place if that individual has mental illness, as defined in s. 49.45 (6c) (a) 7., is otherwise eligible for medical assistance and is determined under s. 49.45 (6c) (d) 1. to be in need of active treatment but not to require facility care.

(3) County matching funds are required for allocations under sub. (1). A county's required match equals 9.89% of the cost of community service.

History: 1989 a. 31; 1991 a. 39; 1993 a. 16; 2009 a. 28.

46.27 Long−term support community options program. (1) DEFINITIONS. In this section:

(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 corporation that is organized under ch. 181 and that is a nonprofit corporation, as defined in s. 181.0103 (17).

(ad) "Alzheimer's disease" has the meaning given under s. 46.87 (1) (a).

(ag) "Caregiver" has the meaning given under s. 46.87 (1) (b).

(ai) "Community−based residential facility" means a facility that meets the definition in s. 50.01 (1g) and that is licensed under s. 50.03 (1).

(ar) "Hospital" has the meaning provided in s. 50.33 (2).

(b) "Nursing home" means a facility that meets the definition in s. 50.01 (3) and that is licensed under s. 50.03 (1) and includes a state center for the developmentally disabled and a Wisconsin veterans home operated by the department of veterans affairs under s. 45.50.

(bm) "Private nonprofit agency" means a nonprofit corporation, as defined in s. 181.0103 (17), which provides a program of all−inclusive care for the elderly under 42 USC 1395eee or 1396u−4.

(c) "Program" means the long−term support community options program.

(cm) "Recuperative care" has the meaning given under s. 50.01 (5m).

(d) "Residence" means the voluntary concurrence of physical presence with intent to remain in a place of fixed habitation. Physical presence shall be prima facie evidence of intent to remain.

(dm) "Respite care" has the meaning given under s. 50.01 (6g).

(dr) "State−operated long−term care facility" means a state center for the developmentally disabled and a Wisconsin veterans home operated by the department of veterans affairs under s. 45.50.

(e) "Voluntary" means according to an individual's free choice, if competent, or by choice of his or her guardian, if the individual is adjudicated incompetent.

(2) DEPARTMENTAL DUTIES. The department shall:

(b) Coordinate the program with:

1. Discharge planning from hospitals;

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2. Periodic on−site inspections of patient care under 42 USC 1396a (a) (31); and

3. The protective service system under ch. 55.

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

(d) In consultation with representatives of counties, hospitals and nursing homes and with recipients of long−term community support services, develop guidelines for implementing the program and criteria for reviewing community options plans from counties participating in the program. The guidelines and criteria shall address cost−effectiveness, scope, feasibility and impact on the quality and appropriateness of health services and social services and shall provide counties with maximum flexibility to develop programs that address local needs.

(e) Review and approve or disapprove the community options plan of each county participating in 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).

(g) After December 31, 1985:

1. Require that a county, by use of a form provided by the department or other appropriate procedure, ensure that persons receiving services under this section meet the eligibility requirements for the program.

2. Periodically monitor the implementation of the program.

(h) Promulgate all of the following as rules:

1. Adoption of a long−term community support service fee schedule as part of the uniform fee schedule under s. 46.03 (18) that is substantially similar to the fee calculation schedule existing on January 1, 1985, that was developed as a part of the guidelines required under par. (d).

2. Conditions of hardship under which the department may grant an exception to the requirement of sub. (6r) (c).

(i) Review and approve or disapprove waiver requests under sub. (3) (f), review and approve or disapprove requests for exceptions under sub. (6r) (c) and provide technical assistance to a county that reaches or exceeds the annual allocation limit specified in sub. (3) (f) in order to explore alternative methods of providing long−term community support services for persons who are in group living arrangements in that county.

(j) By January 1, 1997, develop a model contract for use by counties for purchase of long−term community support services for persons who reside in community−based residential facilities. The governor and the joint committee on finance shall approve the model contract before it is implemented.

(k) Review and approve or disapprove the terms of risk reserve escrow accounts created under sub. (7) (fr) and approve or disapprove disbursements for administrative or staff costs from the risk reserve escrow accounts.

(2m) REIMBURSEMENT DISALLOWANCES. The department may disallow reimbursement under this section for services provided to persons who do not meet the eligibility requirements.

(3) DUTIES OF PARTICIPATING COUNTIES. The county board of supervisors of any county participating in the program shall:

(a) Create an interagency long−term support planning committee, with the composition and the duties specified under sub. (4).

(b) Designate one of the following, subject to departmental review and approval, to administer the program:

1. A county department under s. 46.215 or 46.22.

2. A county department under s. 51.42 to which the powers and duties of a county department under s. 51.437 have been transferred under s. 51.437 (4g) (b).

3. A county department under s. 46.23.

4. The director of the county department of human services who is appointed under s. 46.21 (1m).

5. The departments under subds. 1. and 2. jointly, if the county long−term support planning committee develops no more than one annual community options plan under sub. (4).

6. An aging unit.

(c) Develop procedures and phases for gradual implementation of this section in accordance with guidelines and criteria the department develops under sub. (2) (d).

(cm) Review and approve, disapprove or amend a community options plan to participate in the program, prior to submitting the plan to the department.

(d) Ensure that the program uses existing county resources and personnel to the greatest extent practicable and enhances the effectiveness of discharge planning from hospitals.

(e) Except as provided in sub. (3g), after implementing the program for 12 months and within the limits of state and federal funds allocated under sub. (7), provide noninstitutional community alternatives for a significant number of persons in each of the groups listed in sub. (4) (a) 1. and eligible under sub. (6). The department shall determine what constitutes a "significant number of persons" for each participating county, based on county size and on the statewide proportion of persons from each group receiving medical assistance in a nursing home, and, beginning on January 1, 1994, shall annually adjust each determination to reflect changes in the state population of eligible persons and to reflect purposes for which increased funds, if any, are appropriated by the legislature for the program. If a county fails to meet the "significant number of persons" requirement under this paragraph, all of the following apply:

1. For a county with an annual allocation for provision of long−term community support services under sub. (7) (b) that exceeds $185,000, the department shall, unless the department finds that an emergency or unusual circumstance exists, designate a portion of the county's allocation for increased service in each calendar year that the county fails to meet the requirement, to one or more of the groups specified under sub. (4) (a) 1. a. to e.

2. For a county with an annual allocation for provision of long−term community support services under sub. (7) (b) that is $185,000 or less, the department may designate a portion of the county's allocation for increased service in each calendar year that the county fails to meet the requirement, to one or more of the groups specified under sub. (4) (a) 1. a. to e.

(f) Beginning on January 1, 1996, from the annual allocation to the county for the provision of long−term community support services under subs. (7) (b) and (11), annually establish a maximum total amount that may be encumbered in a calendar year for services for eligible individuals in community−based residential facilities, unless the department waives the requirement under sub. (2) (i) or approves a request for an exception under sub. (6r) (c).

(h) Identify the service needs of persons with Alzheimer's disease and of their caregivers.

(3g) WAIVER OF REQUIREMENTS. The department may waive requirements under sub. (3) (e) for a county if the county is able to demonstrate one of the following:

(a) That the county has disproportionately lengthy waiting lists for services under sub. (7) or under sub. (11) for one or more of the groups listed in sub. (4) (a) 1.

(b) That demographic or other data indicate that the county's population is significantly at variance with the statewide proportion of persons from each group listed in sub. (4) (a) 1. receiving medical assistance in a nursing home.

(3m) POWERS AND DUTIES OF A PRIVATE NONPROFIT AGENCY. A private nonprofit agency with which the department contracts for service under sub. (11) (c) 5. shall have the powers and duties under this section of a county department designated under sub. (3) (b) to administer the program.

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(4) PLANNING COMMITTEE. (a) The county board of supervisors shall select the county long−term support planning committee, which shall include at a minimum the following members:

1. At least 5 persons receiving long−term community support services, each of whom represents one of the following groups:

a. Elderly persons;

b. Physically disabled persons;

c. Developmentally disabled persons;

d. Chronically mentally ill persons;

e. Chemically dependent persons;

2. Two elected county officials;

3. One county health representative;

4. One representative of the county department under s. 46.215 or 46.22;

5. One representative of the county department under s. 51.42 or 51.437; and

6. One representative of the county commission on aging.

(am) If the governing board of a resource center assumes under s. 46.283 (6) (b) 10. the duties of the county long−term support planning committee under this subsection, the county long−term support planning committee for the county is dissolved.

(c) The planning committee shall develop, or, if the governing board of a resource center has under s. 46.283 (6) (b) 10. assumed the duties of the planning committee, the governing board of the resource center shall recommend a community options plan for participation in the program. The plan shall include:

1. A description of the county's proposed program, including the estimated numbers of persons to be assessed and the procedures to be used in performing assessments.

2. A description of the services available and the services to be developed or expanded as alternatives to institutional care under this program.

3. A description of the procedures to be used to coordinate the program with other county agencies, hospitals, nursing homes and providers of community support services.

4. A description of the method to be used to coordinate the use of funds received under this program with the use of other funds allocated to the county under ss. 46.495 (1) (d), 46.80 (5) and 46.85 (3m) (b) 1. and 2. and to county departments under s. 51.423.

5. A description of the method to be used by the committee or, if the governing board of a resource center has under s. 46.283 (6) (b) 10. assumed the duties of the planning committee, the governing board of the resource center to monitor the implementation of the program.

6. A description of outreach procedures to be used to ensure that significant numbers of people from each group listed in sub. (3) (e) will be served by the program.

7. A description of services and programs to be provided to meet the needs of persons with Alzheimer's disease.

8. If a contract with an entity under s. 46.284 (2) is established in the county, a description of how the activities of the entity relate to and are coordinated with the county's proposed program.

(5) COUNTY DEPARTMENT OR AGING UNIT DUTIES. The county department or aging unit selected 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 and members of the person's family or the person's guardian. This paragraph does not apply to a county department or aging unit in a county in which the department has contracted with an entity under s. 46.284 (2).

(b) Within the limits of state and federal funds allocated under sub. (7), arrange service contracts under s. 46.036 and ensure the provision of necessary long−term community support services for each person who meets the criteria specified in sub. (6) (b). No county department or aging unit may use funds allocated under sub. (7) (b) to provide services in any community−based residential facility unless the county department or aging unit uses as a service contract the approved model contract developed under sub. (2) (j) or a contract that includes all of the provisions of the approved model contract.

(c) Within the limits of state and federal funds allocated under sub. (7), provide for ongoing care management services in accordance with the requirements established under sub. (6d) (a) 1., periodic case plan review and follow−up services for any person receiving long−term community support services under sub. (6) (b).

(d) Determine, under sub. (6u), the cost−sharing obligations, if any, for all persons who meet the criteria specified in sub. (6) (b) and are applying for or receiving long−term community support services that are funded under sub. (7) or (11).

(e) Within the limits of state and federal funds allocated under sub. (7) and in accordance with the county's plan for gradual implementation and the requirements under sub. (6) (a) 3., apply the program to any person residing in a nursing home who wants to be assessed and to receive long−term community support services, and coordinate the program with the protective services system under ch. 55.

(h) Within the limits of state and federal funds allocated under sub. (7) and in accordance with the county's plan for gradual implementation, apply the program to any person who has been diagnosed by a physician as having Alzheimer's disease, who meets the level of care requirements under sub. (6r) (b) 4. and who wants to be assessed and to receive long−term community support services.

(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 insurance 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, 46.2785, 46.495, 51.42, or 51.437. The fiscal agent under this paragraph is responsible for remitting any federal unemployment compensation taxes or state unemployment insurance 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.

(j) Within the time period specified by the department, offer counseling, that is specified by the department, concerning public and private benefit programs to prospective residents of community−based residential facilities who are referred to the county department or aging unit under s. 50.035 (4n).

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(6) ASSESSMENTS. (a) 1. Within the limits of state and federal funds allocated under sub. (7) and within the limits of fees collected, an assessment shall be conducted for any person identified in sub. (5) (e) or who is seeking admission to or is about to be admitted to a nursing home. A fee may be charged, unless prohibited, for the assessment.

1m. Each assessment shall determine the person's functional abilities, disabilities and need for medical and social long−term community support services. Each assessment shall include an investigation of long−term community support services that could serve as alternatives to institutional care in a nursing home. The assessment shall include an explanation of the potential community alternatives to the person being assessed and the person's family or guardian.

2. Subdivision 1. does not apply to:

a. Any person or facility that is excluded because of gradual implementation of the program under sub. (3) (c).

b. Emergency admissions, as determined by a physician, but shall be applied within 10 days of admission.

c. Private pay patients seeking admission to or about to be admitted to a facility under subd. 1. who are informed about the program but waive the assessment, unless the patient will be eligible for medical assistance within 6 months of assessment.

cm. Persons under subd. 1. seeking admission to or about to be admitted to a Wisconsin veterans home operated by the department of veterans affairs under s. 45.50 who are informed about the program but waive the assessment.

d. Any person who is readmitted to a nursing home from a hospital within 6 months after being assessed.

e. Current residents of a nursing home who are eligible for an assessment under sub. (5) (e) and subd. 3., but who waive the assessment.

f. A person who enters a nursing home for recuperative care.

g. A person who enters a nursing home for respite care.

h. A person who is admitted to a nursing home from another nursing home, unless the person requests an assessment and funds allocated for assessments under sub. (7) (am) are available to the county.

3. In each participating county, except in counties in which the department has contracted with an entity under s. 46.284 (2), assessments shall be conducted for those persons and in accordance with the procedures described in the county's community options plan. The county may elect to establish assessment priorities for persons in target groups identified by the county in its plan regarding gradual implementation. If a person who is already admitted to a nursing home requests an assessment and if funds allocated for assessments under sub. (7) (am) are available, the county shall conduct the assessment.

(b) Within the limits of state and federal funds allocated under sub. (7) and within the limits of fees collected unless prohibited, a community services case plan shall be developed for any person with chronic disabilities:

1. Who is assessed under par. (a); and

2. For whom noninstitutional community services are feasible, financially viable and preferred by the person or the person's guardian. In this subdivision, noninstitutional community services are financially viable if they can be financed by state or federal funds allocated under sub. (7).

(c) The amount of any fee charged for conduct of an assessment under par. (a) or for development of a case plan under par. (b) shall be in accordance with a sliding scale formula established by the department by rule under sub. (12) (c). A fee may not be charged if prohibited under 42 USC 1396 to 1396v or under regulations under 42 USC 1396 to 1396v.

(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.

(e) The department shall encourage counties to use public health nurses who meet the requirements of s. 250.06 (1) to conduct assessments under this subsection.

(6d) CARE MANAGEMENT REQUIREMENTS. (a) The department, after consulting with representatives of counties, hospitals, and individuals who receive services under this section, shall do all of the following:

1. Establish minimum requirements for the provision of care management services, as defined by the department, including standards for care, times for performance of duties, and size of caseloads.

2. Specify a reasonable schedule for phasing in the requirements established under subd. 1.

3. Provide technical consultation and assistance to the administrator of the program, as designated under sub. (3) (b), with respect to the requirements established under subd. 1.

(b) The department need not promulgate as rules under ch. 227 the requirements under par. (a) 1. or the schedule under par. (a) 2.

(6g) FISCAL RESPONSIBILITY. Except as provided in s. 51.40, and within the limitations under sub. (7) (b), the fiscal responsibility of a county for an assessment, unless the assessment is performed by an entity under a contract as specified under s. 46.284 (2), case plan, or services provided to a person under this section is as follows:

(a) For a person seeking admission to or about to be admitted to a nursing home, the county in which the person has residence is the county of fiscal responsibility.

(b) For a person residing in a nursing home, except a state−operated long−term care facility, the county in which the nursing home is located is the county of fiscal responsibility.

(c) For a person living in a nursing home, except a state−operated long−term care facility, whose legal residence is established in another county, the county in which the legal residence is established is the county of fiscal responsibility.

(d) For a person residing in a state−operated long−term care facility, or for a person protectively placed under ch. 55, the county in which the person has residence before he or she enters the state−operated long−term care facility or is protectively placed is the county of fiscal responsibility.

(6r) ELIGIBILITY. No county may use funds received under sub. (7) (b) to pay for long−term community support services provided to any of the following:

(a) A person who is initially eligible for services under sub. (7) (b), for whom home and community−based services are available under sub. (11) or s. 46.275, 46.277, 46.278, or 46.2785 that require less total expenditure of state funds than do comparable services under sub. (7) (b) and who is eligible for and offered the home and community−based services under sub. (11) or s. 46.275, 46.277, 46.278, or 46.2785, but who declines the offer, except that a county may use funds received under sub. (7) (b) to pay for long−term community support services for the person for a period of up to 90 days during which an application for services under sub. (11) or s. 46.275, 46.277, 46.278, or 46.2785 for the person is processed.

(b) A person who initially receives services under this section after December 31, 1985, unless one of the following applies:

1. The person meets the level of care requirements under s. 49.45 (6m) (i) for reimbursement of nursing home care under the medical assistance program.

1m. The person meets the requirements under s. 46.266 (1) (a), (b) or (c) for receipt of care in an institution for mental diseases.

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2. The person has serious and persistent mental illness, as defined under s. 51.01 (14t), affecting mental health to the extent that long−term or repeated hospitalization is likely unless the person receives long−term community support services.

3. The person receives medical assistance, resides in a nursing home immediately prior to receiving services under this section and is identified through the inspection of patient care under 42 USC 1396a (a) (31) as a person for whom community care is appropriate.

4. The person has been diagnosed by a physician as having Alzheimer's disease and requires a level of care equivalent to either of the following:

a. Noninstitutional personal care, including personal assistance, supervision and protection, and periodic medical services and consultation with a registered nurse, or periodic observation and consultation for physical, emotional, social or restorative needs, but not regular nursing care.

b. Care, including social services and activity therapy, in a residential facility under the daily supervision of a licensed nurse with consultation from a registered nurse at least 4 hours per week.

(c) A person who resides or intends to reside in a community−based residential facility and who is initially applying for long−term community support services, if the projected cost of services for the person, plus the cost of services for existing participants, would cause the county to exceed the limitation under sub. (3) (f), unless the department grants an exception to the requirement under this paragraph, under the conditions specified by rule, to avoid hardship to the person.

(e) A person who has not resided in this state for at least 180 consecutive days before applying for or receiving long−term community support services that are funded under sub. (7) (b).

(f) A person who has attained the age of 18 but has not attained the age of 65 unless that person is engaged in gainful employment or participating in a program that is certified by the department to provide health and employment services that are aimed at helping the individual achieve employment goals. The department may waive this paragraph for any individual for whom its application would cause undue hardship.

(6u) FINANCIAL ELIGIBILITY AND COST−SHARING REQUIREMENTS. (a) In this subsection, "assets" has the meaning given in s. 49.453 (1) (a).

(b) The county department or aging unit selected to administer the program shall require all persons applying for long−term community support services that are funded under sub. (7) or (11) and, annually, all persons receiving the services to provide the following information:

1. For persons applying for or receiving services under sub. (7), a declaration of assets, on a form prescribed by the department. The declaration shall include any assets that the person applying for or receiving the services, or his or her spouse, has, after August 12, 1993, transferred to another for less than fair market value at any time within the 36−month period, or with respect to payments from a trust or portions of a trust that would be treated as assets transferred by an individual under s. 49.454 (2) (c) or (3) (b), within the 60−month period, immediately before the date of the declaration.

2. For persons applying for or receiving services under sub. (11), a declaration of income, on a form prescribed by the department.

(c) From the information obtained under par. (b), the county department or aging unit shall:

1. Determine the financial eligibility of the applicant or recipient of services to receive assistance for long−term community support services under the program. A person is financially eligible under this subdivision if he or she is one of the following:

a. Eligible for medical assistance under s. 49.46, 49.468, 49.47, or 49.471 (4) (a).

b. A person whom the county department or aging unit finds is likely to become medically indigent within 6 months by spending excess assets for medical or remedial care.

2. For a person who is determined to be financially eligible under subd. 1. calculate, by use of the uniform fee system under s. 46.03 (18), the amount of cost sharing required for receipt of long−term community support services provided under sub. (5) (b). The county department or aging unit shall require payment by the person of 100% of the amount calculated under this subdivision, unless the person is a recipient of medical assistance under s. 49.472. If the person is a recipient of medical assistance under s. 49.472, the county department or aging unit may not require any payment from the person under this subdivision.

3. Bill persons not determined under subd. 1. to be financially eligible for the full cost of long−term community support services received.

4. Use funds received under subds. 2. and 3. to pay for long−term community support services for persons who are eligible under sub. (6) (b).

(d) In determining financial eligibility under par. (c) 1. and in calculating the amount under par. (c) 2., the county department or aging unit shall include as the assets for any person, except those persons who are eligible for medical assistance under s. 49.46, 49.468, 49.47, or 49.471 (4) (a), any portion of assets that the person or the person's spouse has, after August 12, 1993, transferred to another as specified in par. (b), unless one of the following conditions applies:

1. The transferred asset has no current value.

2. The county department or aging unit determines that undue hardship would result to the person or to his or her family from a denial of financial eligibility or from including all or a portion of a transferred asset in the calculation of the amount of cost sharing required.

(7) FUNDING. (am) From the appropriation under s. 20.435 (7) (bd), the department shall allocate funds to each county or private nonprofit agency with which the department contracts to pay assessment and case plan costs under sub. (6) not otherwise paid by fee or under s. 49.45 or 49.78 (2). The department shall reimburse multicounty consortia for the cost of assessing persons eligible for medical assistance under s. 49.46, 49.468, 49.47, or 49.471 (4) (a) as part of the administrative services of medical assistance, payable under s. 49.45 (3) (a). Counties may use unspent funds allocated under this paragraph to pay the cost of long−term community support services and for a risk reserve under par. (fr).

(b) From the appropriations under s. 20.435 (7) (bd) and (im), 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, 49.47, or 49.471 (4) (a) 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. Counties may use unspent funds allocated under this paragraph from the appropriation under s. 20.435 (7) (bd) for a risk reserve under par. (fr).

(c) 2. Receipt of funds under this section is subject to s. 46.495 (2).

3. The department may not release funds under this section before approving the county's community options plan.

(cg) No county may use funds received under par. (b) to pay for long−term community support services provided any person who resides in a nursing home, unless the department waives this

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restriction on use of funds and the services are provided in accordance with a discharge plan.

(cj) No county may use funds received under par. (b) to provide services to a person who does not live in his or her own home or apartment unless, subject to the limitations under par. (cm), one of the following applies:

1. The services are provided to the person in a community−based residential facility that entirely consists of independent apartments, each of which has an individual lockable independent entrance and exit and individual separate kitchen, bathroom, sleeping and living areas.

2. The person suffers from Alzheimer's disease or related dementia and the services are provided to the person in a community−based residential facility that has a dementia care program.

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

b. The county department or aging unit documents that the option of in−home services has been discussed with the person, thoroughly evaluated and found to be infeasible, as determined by the county department or aging unit in accordance with rules promulgated by the department of health services.

c. The county department or aging unit determines that the community−based residential facility is the person's preferred place of residence or is the setting preferred by the person's guardian.

d. The county department or aging unit determines that the community−based residential facility provides a quality environment and quality care services.

e. The county department or aging unit determines that placement in the community−based residential facility is cost−effective compared to other options, including home care and nursing home care.

5. The services are provided to the person in an adult family home, as defined in s. 50.01 (1).

(ck) 1. Subject to the approval of the department, a county may establish and implement more restrictive conditions than those imposed under par. (cj) on the use of funds received under par. (b) for the provision of services to a person in a community−based residential facility. A county that establishes more restrictive conditions under this subdivision shall include the conditions in its community options plan under sub. (3) (cm).

2. If the department determines that a county has engaged in a pattern of inappropriate use of funds received under par. (b), the department may revoke its approval of the county's conditions established under subd. 1., if any, and may prohibit the county from using funds received under par. (b) to provide services under par. (cj) 3.

(cm) 1. Beginning on January 1, 1996, no county, private nonprofit agency or aging unit may use funds received under par. (b) to provide services in any community−based residential facility that has more than 20 beds, unless one of the following applies:

a. The department approves the provision of services in a community−based residential facility that is licensed on July 29, 1995, and that meets standards established under subd. 2.

b. The department approves the provision of services in a community−based residential facility that entirely consists of independent apartments, each of which has an individual lockable entrance and exit and individual separate kitchen, bathroom, sleeping and living areas, to individuals who are provided services under sub. (5) (b) and are physically disabled or are at least 65 years of age.

c. The department approves the provision of services in a community−based residential facility that is initially licensed after July 29, 1995, that is licensed for more than 20 beds and that meets standards established under subd. 2.

2. By January 1, 1996, the department shall establish standards for approvals made under subd. 1. a., including whether the proposed use of funds for residents at the community−based residential facility in question adequately provides for all of the following:

a. Sufficient responsiveness to individual resident needs.

b. Maintenance of approved levels of quality of care.

c. Cost effectiveness, in comparison with other feasible funding uses.

d. Sufficient consideration of care for facility residents with dementia or related conditions.

3. The department need not promulgate as rules under ch. 227 the standards required to be established under subd. 2.

4. This paragraph does not apply to individuals who are receiving services under this section that are funded under par. (b) and who are residing in community−based residential facilities with more than 8 beds on January 1, 1996.

(d) The department may release funds to counties acting jointly, if the counties sign a contract approved by the secretary that explains the plans for joint sponsorship.

(e) No county may use funds received under this section to purchase land or construct buildings.

(f) If the department determines that a county demonstrates a pattern of failure to serve clients whose cost of care significantly exceeds the average cost of care for long−term community support services provided under this section, the department may require that county to reserve a portion of funds allocated under this subsection for provision of service to those clients.

(fm) The department shall, at the request of a county, carry forward up to 5% of the amount allocated under this subsection to the county for a calendar year if up to 5% of the amount so allocated has not been spent or encumbered by the county by December 31 of that year, for use by the county in the following calendar year, except that the amount carried forward shall be reduced by the amount of funds that the county has notified the department that the county wishes to place in a risk reserve under par. (fr). The department may transfer funds within s. 20.435 (7) (bd) to accomplish this purpose. An allocation under this paragraph does not affect a county's base allocation under this subsection and shall lapse to the general fund unless expended within the calendar year to which the funds are carried forward. A county may not expend funds carried forward under this paragraph for administrative or staff costs, except administrative or staff costs that are associated with implementation of the waiver under sub. (11) and approved by the department.

(fr) 1. Notwithstanding s. 46.036 (3) and (5m), a county may place in a risk reserve funds that are allocated under par. (am) or (b) or sub. (11) (c) 3. and are not expended or encumbered for services under this subsection or sub. (11). The county shall notify the department of this decision and of the amount to be placed in the risk reserve. The county shall maintain the risk reserve in an interest−bearing escrow account with a financial institution, as defined in s. 69.30 (1) (b), if the department has approved the terms of the escrow. All interest from the principal shall be reinvested in the escrow account.

2. The annual amount of a county's expenditure for a risk reserve, as specified in subd. 1., may not exceed 10% of the county's most recent allocation under pars. (am) and (b) and sub. (11) (c) 3. or $750,000, whichever is less. The total amount of the risk reserve, including interest, may not exceed 15% of the county's most recent allocation under this subsection.

3. A county may expend funds maintained in a risk reserve, as specified in subd. 1., for any of the following purposes:

a. To defray costs of long−term community support services under this section.

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b. To meet requirements under any contract that the county has with the department to operate a care management organization under s. 46.284.

c. If approved by a resolution of the county board of supervisors, to transfer funds to a long−term care district.

d. If approved by the department, for administrative or staff costs under this section.

4. A county that maintains a risk reserve, as specified in subd. 1., shall annually, on a form prescribed by the department, submit to the department a record of the status of the risk reserve, including revenues and disbursements.

(g) The department may carry forward to the next state fiscal year funds allocated under this subsection and not encumbered by counties by December 31 or carried forward under par. (fm). The department may transfer moneys within s. 20.435 (7) (bd) to accomplish this purpose. An allocation under this paragraph shall not affect a county's base allocation for the program. The department may allocate these transferred moneys during the next fiscal year to counties for planning and implementation of resource centers under s. 46.283 or care management organizations under s. 46.284 and for the improvement or expansion of long−term community support services for clients whose cost of care significantly exceeds the average cost of care provided under this section, including any of the following:

1. Specialized training for providers of services under this section.

2. Start−up costs for developing needed services.

3. Home modifications.

4. Purchase of medical equipment or other specially adapted equipment.

(7g) RECOVERY OF COSTS OF CARE. (a) In this subsection:

1. "Client" means a person who receives or received long−term community support services that are funded under sub. (7).

2. "Disabled" has the meaning given in s. 49.468 (1) (a) 1.

3. "Home" means property in which a person has an ownership interest consisting of the person's dwelling and the land used and operated in connection with the dwelling.

(c) 1. Except as provided in subd. 4., the department shall file a claim against the estate of a client or against the estate of the surviving spouse of a client for the amount of long−term community support services funded under sub. (7) paid on behalf of the client after the client attained 55 years of age, unless already recovered by the department under this subsection.

2. The affidavit of a person designated by the secretary to administer this paragraph is evidence of the amount of the claim.

3. The court shall reduce the amount of a claim under subd. 1. by up to the amount specified in s. 861.33 (2) if necessary to allow the client's heirs or the beneficiaries of the client's will to retain the following personal property:

a. The decedent's wearing apparel and jewelry held for personal use.

b. Household furniture, furnishings and appliances.

c. Other tangible personal property not used in trade, agriculture or other business, not to exceed in value the amount specified in s. 861.33 (1) (a) 4.

4. A claim under subd. 1. is not allowable if the decedent has a surviving child who is under age 21 or disabled or a surviving spouse.

5. a. If the department's claim is not allowable because of subd. 4. and the estate includes an interest in a home, the court exercising probate jurisdiction shall, in the final judgment or summary findings and order, assign the interest in the home subject to a lien in favor of the department for the amount described in subd. 1. The personal representative or petitioner for summary settlement or summary assignment of the estate shall record the final judgment as provided in s. 863.29, 867.01 (3) (h) or 867.02 (2) (h).

b. If the department's claim is not allowable because of subd. 4., the estate includes an interest in a home and the personal representative closes the estate by sworn statement under s. 865.16, the personal representative shall stipulate in the statement that the home is assigned subject to a lien in favor of the department for the amount described in subd. 1. The personal representative shall record the statement in the same manner as described in s. 863.29, as if the statement were a final judgment.

6. The department may not enforce the lien under subd. 5. as long as any of the following survive the decedent:

a. A spouse.

b. A child who is under age 21 or disabled.

7. The department may enforce a lien under subd. 5. by foreclosure in the same manner as a mortgage on real property.

(d) The department may require the county department or aging unit selected to administer the program in each county to gather and provide the department with information needed to recover payment of long−term community support services under this subsection. The department shall pay to the county department or aging unit an amount equal to 5% of the recovery collected by the department relating to a beneficiary for whom the county department or aging unit made the last determination of eligibility for funding under sub. (7). A county department or aging unit may use funds received under this paragraph only to pay costs incurred under this paragraph and shall remit the remainder, if any, to the department for deposit in the appropriation account under s. 20.435 (7) (im). The department may withhold payments under this paragraph for failure to comply with the department's requirements under this paragraph. The department shall treat payments made under this paragraph as costs of administration of the program.

(e) From the appropriation under s. 20.435 (7) (im), the department shall pay the amount of the payments under par. (d) and shall spend the remainder of the funds recovered under this subsection for long−term community support services funded under sub. (7) (b).

(f) 1. The department may recover amounts under this subsection for the provision of long−term community support services paid on and after January 1, 1996.

2. The department may file a claim under par. (c) only with respect to a client who dies after February 15, 1996.

(g) The department shall promulgate rules establishing standards for determining whether the application of this subsection would work an undue hardship in individual cases. If the department determines that the application of this subsection would work an undue hardship in a particular case, the department shall waive application of this subsection in that case.

(h) The department may contract with or employ an attorney to probate estates to recover under this subsection the costs of care.

(7m) RIGHT TO HEARING. A person who is denied eligibility for services or whose services are reduced or terminated under this section may request a hearing from the department under s. 227.44, except that lack of adequate funding or a denial under sub. (6r) (a) may not serve as the basis for a request under this subsection.

(8) COUNTY PARTICIPATION. Every county shall participate in and implement the program.

(9) PILOT PROJECT ALLOCATING THE COST OF NURSING HOME UTILIZATION INCREASES TO COUNTIES. (a) The department may select up to 5 counties that volunteer to participate in a pilot project under which they will receive certain funds allocated for long−term care. The department shall allocate a level of funds to these counties equal to the amount that would otherwise be paid under s. 20.435 (4) (b), (gm), or (w) to nursing homes for providing care because of increased utilization of nursing home services, as estimated by the department. In estimating these levels, the department shall exclude any increased utilization of services provided

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by state centers for the developmentally disabled. The department shall calculate these amounts on a calendar year basis under sub. (10).

(b) The department may only select counties to participate in this pilot project and receive these funds that have been part of the long−term support community options program since January 1, 1983. County participation in this pilot project shall be for periods beginning either January 1, 1984, or January 1, 1985.

(c) All long−term community support services provided under this pilot project in lieu of nursing home care shall be consistent with those services described in the participating county's community options plan under sub. (4) (c) 1. and provided under sub. (5) (b). Unless the department has contracted under s. 46.284 (2) with an entity other than the county department, each county participating in the pilot project shall assess persons under sub. (6).

(10) FUNDING THE PILOT PROJECT. (a) 1. The department shall determine for each county participating in the pilot project under sub. (9) a funding level of state medical assistance expenditures to be received by the county. This level shall equal the amount that the department determines would otherwise be paid under s. 20.435 (4) (b), (gm), or (w) because of increased utilization of nursing home services, as estimated by the department.

2. The department shall transfer or credit to the participating county the amount calculated under subd. 1. for 1984 or for the first 6 months of 1985, depending on the date the county begins participating in the pilot project. The county shall use these funds to provide long−term care to medical assistance recipients covered by its community options plan, either in the form of nursing home care financed under par. (b) or in the form of long−term community support services. The county may use extra funds available under this paragraph after it provides this long−term care for other long−term community support services under its community options plan.

(b) Each county participating in the pilot project is liable for the entire nonfederal share of medical assistance costs related to increased utilization of nursing homes that are located in the county.

(c) The department's method of determining each county's base level of funding, the transfer or credit of funds and the department's specification of county financial liability under the pilot project are subject to the approval of the joint committee on finance.

(11) MEDICAL ASSISTANCE WAIVER. (am) The department shall request a waiver from the secretary of the federal department of health and human services, under 42 USC 1396n (c), authorizing the department to provide as part of the medical assistance program home and community−based services for persons who are eligible for long−term support community options program services under sub. (5) (b).

(b) The department shall include all assurances required under 42 USC 1396n (c) in the implementation of the waiver.

(c) The following conditions apply under the waiver:

1. At the end of the 3−year period during which the waiver remains in effect the department may request a 3−year extension of the waiver.

2. The department shall annually submit to the secretary of the federal department of health and human services information showing the effect of the program on the type and amount of medical assistance provided and on the health and welfare of program participants.

3. Medical assistance reimbursement for services a county, a private nonprofit agency or an aging unit with which the department contracts provides under this subsection shall be made from the appropriations under s. 20.435 (4) (o) and (7) (b) and (bd).

4. The department may, from the appropriation under s. 20.435 (4) (o), provide reimbursement for services provided under this subsection by counties that are in excess of the current average annual per person rate, as established by the department, and are less than or equal to the average amount approved in the waiver received under par. (am).

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, an aging unit.

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

a. The services are provided to the person in a community−based residential facility that entirely consists of independent apartments, each of which has an individual lockable independent entrance and exit and individual separate kitchen, bathroom, sleeping and living areas.

b. The person suffers from Alzheimer's disease or related dementia and the services are provided to the person in a community−based residential facility that has a dementia care program.

c. The services are provided to the person in a residential care apartment complex, as defined in s. 50.01 (6d).

NOTE: The cross−reference to s. 50.01 (6d) was changed from s. 50.01 (1d) by the legislative reference bureau under s. 13.92 (1) (bm) 2. to reflect the renumbering under s. 13.92 (1) (bm) 2. of s. 50.01 (1d).

d. The services are provided to the individual in an adult family home, as defined in s. 50.01 (1).

e. Subdivision 5n. applies.

5n. A county may also use funds received under this subsection, subject to the limitations under subds. 6., 7. and 8., to provide services to a person who does not live in his or her own home or apartment if the services are provided to the person in a community−based residential facility and the county department or aging unit has determined that all of the following conditions have been met:

b. The county department or aging unit documents that the option of in−home services has been discussed with the person, thoroughly evaluated and found to be infeasible, as determined by the county department or aging unit in accordance with rules promulgated by the department of health services.

c. The county department or aging unit determines that the community−based residential facility is the person's preferred place of residence or is the setting preferred by the person's guardian.

d. The county department or aging unit determines that the community−based residential facility provides a quality environment and quality care services.

e. The county department or aging unit determines that placement in the community−based residential facility is cost−effective compared to other options, including home care and nursing home care.

5p. a. Subject to the approval of the department, a county may establish and implement more restrictive conditions than those imposed under subd. 5m. on the use of funds received under sub. (7) (b) for the provision of services to a person in a community−based residential facility. A county that establishes more restrictive conditions under this subd. 5p. a. shall include the conditions in its community options plan under sub. (3) (cm).

b. If the department determines that a county has engaged in a pattern of inappropriate use of funds received under sub. (7) (b), the department may revoke its approval of the county's conditions established under subd. 5p. a., if any, and may prohibit the county from using funds received under sub. (7) (b) to provide services under subd. 5n.

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

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b. No county, private nonprofit agency, or aging unit may use funds received under this subsection to provide residential services in a community−based residential facility, as defined in s. 50.01 (1g), that has more than 20 beds, unless the requirements of sub. (7) (cm) 1. a., b., or c. are met.

7. A county may use funds received under this subsection to provide supportive, personal or nursing services, as defined in rules promulgated under s. 49.45 (2) (a) 23., to a person who resides in a certified residential care apartment complex, as defined in s. 50.01 (6d). Funding of the services may not exceed 85% of the statewide medical assistance daily cost of nursing home care, as determined by the department.

NOTE: The cross−reference to s. 50.01 (6d) was changed from s. 50.01 (1d) by the legislative reference bureau under s. 13.92 (1) (bm) 2. to reflect the renumbering under s. 13.92 (1) (bm) 2. of s. 50.01 (1d).

8. No county, private nonprofit agency or aging unit may use funds received under this subsection to provide services in any community−based residential facility unless the county, agency or aging unit uses as a service contract the approved model contract developed under sub. (2) (j) or a contract that includes all of the provisions of the approved model contract.

(d) Section 49.45 (37) applies to this subsection.

(11g) REPORT. Beginning January 1, 1997, and every January 1 thereafter, the department shall submit a report to the joint committee on finance and to the appropriate standing committees under s. 13.172 (3), summarizing the data collected for the state and for individual counties under the program in the calendar year ending immediately before the preceding calendar year.

(12) RULES. The department shall promulgate rules establishing the following:

(a) Fiscal management procedures required to be implemented by counties in administering the program under this section, as follows:

1. A simple contract between the community options program client and the service provider for that client.

2. A method for documenting the amount of service provided to enable verification of the appropriateness of payment.

3. Guidelines for determining whether a potential community options program client is competent to receive community options program funds directly or if an action should be brought for a determination of competency and the appointment of a guardian.

4. Supervisory review of community options program client payment decisions.

(b) Standards to ensure that only a single payment is made by the department for an initial community options case plan conducted by a county.

(c) A sliding scale formula for a fee chargeable for conduct of an assessment under sub. (6) (a) or for development of a case plan under sub. (6) (b) that is based on the person's ability to pay, unless prohibited from payment under 42 USC 1396 to 1396v or under regulations under 42 USC 1396 to 1396v.

History: 1981 c. 20; 1983 a. 27; 1983 a. 189 s. 329 (5); 1983 a. 192, 239; 1985 a. 29 ss. 876s to 896am, 3200 (56); 1985 a. 120, 176; 1987 a. 27, 399; 1989 a. 31, 77, 336, 359; 1991 a. 32, 39, 235, 274; 1993 a. 16, 27, 437; 1995 a. 27; 1997 a. 13, 27, 39, 79, 237; 1999 a. 9, 63; 2001 a. 16, 103; 2003 a. 33; 2005 a. 22, 25, 264, 386, 387; 2007 a. 20 ss. 904 to 921, 9121 (6) (a); 2007 a. 141; 2009 a. 2; 2011 a. 32; s. 13.92 (1) (bm) 2.

Cross−reference: See also ch. DHS 73, Wis. adm. code.

The county was found to be the employer, for worker's compensation purposes, of a care giver for a service recipient under the long−term support community options waiver program under sub. (11). County of Barron v. Labor and Industry Review Commission, 2010 WI App 149, 330 Wis. 2d 203, 792 N.W.2d 584, 09−1845.

46.271 Long−term support pilot projects. (1) (a) From the appropriation under s. 20.435 (7) (bd), the department shall award $100,000 in each fiscal year to applying county departments under s. 46.215, 46.22, 46.23, 51.42 or 51.437 or to an aging unit under the conditions specified in par. (c) to establish pilot projects for home and community−based long−term support services. Funds awarded to the pilot projects shall be used to do any of the following:

1. Provide administration for projects that serve individuals who are discharged from hospitals and meet one of the eligibility requirements under s. 46.27 (6r) (b) 1. to 4.

2. Promote the development of a system of home and community−based long−term support services that is easily accessible to individuals who are eligible for and potentially need these services.

(b) The department shall do all of the following:

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

2. Require that an applying county department or aging unit under subd. 1. 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) The department may contract with an aging unit, as defined in s. 46.27 (1) (a), for administration of services under par. (a) if, by resolution, the county board of supervisors of that county so requests the department.

History: 1989 a. 31, 336; 1991 a. 39, 235; 1993 a. 16; 1997 a. 27; 1999 a. 9.

46.275 Community integration program for residents of state centers. (1) LEGISLATIVE INTENT. The intent of the program under this section is to relocate persons from the state centers for the developmentally disabled into appropriate community settings with the assistance of home and community−based services and with continuity of care. The intent of the program is also to minimize its impact on state employees through redeployment of employees into vacant positions.

(1m) DEFINITIONS. In this section:

(a) "Medical assistance" means aid provided under subch. IV of ch. 49, except ss. 49.468 and 49.471.

(b) "Program" means the community integration program for residents of state centers for the developmentally disabled, for which a waiver has been received under sub. (2).

(2) DEPARTMENTAL POWERS AND DUTIES. The department may request a waiver from the secretary of the U.S. department of health and human services, under 42 USC 1396n (c), authorizing the department to integrate medical assistance recipients who reside in state centers for the developmentally disabled into their communities by providing home and community−based services as part of the medical assistance program. If the department requests this waiver, it shall include all assurances required under 42 USC 1396n (c) (2) in its request. If the department receives this waiver, at the end of the 3−year period during which the waiver remains in effect the department may request an additional 3−year extension of the waiver. If the department receives this waiver, it shall:

(a) Annually submit to the secretary of the U.S. department of health and human services information showing the effect of the program on medical assistance costs and on the health and welfare of program participants.

(b) Evaluate the effect of the program on medical assistance costs and on the program's ability to provide community care alternatives to institutional care in state centers for the developmentally disabled.

(c) Fund home or community−based services provided by any county or by the department that meet the requirements of this section.

(d) Unless s. 49.45 (37) applies, review and approve or disapprove each plan of care developed under sub. (3) (c) 2.

(e) Submit to the governor and to the chief clerk of each house of the legislature, for distribution to appropriate legislative standing committees under s. 13.172 (3), annual progress reports on the program plus any other information requested.

(3) COUNTY PARTICIPATION. (a) Any county may participate in the program, if it meets the conditions specified in this subsection and the requirements established by the department, including

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requirements concerning the qualifications and levels of staff for home or community−based service providers.

(b) The board of supervisors of any county that participates in the program shall designate one of the following county departments to administer the program, subject to departmental review and approval:

2. A county department under s. 51.42 to which the powers and duties of a county department under s. 51.437 have been transferred under s. 51.437 (4g) (b).

3. A county department under s. 46.23.

4. A county department under s. 51.437.

(c) Any county participating in the program shall inform the persons eligible for program services under sub. (4) that home and community−based services are available, at their choosing, in place of institutional care. Services provided under this section shall meet the following conditions:

1. The services substitute for care provided at a state center for the developmentally disabled.

2. The services are provided to each recipient under a written plan of care designed for that recipient and, unless s. 49.45 (37) applies, approved by the department.

(d) Any county participating in the program shall provide case management services, including the responsibility for locating, coordinating and monitoring all services and informal supports needed by eligible persons and their families.

(e) Any county participating in the program shall protect the health and welfare of persons receiving program services and shall coordinate the program to the greatest extent practicable with the long−term support community options program under s. 46.27.

(3g) DUTIES OF THE DEPARTMENT. The department shall provide fair and equitable arrangements to protect the interests of all state employees affected by the program, including arrangements designed to preserve employee rights and benefits.

(3r) RELOCATION BY THE DEPARTMENT. (a) The department may, without county participation under sub. (3) or county reimbursement under sub. (5) (a), relocate a person eligible for program services under sub. (4) from a state center for the developmentally disabled into a community setting in any of the following situations:

1. The person's county of residence when the person entered the state center for the developmentally disabled cannot be determined with reasonable certainty.

2. The person's county of residence when the person entered the state center for the developmentally disabled is not participating, under sub. (3), in the program.

3. The person will be relocated into the home of the person's parent or guardian and will be receiving state monitoring of the relocation and services provided by a public or private school or a tribal school, as defined in s. 115.001 (15m).

(b) If the department relocates a person under this subsection, it shall comply with the requirements imposed on counties under sub. (3) (c) to (e).

(c) Prior to relocating a person under this subsection, the department shall ensure delivery of any necessary education, habilitation, vocational, medical and therapy services through contracting with community−based service providers. If any service is not available, the department may provide it directly.

(4) ELIGIBILITY OF RECIPIENTS. (a) Any medical assistance recipient living in a state center for the developmentally disabled is eligible to participate in the program. Such a recipient may apply, or any person may apply on behalf of such a recipient, for participation in the program.

(b) The department in conjunction with the county shall review any application for participation in the program as to eligibility and the appropriateness of planned services. The county department administering the program for the county in which the medical assistance recipient resides shall review any application for participation in the program as to eligibility, except applications for relocation under sub. (3r). No person may participate in the program unless all of the following occur:

1. Consent for participation is given either by the person's parent, guardian or legal custodian, if the person is under age 18, or by the person or the person's guardian, if the person is age 18 or over, except that this subdivision does not limit the authority of the circuit court to enter, change, revise or extend a dispositional order under subch. VI of ch. 48 or subch. VI of ch. 938 or to order a protective placement or protective services under s. 55.12.

2. The county, or the department under sub. (3r), agrees to provide services to the person.

3. The department determines that available home or community−based services are appropriate for that person.

(c) 1. Except as provided in subd. 2., if a resident of a state center for the developmentally disabled is relocated in order to receive home or community−based services under the program, the center may not accept a patient to fill the bed left vacant by the person leaving.

2. If a person who has been relocated from a state center for the developmentally disabled under this program seeks to return to the center within 365 days after relocating because the person or the county department administering the program, or the department under sub. (3r), finds that the services available are inappropriate, the center shall accept the person as a patient to fill the bed that the person vacated. After this 365−day period, the person may only be readmitted into a bed not left vacant because of relocation under this section.

(f) To the extent provided in 42 USC 1396n, if a person who has been relocated from a state center for the developmentally disabled under this program discontinues participating in the program for any reason other than institutional placement, the department may reallocate on a case−by−case basis the funding within the relocating county to another medical assistance recipient who is developmentally disabled and who, but for this program, would require the level of care provided in a state center for the developmentally disabled.

(5) FUNDING. (a) Medical Assistance reimbursement for services a county, or the department under sub. (3r), provides under this program is available from the appropriation accounts under s. 20.435 (4) (b), (gm), (o), and (w). If 2 or more counties jointly contract to provide services under this program and the department approves the contract, Medical Assistance reimbursement is also available for services provided jointly by these counties.

(b) No county, or the department under sub. (3r), may use funds received under this section to do any of the following:

1. Purchase land or construct buildings.

2. Reduce federal, state or county matching expenditures for long−term community support services provided to any person as part of this program from funds allocated under s. 46.495 (1) (d), 46.80 (5), 46.85 (3m) (b) 1. and 2. or 51.423, as indicated in the county's budget or by actual expenditures.

3. Provide room and board, except for respite care.

4. Provide services, except respite care that is approved by the department, within a skilled nursing facility, intermediate care facility or intermediate care facility for persons with an intellectual disability, as defined in s. 46.278 (1m) (am), including a state center for the developmentally disabled.

5. 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 8 beds.

6. Provide services to a recipient that are not specified in the recipient's written plan of care.

7. Provide services in any community−based residential facility unless the county or department uses as a service contract the approved model contract developed under s. 46.27 (2) (j) or a contract that includes all of the provisions of the approved model contract.

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(c) The total allocation under s. 20.435 (4) (b), (gm), (o), and (w) to counties and to the department under sub. (3r) for services provided under this section may not exceed the amount approved by the federal department of health and human services. A county may use funds received under this section only to provide services to persons who meet the requirements under sub. (4) and may not use unexpended funds received under this section to serve other developmentally disabled persons residing in the county.

(d) The department may, from the appropriation under s. 20.435 (4) (o), provide reimbursement for services provided under this section by counties that are in excess of the current average annual per person rate, as established by the department, and are less than the average amount approved in the waiver received under sub. (2).

(e) From the appropriation under s. 20.435 (2) (gL), the department may provide moneys to a county to pay for one−time costs associated with the relocation under this section of an individual from a state center for the developmentally disabled.

(5m) REPORT. By March 1 of each year, the department shall submit a report to the joint committee on finance and to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3), describing the program's impact during the preceding calendar year on state employees, including the department's efforts to redeploy employees into vacant positions and the number of employees laid off.

(6) EFFECTIVE PERIOD. This section takes effect on the date approved by the secretary of the U.S. department of health and human services as the beginning date of the period of waiver received under sub. (2). This section remains in effect for 3 years following that date and, if the secretary of the U.S. department of health and human services approves a waiver extension, shall continue an additional 3 years.

History: 1983 a. 27; 1985 a. 29 ss. 896b to 896L, 3202 (23); 1985 a. 120, 176; 1987 a. 27; 1987 a. 161 s. 13m; 1987 a. 186; 1989 a. 31; 1993 a. 16; 1995 a. 27, 77; 1997 a. 27, 114; 1999 a. 9; 2001 a. 16; 2003 a. 33, 318; 2005 a. 25, 264; 2007 a. 20, 153; 2009 a. 2, 302; 2011 a. 32, 126.

The circuit court that protectively placed an incompetent person in a center for the developmentally disabled, and not the person's parent or guardian, has the ultimate authority under state and federal law to determine whether the person should remain institutionalized or receive home or community based services. OAG 3−97.

46.277 Community integration program for persons relocated or meeting reimbursable levels of care. **(1)** LEGISLATIVE INTENT. The intent of the program under this section is to provide home or community−based care to serve in a noninstitutional community setting a person who meets eligibility requirements under 42 USC 1396n (c) and is relocated from an institution other than a state center for the developmentally disabled or meets the level of care requirements for medical assistance reimbursement in a skilled nursing facility or an intermediate care facility, except that the number of persons who receive home or community−based care under this section is not intended to exceed the number of nursing home beds that are delicensed as part of a plan submitted by the facility and approved by the department. The intent of the program is also that counties use all existing services for providing care under this section, including those services currently provided by counties.

(1m) DEFINITIONS. In this section:

(a) "Medical assistance" means aid provided under subch. IV of ch. 49, except ss. 49.468 and 49.471.

(ag) "Delicensed" means deducted from the number of beds stated on a facility's license, as specified under s. 50.03 (4) (e).

(am) "Plan submitted by the facility" means an individual relocation plan under s. 50.03 (14).

(at) "Private nonprofit agency" has the meaning specified in s. 46.27 (1) (bm).

(b) "Program" means the community integration program for which a waiver has been received under sub. (2).

(2) DEPARTMENTAL POWERS AND DUTIES. The department may request a waiver from the secretary of the federal department of health and human services, under 42 USC 1396n (c), authorizing the department to serve medical assistance recipients, who meet the level of care requirements for medical assistance reimbursement in a skilled nursing facility or an intermediate care facility, in their communities by providing home or community−based services as part of medical assistance. The number of persons for whom the waiver is requested may not exceed the number of nursing home beds that are delicensed as part of a plan submitted by the facility and approved by the department. If the department requests a waiver, it shall include all assurances required under 42 USC 1396n (c) (2) in its request. If the department receives this waiver, it may request one or more 3−year extensions of the waiver under 42 USC 1396n (c) and shall perform the following duties:

(a) Evaluate the effect of the program on medical assistance costs and on the program's ability to provide community care alternatives to institutional care in facilities certified as medical assistance providers.

(b) Fund home or community−based services provided by any county that meet the requirements of this section.

(c) To the maximum extent possible, authorize the provision of services under this section to serve persons, except those institutionalized in a state center for the developmentally disabled, in noninstitutional settings and coordinate application of the review criterion under s. 150.39 (5) with the services provided under this section.

(d) Unless s. 49.45 (37) applies, review and approve or disapprove each plan of care developed by the county department under sub. (3).

(e) Review and approve or disapprove waiver requests under sub. (3) (c), review and approve or disapprove requests for exceptions under sub. (5) (d) 3. and provide technical assistance to a county that reaches or exceeds the annual allocation limit specified in sub. (3) (c) in order to explore alternative methods of providing long−term community support services for persons who are in group living arrangements in that county.

(3) COUNTY PARTICIPATION. (a) Sections 46.27 (3) (b) and 46.275 (3) (a) and (c) to (e) apply to county participation in this program, except that services provided in the program shall substitute for care provided a person in a skilled nursing facility or intermediate care facility who meets the level of care requirements for medical assistance reimbursement to that facility rather than for care provided at a state center for the developmentally disabled. The number of persons who receive services provided by the program under this paragraph may not exceed the number of nursing home beds, other than beds specified in sub. (5g) (b), that are delicensed as part of a plan submitted by the facility and approved by the department.

(b) 1. If the provision of services under this section results in a decrease in the statewide nursing home bed limit under s. 150.31 (3), the facility affected by the decrease shall submit a plan for delicensing all or part of the facility that is approved by the department.

2. Each county department participating in the program shall provide home or community−based care to persons eligible under this section, except that the number of persons who receive home or community−based care under this section may not exceed the number of nursing home beds, other than beds specified in sub. (5g) (b), that are delicensed as part of a plan submitted by the facility and approved by the department.

(c) Beginning on January 1, 1996, from the annual allocation to the county for the provision of long−term community support services under sub. (5), annually establish a maximum total amount that may be encumbered in a calendar year for services for eligible individuals in community−based residential facilities.

(d) The county department or aging unit that administers the program under this section shall, within the time period specified by the department, offer counseling, that is specified by the department, concerning public and private benefit programs to

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prospective residents of community−based residential facilities who are referred to the county department or aging unit under s. 50.035 (4n).

(3m) PARTICIPATION BY A PRIVATE NONPROFIT AGENCY. A private nonprofit agency with which the department contracts for service under sub. (5) (c) shall have the powers and duties under this section of a county department, as specified in sub. (3) (a).

(4) ELIGIBILITY OF RESIDENTS. (a) Any medical assistance recipient who meets the level of care requirements for medical assistance reimbursement in a skilled nursing facility or intermediate care facility is eligible to participate in the program, except that the number of participants may not exceed the number of nursing home beds, other than beds specified in sub. (5g) (b), that are delicensed as part of a plan submitted by the facility and approved by the department. Such a recipient may apply, or any person may apply on behalf of such a recipient, for participation in the program. Section 46.275 (4) (b) applies to participation in the program.

(b) To the extent authorized under 42 USC 1396n, if a person discontinues participation in the program, a medical assistance recipient may participate in the program in place of the participant who discontinues if that recipient meets the level of care requirements for medical assistance reimbursement in a skilled nursing facility or intermediate care facility, except that the number of participants may not exceed the number of nursing home beds, other than beds specified in sub. (5g) (b), that are delicensed as part of a plan submitted by the facility and approved by the department.

(5) FUNDING. (a) The provisions of s. 46.275 (5) (a), (b) 1. to 4. and 6. and (d) apply to funding received by counties under the program.

(b) Total funding to counties under the program may not exceed the amount approved in the waiver received under sub. (2).

(c) The department may contract for services under this section with a private nonprofit agency. Paragraphs (a) and (b) apply to funding received by a private nonprofit agency under this subsection.

(d) 1. In this paragraph, "physically disabled" means having a condition that affects one's physical functioning by limiting mobility or the ability to see or hear, that is the result of injury, disease or congenital deficiency and that significantly interferes with or limits at least one major life activity and the performance of one's major personal or social roles.

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

a. The services are provided to the person in a community−based residential facility that entirely consists of independent apartments, each of which has an individual lockable independent entrance and exit and individual separate kitchen, bathroom, sleeping and living areas.

b. The person suffers from Alzheimer's disease or related dementia and the services are provided to the person in a community−based residential facility that has a dementia care program.

c. The services are provided to the person in a residential care apartment complex, as defined in s. 50.01 (6d).

NOTE: The cross−reference to s. 50.01 (6d) was changed from s. 50.01 (1d) by the legislative reference bureau under s. 13.92 (1) (bm) 2. to reflect the renumbering under s. 13.92 (1) (bm) 2. of s. 50.01 (1d).

d. The services are provided to the individual in an adult family home, as defined in s. 50.01 (1).

e. Subdivision 1n. applies.

1n. A county may also use funds received under this section, subject to the limitations under subds. 2., 3., and 4. and par. (e), to provide services to a person who does not live in his or her own home or apartment if the services are provided to the person in a community−based residential facility and the county department or aging unit has determined that all of the following conditions have been met:

b. The county department or aging unit documents that the option of in−home services has been discussed with the person, thoroughly evaluated and found to be infeasible, as determined by the county department or aging unit in accordance with rules promulgated by the department of health services.

c. The county department or aging unit determines that the community−based residential facility is the person's preferred place of residence or is the setting preferred by the person's guardian.

d. The county department or aging unit determines that the community−based residential facility provides a quality environment and quality care services.

e. The county department or aging unit determines that placement in the community−based residential facility is cost−effective compared to other options, including home care and nursing home care.

1p. a. Subject to the approval of the department, a county may establish and implement more restrictive conditions than those imposed under subd. 1m. on the use of funds received under this section for the provision of services to a person in a community−based residential facility. A county that establishes more restrictive conditions under this subd. 1p. a. shall include the conditions in its plan under sub. (3) (a).

b. If the department determines that a county has engaged in a pattern of inappropriate use of funds received under this section, the department may revoke its approval of the county's conditions established under subd. 1p. a., if any, and may prohibit the county from using funds received under this section to provide services under subd. 1n.

2. No county may use funds received under this section to provide residential services in any community−based residential facility, as defined in s. 50.01 (1g), unless one of the following applies:

a. The requirements of s. 46.27 (7) (cm) 1. a. or c. are met.

b. The department approves the provision of services in a community−based residential facility that entirely consists of independent apartments, each of which has an individual lockable entrance and exit and individual separate kitchen, bathroom, sleeping and living areas, to individuals who are eligible under this section and are physically disabled or are at least 65 years of age.

3. If subd. 2. a. or b. applies, no county may use funds received under this section to pay for services provided to a person who resides or intends to reside in a community−based residential facility and who is initially applying for the services, if the projected cost of services for the person, plus the cost of services for existing participants, would cause the county to exceed the limitation under sub. (3) (c). The department may grant an exception to the requirement under this subdivision, under the conditions specified by rule, to avoid hardship to the person.

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

(e) A county may use funds received under this subsection to provide supportive, personal or nursing services, as defined in rules promulgated under s. 49.45 (2) (a) 23., to a person who resides in a certified residential care apartment complex, as defined in s. 50.01 (6d). Funding of the services may not exceed 85% of the statewide medical assistance daily cost of nursing home care, as determined by the department.

NOTE: The cross−reference to s. 50.01 (6d) was changed from s. 50.01 (1d) by the legislative reference bureau under s. 13.92 (1) (bm) 2. to reflect the renumbering under s. 13.92 (1) (bm) 2. of s. 50.01 (1d).

(f) No county or private nonprofit agency may use funds received under this subsection to provide services in any

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community−based residential facility unless the county or agency uses as a service contract the approved model contract developed under s. 46.27 (2) (j) or a contract that includes all of the provisions of the approved model contract.

(g) 1. The department may provide enhanced reimbursement for services provided under this section to an individual who, on or after July 27, 2005, is relocated to the community from a nursing home by a county department or to an individual who meets the level of care requirements for Medical Assistance reimbursement in a skilled nursing facility or an intermediate care facility and is diverted from imminent entry into a nursing home. The number of individuals served under this paragraph may not exceed the number of nursing home beds that are delicensed as part of plans submitted by nursing homes and approved by the department.

2. The department shall develop and utilize a formula to determine the enhanced reimbursement rate for services provided under subd. 1. The department shall also develop and utilize criteria for determining imminent entry into a nursing home under subd. 1. that shall include an imminent loss of current living arrangements and an imminent risk of a long−term nursing home stay. The department need not promulgate as rules under ch. 227 the criteria required to be developed and utilized under this subdivision.

(5g) LIMITATIONS ON SERVICE. (a) The number of persons served under this section may not exceed the number of nursing home beds that are delicensed as part of a plan submitted by the facility and approved by the department.

(b) This section does not apply to the delicensure of a bed of an institution for mental diseases of an individual who is aged 21 to 64, who has a primary diagnosis of mental illness and who otherwise meets the requirements of s. 46.266 (1) (a), (b) or (c).

(5m) REPORT. By October 1 of each year, the department shall submit a report to the joint committee on finance and to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3), describing the cost and quality of services used under the program and the extent to which existing services have been used under the program in the preceding calendar year.

(5r) RULE MAKING. The department shall promulgate rules that specify conditions of hardship under which the department may grant an exception to the requirement of sub. (5) (d) 3.

(6) EFFECTIVE PERIOD. The effective date provisions of s. 46.275 (6) apply to this section.

History: 1983 a. 27; 1985 a. 29 ss. 896nc to 896u, 3202 (23); 1985 a. 176; 1987 a. 27, 186, 399; 1989 a. 31; 1991 a. 39; 1993 a. 16; 1995 a. 27; 1997 a. 13, 27, 114; 1999 a. 9; 2001 a. 16; 2003 a. 33; 2005 a. 25, 355; 2007 a. 20 ss. 926 to 928, 9121 (6) (a); 2009 a. 277; s. 13.92 (1) (bm) 2.

Cross−reference: See also ch. DHS 73, Wis. adm. code.

46.278 Community integration program and brain injury waiver program for persons with developmental disabilities. (1) LEGISLATIVE INTENT. The intent of the programs under this section is to provide home or community−based care to serve in a noninstitutional community setting a person who meets eligibility requirements under 42 USC 1396n (c) and who is diagnosed as developmentally disabled under the definition specified in s. 51.01 (5) and relocated from an institution other than a state center for the developmentally disabled or who meets the intermediate care facility for persons with an intellectual disability or brain injury rehabilitation facility level of care requirements for medical assistance reimbursement in an intermediate care facility for persons with an intellectual disability or a brain injury rehabilitation facility and is ineligible for services under s. 46.275 or 46.277. The intent of the program is also that counties use all existing services for providing care under this section, including those services currently provided by counties.

(1m) DEFINITIONS. In this section:

(a) "Brain injury rehabilitation facility" means a nursing facility or hospital designated as a facility for brain injury rehabilitation by the department under the approved state medicaid plan.

(ag) "Family consortium" means a group composed of relatives, or of relatives and the guardian, of an individual with developmental disability who together provide services for the individual in a home that is an extension of a relative's or the guardian's home.

(am) "Intermediate care facility for persons with an intellectual disability" has the meaning given for "intermediate care facility for the mentally retarded" under 42 USC 1396d (d).

(b) "Medical assistance" means aid provided under subch. IV of ch. 49, except ss. 49.468 and 49.471.

(c) "Program" means the community integration program or the brain injury waiver program, for facilities certified as medical assistance providers, for which a waiver has been received under sub. (3).

(2) DEPARTMENTAL POWERS AND DUTIES. (a) The department may request one or more waivers from the secretary of the federal department of health and human services, under 42 USC 1396n (c), authorizing the department to serve medical assistance recipients, who meet the level of care requirements for medical assistance reimbursement in an intermediate care facility for persons with an intellectual disability or in a brain injury rehabilitation facility, in their communities by providing home or community−based services as part of medical assistance. If the department requests a waiver, it shall include all assurances required under 42 USC 1396n (c) (2) in its request.

(b) Section 49.45 (37) applies to this subsection.

(3) WAIVER; EXTENSION; DUTIES. If the department receives a waiver requested under sub. (2) (a), it may request a 3−year extension of the waiver under 42 USC 1396n (c) and shall perform the following duties:

(a) Evaluate the effect of each program on medical assistance costs and on the program's ability to provide community care alternatives to institutional care in facilities certified as medical assistance providers.

(b) Fund home or community−based services provided by any county that meet the requirements of this section.

(c) To the maximum extent possible, authorize the provision of services under this section to serve persons, except those institutionalized in a state center for the developmentally disabled, in noninstitutional settings and coordinate application of the review criterion under s. 150.39 (5) with the services provided under this section.

(4) COUNTY PARTICIPATION. (a) Sections 46.27 (3) (b) and 46.275 (3) (a) and (c) to (e) apply to county participation in a program, except that services provided in the program shall substitute for care provided a person in an intermediate care facility for persons with an intellectual disability or in a brain injury rehabilitation facility who meets the intermediate care facility for persons with an intellectual disability or brain injury rehabilitation facility level of care requirements for medical assistance reimbursement to that facility rather than for care provided at a state center for the developmentally disabled.

(b) 1. If the provision of services under this section results in a decrease in the statewide nursing home bed limit under s. 150.31 (3), the facility affected by the decrease shall submit a plan for delicensing all or part of the facility that is approved by the department.

2. Each county department participating in a program shall provide home or community−based care to persons eligible under this section, except that the number of persons who receive home or community−based care under this section may not exceed the number that are approved under an applicable waiver received under sub. (3).

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(5) ELIGIBILITY OF RESIDENTS. (a) Any medical assistance recipient who meets the level of care requirements for medical assistance reimbursement in an intermediate care facility for persons with an intellectual disability or in a brain injury rehabilitation facility and is ineligible for service under s. 46.275 or 46.277 is eligible to participate in a program, except that persons eligible for the brain injury waiver program must meet the definition of brain injury under s. 51.01 (2g), and except that the number of participants may not exceed the number approved under the waiver received under sub. (3). Such a recipient may apply, or any person may apply on behalf of such a recipient, for participation in a program. Section 46.275 (4) (b) applies to participation in a program.

(am) One individual who is eligible under par. (a) may, beginning January 1, 1992, participate in the program through services provided by a family consortium that is formed before January 1, 1991, and is approved by the department.

(b) To the extent authorized under 42 USC 1396n, if a person discontinues participation in a program, a medical assistance recipient may participate in a program in place of the participant who discontinues if that recipient meets the requirements under par. (a).

(6) FUNDING. (a) The provisions of s. 46.275 (5) (a), (b) and (d) apply to funding received by counties under the programs.

(b) Total funding to counties for relocating each person under a program may not exceed the amount approved in the waiver received under sub. (3).

(c) Funding may be provided under a program for services of a family consortium.

(d) If a county makes available nonfederal funds equal to the state share of service costs under a waiver received under sub. (3), the department may, from the appropriation under s. 20.435 (4) (o), provide reimbursement for services that the county provides under this section to persons who are in addition to those who may be served under this section with funds from the appropriation accounts under s. 20.435 (4) (b), (gm), or (w).

(e) 1. The department may provide enhanced reimbursement for services under the community integration program for an individual who was relocated to the community by a county department from one of the following:

a. An intermediate care facility for persons with an intellectual disability that closes under s. 50.03 (14).

b. An intermediate care facility for persons with an intellectual disability or a distinct part thereof that has a plan of closure approved by the department and that intends to close within 12 months.

c. An intermediate care facility for persons with an intellectual disability that has a plan of closure or significant reduction in capacity approved by the department and that intends to close or significantly reduce its capacity within 60 months.

2. a. The enhanced reimbursement rate under subd. 1. a. and b. shall be determined under a formula that is developed by the department.

b. The enhanced reimbursement rate under subd. 1. c. shall be 90% of the enhanced reimbursement rate under this subd. 2. a.

(7) REPORT. By July 1 of each year, the department shall submit to the joint committee on finance and to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3), a report describing the cost and quality of services used under the program and the extent to which existing services have been used under the program in the preceding calendar year.

(8) EFFECTIVE PERIOD. Except as provided under sub. (2), this section takes effect on the date approved by the secretary of the federal department of health and human services as the beginning date of the period of waiver received under sub. (3). This section remains in effect for 3 years following that date and, if the secretary of the federal department of health and human services approves a waiver extension, shall continue an additional 3 years.

History: 1987 a. 27, 186; 1989 a. 31; 1991 a. 269; 1993 a. 16; 1995 a. 27; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 33; 2007 a. 153; 2011 a. 32, 126.

46.2785 Community Opportunities and Recovery Program. (1) DEFINITIONS. In this section:

(a) "Nursing facility" has the meaning given in 42 USC 1396r (a).

(b) "Serious mental illness" has the meaning given in 42 CFR 483.102 (b) (1).

(c) "Waiver program" means the Community Opportunities and Recovery Program for which a waiver has been requested under sub. (2) and granted under 42 USC 1396n (c).

(2) WAIVER REQUEST. The department may request a waiver from the secretary of the U.S. department of health and human services, under 42 USC 1396n (c), authorizing the department to serve in their communities medical assistance recipients who meet eligibility requirements specified in sub. (4) by providing them home or community−based services as part of the Medical Assistance program. If the department requests the waiver, it shall include all the assurances required under 42 USC 1396n (c) (2) in the request. If the department receives the waiver, it may request an extension of the waiver under 42 USC 1396n (c).

(3) CONTRACT FOR ADMINISTRATION. If doing so is consistent with the waiver received by the department as specified in sub. (2), the department may contract with a county or a private agency to administer the waiver program. A private agency with which the department contracts shall have the powers and duties of a county under this section.

(4) ELIGIBILITY. Any medical assistance recipient who has a serious mental illness and meets the level of care requirements under s. 49.45 (6m) (i) for reimbursement of nursing home care under the Medical Assistance program is eligible to participate in the waiver program.

(5) FUNDING. (a) Medical assistance reimbursement for services a county or private agency contracts for or provides under the waiver program shall be made from the appropriation accounts under s. 20.435 (4) (b), (gm), and (o).

(b) The department may, from the appropriation account under s. 20.435 (4) (o), reimburse a county for providing, or contracting to provide, services that cost more than the average annual per person rate established by the department, but less than the average amount approved by the federal government for the waiver program.

History: 2005 a. 25; 2011 a. 32.

46.279 Restrictions on placements and admissions to intermediate and nursing facilities. (1) DEFINITIONS. In this section:

(a) "Developmental disability" has the meaning given in s. 51.01 (5) (a).

(b) "Intermediate facility" has the meaning given for an intermediate care facility for the mentally retarded under 42 USC 1396d (d), other than a center for the developmentally disabled, as defined in s. 51.01 (3).

(bm) "Most integrated setting" means a setting that enables an individual to interact with persons without developmental disabilities to the fullest extent possible.

(c) "Nursing facility" has the meaning given under 42 USC 1396r (a).

(2) PLACEMENTS AND ADMISSIONS TO INTERMEDIATE FACILITIES. Except as provided in sub. (5), no person may protectively place or continue protective placement of an individual with a developmental disability in an intermediate facility and no intermediate facility may admit or continue service for such an individual unless, before the protective placement, continued placement fol-

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lowing review under s. 55.18, or admission and after having considered a plan developed under sub. (4), a court under s. 55.12 or 55.18 (1) (ar) finds that protective placement in the intermediate facility is the most integrated setting that is appropriate to the needs of the individual or that the county of residence of the individual would not reasonably be able to provide community−based care in accordance with the plan within the limits of available state and federal funds and county funds required to be appropriated to match state funds, taking into account information presented by all affected parties. An intermediate facility to which an individual who has a developmental disability applies for admission shall, within 5 days after receiving the application, notify the county department that is participating in the program under s. 46.278 of the county of residence of the individual who is seeking admission concerning the application.

(3) PLACEMENTS AND ADMISSIONS TO NURSING FACILITIES. Except as provided in sub. (5), if the department or an entity determines from a screening under s. 49.45 (6c) (b) that an individual requires active treatment for developmental disability, no individual may be protectively placed in a nursing facility or have protective placement in a nursing facility continued following review under s. 55.18, and no nursing facility may admit or continue service for the individual, unless the department or entity that conducts the screening determines that the individual's need for care cannot fully be met in an intermediate facility or under a plan under sub. (4) or that the county of residence of the individual would not reasonably be able to provide community−based care in accordance with the plan within the limits of available state and federal funds and county funds required to be appropriated to match state funds.

(4) PLAN FOR HOME OR COMMUNITY−BASED CARE. Except as provided in a contract specified in sub. (4m), a county department that participates in the program under s. 46.278 shall develop a plan for providing home or community−based care in a noninstitutional community setting to an individual who is a resident of that county, under any of the following circumstances:

(a) Within 120 days after any determination made under s. 49.45 (6c) (c) 3. that the level of care required by a resident that is provided by a facility could be provided in an intermediate facility or under a plan under this subsection.

(b) Within 120 days after receiving written notice under sub. (2) of an application.

(c) Within 120 days after a proposal is made under s. 55.12 (6) to provide protective placement to the individual in an intermediate facility or a nursing facility.

(d) Within 120 days after receiving written notice under s. 55.18 (1) (ar) of the protective placement of the individual in a nursing facility or an intermediate facility.

(e) Within 90 days after extension of a temporary protective placement order by the court under s. 55.135 (5).

(4m) CONTRACT FOR PLAN DEVELOPMENT. The department shall contract with a public or private agency to develop a plan under sub. (4), and the county department is not required to develop such a plan, for an individual, as specified in the contract, to whom all of the following apply:

(a) The individual resides in a county with a population of less than 100,000 in which are located at least 2 intermediate facilities that have licenses issued to private nonprofit organizations that are exempt from federal income tax under section 501 (a) of the Internal Revenue Code.

(b) Placement for the individual is in, or proposed to be in, an intermediate facility specified under par. (a) that has agreed to reduce its licensed bed capacity to an extent and according to a schedule acceptable to the facility and the department.

(4n) CONTRACT FOR PLAN PAYMENT. The department and the county specified in sub. (4m) (a) shall negotiate a contract under which the department shall provide payment, from the appropriation account under s. 20.435 (4) (b), to implement a plan to provide care in a noninstitutional community setting to an individual who has established residence in the county in order to be admitted to an intermediate facility in the county. The contract may provide for the negotiation of a memorandum of understanding between the parties that identifies the relative functions and duties of the department and the county in implementing plans under sub. (4) for residents of intermediate facilities in the county.

(5) EXCEPTIONS. Subsections (2) and (3) do not apply to entrance to a facility under s. 49.45 (6c) (e) 1., to an emergency protective placement under s. 55.135, or to a temporary protective placement under s. 55.135 (5) or 55.055 (5).

History: 2003 a. 33; 2005 a. 25, 47, 253, 264; 2007 a. 139, 153.

46.28 Revenue bonding for residential facilities. (1) In this section:

(a) "Authority" means the Wisconsin Housing and Economic Development Authority created under ch. 234.

(am) "Child with long−term care needs" means any of the following:

1. A juvenile adjudged delinquent for whom a case disposition is made under s. 938.34.

2. A child found to be in need of protection or services for whom an order is made under s. 48.345 or a juvenile found to be in need of protection or services for whom an order is made under s. 938.345.

3. A child placed under s. 48.63.

4. A child who is eligible under 42 USC 1396a (e) (3).

(b) "Chronically disabled" means any person who is alcoholic, developmentally disabled, drug dependent or mentally ill, as defined in s. 51.01 (1), (5), (8) and (13), or any person who is physically disabled.

(c) "Elderly" means a person 60 years of age or older.

(cg) "Eligible individual" means an individual who is elderly or chronically disabled, a child with long−term care needs, a homeless individual or a victim of domestic abuse.

(cr) "Homeless individual" has the meaning given in 42 USC 11302 (a).

(d) "Residential facility" means a living unit for eligible individuals that is developed by a sponsor and that is not physically connected to a nursing home or hospital except by common service units for laundry, kitchen or utility purposes and that may include buildings and grounds for activities related to residence, including congregate meal sites, socialization, physical rehabilitation facilities and child care facilities.

(e) "Sponsor" means any of the following:

1. A nonprofit participating health institution, as defined in s. 231.01 (6).

2. A tribal council or housing authority or any nonprofit entity created by a tribal council.

3. The department.

4. Any county department under s. 46.21, 46.22, 46.23, 51.42 or 51.437.

5. A county commission on aging appointed under s. 46.82 (4) (a).

6. Any housing authority created under s. 59.53 (22), 66.1201, 66.1213 or 66.1335.

7. Any housing corporation, limited−profit or nonprofit entity.

8. Any other entity meeting criteria established by the authority and organized to provide housing for persons and families of low and moderate income.

9. An entity that is operated for profit and that is engaged in providing medical care or residential care or services, including all of the following:

a. A hospital, as defined in s. 50.33 (2).

b. A nursing home, as defined in s. 50.01 (3).

c. A community−based residential facility, as defined in s. 50.01 (1g).

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d. A residential care apartment complex, as defined in s. 50.01 (6d).

NOTE: The cross−reference to s. 50.01 (6d) was changed from s. 50.01 (1d) by the legislative reference bureau under s. 13.92 (1) (bm) 2. to reflect the renumbering under s. 13.92 (1) (bm) 2. of s. 50.01 (1d).

(f) "Victim of domestic abuse" means an individual who has encountered domestic abuse, as defined in s. 49.165 (1) (a).

(2) The department may approve any residential facility for financing by the authority if it determines that the residential facility will help meet the housing needs of an eligible individual, based on factors that include:

(a) The geographic location of the residential facility.

(b) The population served by the residential facility.

(c) The services offered by the residential facility.

(3) The department may authorize the authority to issue revenue bonds under s. 234.61 to finance any residential facility it approves under sub. (2).

(4) The department may charge sponsors for administrative costs and expenses it incurs in exercising its powers and duties under this section and under s. 234.61.

History: 1981 c. 298; 1983 a. 27 ss. 996g to 996r, 2202 (20); 1983 a. 81 s. 11; 1983 a. 83 s. 20; 1983 a. 189 s. 329 (9); 1985 a. 29, 176; 1985 a. 265 s. 4; 1985 a. 332; 1991 a. 39, 235, 269; 1995 a. 77, 201; 1997 a. 27, 35, 320; 1999 a. 150 s. 672; 2001 a. 104; 2007 a. 20; s. 13.92 (1) (bm) 2.

46.2803 Transition. (1) In order to facilitate the transition to the long−term care system specified in ss. 46.2805 to 46.2895, within the limits of applicable federal statutes and regulations and if the secretary of health services finds it necessary, he or she may grant a county limited waivers to or exemptions from ss. 46.27 (3) (e) (intro.), 1. and 2. and (f), (5) (d) and (e), (6) (a) 1., 2. and 3. and (b) (intro.), 1. and 2., (6r) (c), (7) (b), (cj) and (cm) and (11) (c) 5m. (intro.) and 6. and 46.277 (3) (a), (4) (a) and (5) (d) 1m., 1n. and 2. and rules promulgated under those provisions.

(2) Notwithstanding s. 46.27 (7), a county in which a care management organization is operating pursuant to a contract under s. 46.284 (2) or a county in which a program described under s. 46.2805 (1) (a) or (b) is administered may use funds appropriated under 20.435 (7) (bd) and allocated to the county under s. 46.27 (7) to provide community mental health or substance abuse services and supports for persons with mental illness or persons in need of services or supports for substance abuse and to provide services under the Family Support Program under s. 46.985.

History: 1999 a. 9; 2007 a. 20 ss. 934, 1019, 1020, 9121 (6) (a).

46.2804 Client management of managed care long−term care benefit. Under a managed care program for provision of long−term care services, the care manager shall provide, within guidelines established by the department, a mechanism by which an enrollee, beneficiary, or recipient of the program may arrange for, manage, and monitor his or her benefit directly or with the assistance of another person chosen by the enrollee, beneficiary, or recipient. The care manager shall provide each enrollee, beneficiary, or recipient with a form on which the enrollee, beneficiary, or recipient shall indicate whether he or she has been offered the option under this subsection and whether he or she has accepted or declined the option. If the enrollee, beneficiary, or recipient accepts the option, the care manager shall monitor the use by the enrollee, beneficiary, or recipient of a fixed budget for purchase of services or support items from any qualified provider, monitor the health and safety of the enrollee, beneficiary, or recipient, and provide assistance in management of the budget and services of the enrollee, beneficiary, or recipient at a level tailored to the need and desire of the enrollee, beneficiary, or recipient for the assistance.

History: 2005 a. 386; 2007 a. 20.

46.2805 Definitions; long−term care. In ss. 46.2805 to 46.2895:

(1) "Care management organization" means an entity that is certified as meeting the requirements for a care management organization under s. 46.284 (3) and that has a contract under s. 46.284 (2). "Care management organization" does not mean an entity that contracts with the department to operate one of the following:

(a) A program of all−inclusive care for the elderly under 42 USC 1395eee or 1396u−4.

(b) A demonstration program known as the Wisconsin partnership program under a federal waiver authorized under 42 USC 1315.

(2) "Eligible person" means a person who meets all eligibility criteria under s. 46.286 (1).

(3) "Enrollee" means a person who is enrolled in a care management organization.

(4) "Family care benefit" means financial assistance for long−term care and support items for an enrollee.

(6m) "Family member" means a spouse or an individual related by blood, marriage, or adoption within the 3rd degree of kinship as computed under s. 990.001 (16).

(6r) "Financial and cost−sharing screening" means a screening to determine financial eligibility under s. 46.286 (1) (b) or the self−directed services option and cost−sharing under s. 46.286 (2) using a uniform tool prescribed by the department.

(6v) "Frail elder" means an individual who is 65 years of age or older and has a physical disability or irreversible dementia that restricts the individual's ability to perform normal daily tasks or that threatens the capacity of the individual to live independently.

(7) "Functional screening" means a screening to determine functional eligibility under s. 46.286 (1) (a) or the self−directed services option using a uniform tool prescribed by the department.

(7r) "Long−term care district" means a special purpose district created under s. 46.2895 (1).

(7u) "Long−term care district board" means the governing board of a long−term care district.

(8) "Nonprofit organization" has the meaning given in s. 108.02 (19).

(9) "Older person" means a person who is at least 65 years of age.

(10) "Resource center" means an entity that meets the standards for operation under s. 46.283 (3) or, if under contract to provide a portion of the services specified under s. 46.283 (3), meets the standards for operation with respect to those services.

(10m) "Self−directed services option" means the program that is operated under a waiver from the secretary of the federal department of health and human services under 42 USC 1396n (c) in which an enrolled individual selects his or her own services and service providers.

(11) "Tribe or band" means a federally recognized American Indian tribe or band.

History: 1999 a. 9, 185; 2003 a. 33; 2007 a. 20, 141; 2009 a. 247.

46.281 Powers and duties of the department, secretary, and counties; long−term care. (1d) WAIVER REQUEST. The department shall request from the secretary of the federal department of health and human services any waivers of federal medicaid laws necessary to permit the use of federal moneys to provide the family care benefit to recipients of medical assistance. The department shall implement any waiver that is approved and that is consistent with ss. 46.2805 to 46.2895. Regardless of whether a waiver is approved, the department may implement operation of resource centers, care management organizations, and the family care benefit.

(1g) CONTRACTING FOR RESOURCE CENTERS AND CARE MANAGEMENT ORGANIZATIONS. (a) Subject to par. (b), the department may contract with entities as provided under s. 46.283 (2) to provide the services under s. 46.283 (3) and (4) as resource centers in any geographic area in the state, and may contract with entities as provided under s. 46.284 (2) to administer the family care bene-

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fit as care management organizations in any geographic area in the state.

(b) If the department proposes to contract with entities to administer the family care benefit in geographic areas in which, in the aggregate, resides more than 29 percent of the state population that is eligible for the family care benefit, the department shall first submit to the joint committee on finance in writing the proposed contract for the approval of the committee. The submission shall include the contract proposal; and an estimate of the fiscal impact of the proposed addition that demonstrates that the addition will be cost neutral, including startup, transitional, and ongoing operational costs and any proposed county contribution. The submission shall also include, for each county affected by the proposal, documentation that the county consents to administration of the family care benefit in the county, the amount of the county's payment or reduction in community aids under s. 46.281 (4), and a proposal by the county for using any savings in county expenditures on long−term care that result from administration of the family care benefit in the county. The department may enter into the proposed contract only if the committee approves the proposed contract. The procedures under s. 13.10 do not apply to this paragraph.

(1n) OTHER DUTIES OF THE DEPARTMENT. The department shall do all of the following:

(a) Prescribe and implement a per person monthly rate structure for costs of the family care benefit.

(b) In order to maintain continuous quality assurance and quality improvement for resource centers and care management organizations, do all of the following:

1. Prescribe by rule and by contract and enforce performance standards for operation of resource centers and care management organizations.

2. Use performance expectations that are related to outcomes for persons in contracting with care management organizations and resource centers.

3. Conduct ongoing evaluations of managed care programs for provision of long−term care services that are funded by medical assistance, as defined in s. 46.278 (1m) (b), as to client access to services, the availability of client choice of living and service options, quality of care, and cost−effectiveness. In evaluating the availability of client choice, the department shall evaluate the opportunity for a client to arrange for, manage, and monitor his or her family care benefit directly or with assistance, as specified in s. 46.284 (4) (e).

4. Require that quality assurance and quality improvement efforts be included throughout the long−term care system specified in ss. 46.2805 to 46.2895.

5. Ensure that reviews of the quality of management and service delivery of resource centers and care management organizations are conducted by external organizations and make information about specific review results available to the public.

(c) Require by contract that resource centers and care management organizations establish procedures under which an individual who applies for or receives the family care benefit may register a complaint or grievance and procedures for resolving complaints and grievances.

(d) 1. Establish regions for long−term care advisory committees under s. 46.2825, periodically review the boundaries of the regions, and, as appropriate, revise the boundaries.

2. Specify the number of members that each governing board of a resource center shall appoint to a regional long−term care advisory committee. The total number of committee members shall not exceed 25, and the department shall allot committee membership equally among the governing boards of resource centers operating within the boundaries of the regional long−term care advisory committee.

3. Provide information and staff assistance to assist regional long−term care advisory committees in performing the duties under s. 46.2825 (2).

(e) Contract with a person to provide the advocacy services described under s. 16.009 (2) (p) 1. to 5. to actual or potential recipients of the family care benefit who are under age 60 or to their families or guardians. The department may not contract under this paragraph with a county or with a person who has a contract with the department to provide services under s. 46.283 (3) and (4) as a resource center or to administer the family care benefit as a care management organization. The contract under this paragraph shall include as a goal that the provider of advocacy services provide one advocate for every 2,500 individuals under age 60 who receive the family care benefit or who participates in the self−directed services option.

(f) From the appropriation under s. 20.435 (7) (b), provide $75,000 annually to Grant County to provide, with respect to issues concerning family care benefits, liaison services between the county and a managed care organization and advocacy services on behalf of the county.

(2) OTHER POWERS OF THE DEPARTMENT. The department may develop risk−sharing arrangements in contracts with care management organizations, in accordance with applicable state laws and federal statutes and regulations.

(3) DUTY OF THE SECRETARY. The secretary shall certify to each county, hospital, nursing home, community−based residential facility, adult family home, and residential care apartment complex the date on which a resource center that serves the area of the county, hospital, nursing home, community−based residential facility, adult family home, or residential care apartment complex is first available to perform functional screenings and financial and cost−sharing screenings. To facilitate phase−in of services of resource centers, the secretary may certify that the resource center is available for specified groups of eligible individuals or for specified facilities in the county.

(4) COUNTY CONTRIBUTION. (a) In this subsection, "base amount" means the amount that a county expended in calendar year 2006, as determined by the department, to provide long−term care services to individuals who would have been eligible for the family care benefit in calendar year 2006 if the family care benefit had been available to residents of the county.

(b) Except as provided in par. (c), each county in which the department has a contract with an entity to administer the family care benefit shall in each year of the contract either pay the department the following amount or agree to reduce the community aids distribution to the county under s. 46.40 (2) by the following amount:

1. If the base amount for the county is less than or equal to 22 percent of the calendar year 2006 community aids distribution to the county under s. 46.40 (2), the base amount.

2. If the base amount for the county is greater than 22 percent of the calendar year 2006 community aids distribution to the county under s. 46.40 (2), the following amounts in the following years:

a. For the first year that the department contracts for administration of the family care benefit in the county, the base amount for the county.

b. For the 2nd, 3rd, and 4th years that the department contracts for administration of the family care benefit in the county, the amount from the previous year minus 25 percent of the difference between the base amount for the county and 22 percent of the calendar year 2006 community aids distribution to the county under s. 46.40 (2).

c. For the 5th year and each subsequent year that the department contracts for administration of the family care benefit in the county, 22 percent of the calendar year 2006 community aids distribution to the county under s. 46.40 (2).

(c) Each county in which the department has a contract with an entity to administer the family care benefit, and in which the department had such a contract before January 1, 2006, shall annually either pay the department or agree to reduce the community aids distribution to the county under s. 46.40 (2) by the

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amount that the county paid the department, or by which the county's community aids distribution was reduced, in calendar year 2006 to fund the program under ss. 46.2805 to 46.2895.

(d) The department shall deposit payments made by counties under this subsection in the appropriation account under s. 20.435 (7) (g).

History: 1999 a. 9; 2001 a. 103; 2005 a. 25, 386; 2007 a. 20; 2009 a. 28, 247; 2011 a. 32, 127.

46.2825 Regional long−term care advisory committees. (1) CREATION. The governing board of each resource center operating in a region established by the department under s. 46.281 (1n) (d) 1. shall appoint the number of its members that is specified by the department under s. 46.281 (1n) (d) 2. to a regional long−term care advisory committee. At least 50 percent of the persons a resource center board appoints to a regional long−term care advisory committee shall be older persons or persons with a physical or developmental disability or their family members, guardians, or other advocates.

(2) DUTIES. A regional long−term care advisory committee shall do all of the following:

(a) Evaluate the performance of care management organizations and entities that operate a program described under s. 46.2805 (1) (a) or (b) in the committee's region with respect to responsiveness to recipients of their services, fostering choices for recipients, and other issues affecting recipients; and make recommendations based on the evaluation to the department and to the care management organizations and entities, as appropriate.

(b) Evaluate the performance of resource centers operating in the committee's region and, as appropriate, make recommendations, concerning their performance to the department and the resource centers.

(c) Monitor grievances and appeals made to care management organizations or entities that operate a program described under s. 46.2805 (1) (a) or (b) within the committee's region.

(d) Review utilization of long−term care services in the committee's region.

(e) Monitor enrollments and disenrollments in care management organizations that provide services in the committee's region.

(f) Using information gathered under s. 46.283 (6) (b) 2. by governing boards of resources centers operating in the committee's region and other available information, identify any gaps in the availability of services, living arrangements, and community resources needed by older persons and persons with physical or developmental disabilities, and develop strategies to build capacity to provide those services, living arrangements, and community resources in the committee's region.

(g) Perform long−range planning on long−term care policy for individuals belonging to the client groups served by the resource center.

(h) Annually report to the department regarding significant achievements and problems relating to the provision of long−term care services in the committee's region.

History: 2007 a. 20 ss. 968, 970, 977.

46.283 Resource centers. (1) APPLICATION FOR CONTRACT. (a) A county board of supervisors and, in a county with a county executive or a county administrator, the county executive or county administrator, may decide all of the following:

1. Whether to authorize one or more county departments under s. 46.21, 46.215, 46.22 or 46.23 or an aging unit under s. 46.82 (1) (a) 1., 2., or 3. to apply to the department for a contract to operate a resource center and, if so, which to authorize and what client group to serve.

2. Whether to create a long−term care district to apply to the department for a contract to operate a resource center.

(b) The governing body of a tribe or band or of the Great Lakes Inter−Tribal Council, Inc., may decide whether to authorize a tribal agency to apply to the department for a contract to operate a resource center for tribal members and, if so, which client group to serve.

(c) A county board of supervisors may decide to apply to the department for a contract to operate a multicounty resource center in conjunction with the county board or boards of one or more other counties or a county−tribal resource center in conjunction with the governing body of a tribe or band or the Great Lakes Inter−Tribal Council, Inc.

(d) The governing body of a tribe or band may decide to apply to the department for a contract to operate a resource center in conjunction with the governing body or governing bodies of one or more other tribes or bands or the Great Lakes Inter−Tribal Council, Inc., or with a county board of supervisors.

(2) EXCLUSIVE CONTRACT. The department may contract to operate a resource center with counties, long−term care districts, or the governing body of a tribe or band or the Great Lakes Inter−Tribal Council, Inc., under a joint application of any of these, or with a private nonprofit organization if the department determines that the organization has no significant connection to an entity that operates a care management organization and if any of the following applies:

(a) A county board of supervisors declines in writing to apply for a contract to operate a resource center.

(b) A county agency or a long−term care district applies for a contract but fails to meet the standards specified in sub. (3).

(3) STANDARDS FOR OPERATION. The department shall assure that at least all of the following are available to a person who contacts a resource center for service:

(a) Information and referral services and other assistance at hours that are convenient for the public.

(b) A determination of functional eligibility for the family care benefit.

(c) Within the limits of available funding, prevention and intervention services.

(d) Counseling concerning public and private benefits programs.

(e) A determination of financial eligibility and of the maximum amount of cost sharing required for a person who is seeking long−term care services, under standards prescribed by the department.

(f) Assistance to a person who is eligible for the family care benefit with respect to the person's choice of whether or not to enroll in a care management organization and, if so, which available care management organization would best meet his or her needs.

(g) Assistance in enrolling in a care management organization for persons who choose to enroll.

(j) Transitional services to families whose children with physical or developmental disabilities are preparing to enter the adult service system.

(k) A determination of eligibility for state supplemental payments under s. 49.77, medical assistance under s. 49.46, 49.468, 49.47, or 49.471, or the federal food stamp program under 7 USC 2011 to 2029.

(4) DUTIES. A resource center shall do all of the following:

(a) Provide services within the entire geographic area prescribed for the resource center by the department.

(b) Submit to the department all reports and data required or requested by the department.

(c) Implement internal quality improvement and quality assurance processes that meet standards prescribed by the department.

(d) Cooperate with any review by an external advocacy organization.

(e) Provide information about the services of the resource center, including the services specified in sub. (3) (d), about assessments under s. 46.284 (4) (b) and care plans under s. 46.284 (4)

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(c), and about the family care benefit and the self−directed services option to all older persons and adults with a physical or developmental disability who are residents of nursing homes, community−based residential facilities, adult family homes, and residential care apartment complexes in the area of the resource center when the benefit under s. 46.286 first becomes available in the county where the nursing home, community−based residential facility, adult family home, or residential care apartment complex is located.

(f) Perform a functional screening and a financial and cost−sharing screening for any resident, as specified in par. (e), who requests a screening and assist any resident who is eligible and chooses to enroll in a care management organization or the self−directed services option to do so.

(g) Perform a functional screening and a financial and cost−sharing screening for any person seeking admission to a nursing home, community−based residential facility, residential care apartment complex, or adult family home, if the secretary has certified that the resource center is available to the person and the facility and the person is 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. A resource center may not require a financial and cost−sharing screening for a person seeking admission or about to be admitted on a private pay basis who waives the requirement for a financial and cost−sharing screening under this paragraph, unless the person is expected to become eligible for medical assistance within 6 months. A resource center need not perform a functional screening for a person seeking admission or about to be admitted for whom a functional screening was performed within the previous 6 months.

(h) Provide access to services under s. 46.90 and ch. 55 to a person who is eligible for the services, through cooperation with the elder−adult−at−risk agency or the adult−at−risk agency that provides the services.

(i) Assure that emergency calls to the resource center are responded to promptly, 24 hours per day.

(j) Target any outreach, education, and prevention services it provides and any service development efforts it conducts on the basis of findings made by the governing board of the resource center under sub. (6) (b) 2. and 3.

(5) FUNDING. From the appropriation accounts under s. 20.435 (4) (b), (bm), (gm), (pa), and (w) and (7) (b), (bd), and (md), the department may contract with organizations that meet standards under sub. (3) for performance of the duties under sub. (4) and shall distribute funds for services provided by resource centers.

(6) GOVERNING BOARD. (a) 1. A resource center shall have a governing board that reflects the ethnic and economic diversity of the geographic area served by the resource center.

2. At least one−fourth of the members of the governing board shall be individuals who belong to a client group served by the resource center or their family members, guardians, or other advocates. The proportion of these board members who belong to each client group, or their family members, guardians, or advocates, shall be the same, respectively, as the proportion of individuals in this state who receive services under s. 46.2805 to 46.2895 and belong to each client group.

3. An individual who has a financial interest in, or serves on the governing board of, a care management organization or an organization that administers a program described under s. 46.2805 (1) (a) or (b) or a managed care program under s. 49.45 for individuals who are eligible to receive supplemental security income under 42 USC 1381 to 1383c, which serves any geographic area also served by a resource center, and the individual's family members, may not serve as members of the governing board of the resource center.

(b) The governing board of a resource center shall do all of the following:

1. Determine the structure, policies, and procedures of, and oversee the operations of, the resource center. The operations of a resource center that is operated by a county are subject to the county's ordinances and budget.

2. Annually gather information from consumers and providers of long−term care services and other interested persons concerning the adequacy of long−term care services offered in the area served by the resource center. The board shall provide well−advertised opportunities for persons to participate in the board's information gathering activities conducted under this subdivision.

3. Identify any gaps in services, living arrangements, and community resources needed by individuals belonging to the client groups served by the resource center, especially those with long−term care needs.

4. Report findings made under subds. 2. and 3. to the applicable regional long−term care advisory committee.

5. Recommend strategies for building local capacity to serve older persons and persons with physical or developmental disabilities, as appropriate, to local elected officials, the regional long−term care advisory committee, or the department.

6. Identify potential new sources of community resources and funding for needed services for individuals belonging to the client groups served by the resource center.

7. Appoint members to the regional long−term care advisory committee, as provided under s. 46.2825 (1).

8. Annually review interagency agreements between the resource center and care management organizations that provide services in the area served by the resource center and make recommendations, as appropriate, on the interaction between the resource center and the care management organizations to assure coordination between or among them and to assure access to and timeliness in provision of services by the resource center and the care management organizations.

9. Review the number and types of grievances and appeals concerning the long−term care system in the area served by the resource center, to determine if a need exists for system changes, and recommend system or other changes if appropriate.

10. If directed to do so by the county board, assume the duties of the county long−term community support planning committee as specified under s. 46.27 (4) for a county served by the resource center.

(7) CONFIDENTIALITY; EXCHANGE OF INFORMATION. No record, as defined in s. 19.32 (2), of a resource center that contains personally identifiable information, as defined in s. 19.62 (5), concerning an individual who receives services from the resource center may be disclosed by the resource center without the individual's informed consent, except as follows:

(a) A resource center may provide information as required to comply with s. 16.009 (2) (p) or 49.45 (4) or as necessary for the department to administer the program under ss. 46.2805 to 46.2895.

(b) Notwithstanding ss. 48.78 (2) (a), 49.45 (4), 49.83, 51.30, 51.45 (14) (a), 55.22 (3), 146.82, 252.11 (7), 253.07 (3) (c) and 938.78 (2) (a), a resource center acting under this section may exchange confidential information about a client, as defined in s. 46.287 (1), without the informed consent of the client, under s. 46.21 (2m) (c), 46.215 (1m), 46.22 (1) (dm), 46.23 (3) (e), 46.284 (7), 46.2895 (10), 51.42 (3) (e) or 51.437 (4r) (b) in the county of the resource center, if necessary to enable the resource center to perform its duties or to coordinate the delivery of services to the client.

History: 1999 a. 9; 2001 a. 16, 103; 2003 a. 33; 2005 a. 25, 254, 264, 386, 388; 2007 a. 20 ss. 969, 971 to 973, 976, 978 to 991; 2009 a. 2, 28, 180, 247, 249; 2011 a. 32.

46.284 Care management organizations. (1) APPLICATION FOR CONTRACT. (a) A county board of supervisors and, in a county with a county executive or a county administrator, the

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county executive or county administrator, may decide all of the following:

1. Whether to authorize one or more county departments under s. 46.21, 46.215, 46.22 or 46.23 or an aging unit under s. 46.82 (1) (a) 1. or 2. to apply to the department for a contract to operate a care management organization and, if so, which to authorize and what client group to serve.

2. Whether to create a long−term care district to apply to the department for a contract to operate a care management organization.

(b) The governing body of a tribe or band or of the Great Lakes Inter−Tribal Council, Inc., may decide whether to authorize a tribal agency to apply to the department for a contract to operate a care management organization for tribal members and, if so, which client group to serve.

(c) Under the requirements of par. (a), a county board of supervisors may decide to apply to the department for a contract to operate a multicounty care management organization in conjunction with the county board or boards of one or more other counties or a county−tribal care management organization in conjunction with the governing body of a tribe or band or the Great Lakes Inter−Tribal Council, Inc.

(d) Under the requirements of par. (b), the governing body of a tribe or band may decide to apply to the department for a contract to operate a care management organization in conjunction with the governing body or governing bodies of one or more other tribes or bands or the Great Lakes Inter−Tribal Council, Inc., or with a county board of supervisors.

(2) CONTRACTS. (a) The department may contract for operation of a care management organization only with an entity that is certified as meeting the requirements under sub. (3). No entity may operate as a care management organization under the requirements of this section unless so certified and under contract with the department.

(bm) The department may contract with counties, long−term care districts, the governing body of a tribe or band or the Great Lakes inter−tribal council, inc., or under a joint application of any of these, or with a private organization that has no significant connection to an entity that operates a resource center. Proposals for contracts under this subdivision shall be solicited under a competitive sealed proposal process under s. 16.75 (2m) and the department shall evaluate the proposals primarily as to the quality of care that is proposed to be provided, certify those applicants that meet the requirements specified in sub. (3) (a), select certified applicants for contract and contract with the selected applicants.

(c) The department shall require, as a term of any contract with a care management organization under this section, that the care management organization contract for the provision of services that are covered under the family care benefit with any community−based residential facility under s. 50.01 (1g), residential care apartment complex under s. 50.01 (6d), nursing home under s. 50.01 (3), intermediate care facility for persons with an intellectual disability under s. 50.14 (1) (b), community rehabilitation program, home health agency under s. 50.49 (1) (a), provider of day services, or provider of personal care, as defined in s. 50.01 (4o), that agrees to accept the reimbursement rate that the care management organization pays under contract to similar providers for the same service and that satisfies any applicable quality of care, utilization, or other criteria that the care management organization requires of other providers with which it contracts to provide the same service.

NOTE: The cross−reference to s. 50.01 (6d) was changed from s. 50.01 (1d) by the legislative reference bureau under s. 13.92 (1) (bm) 2. to reflect the renumbering under s. 13.92 (1) (bm) 2. of s. 50.01 (1d).

(d) As a term of a contract with a care management organization under this section, the department shall prohibit a care management organization from including a provision that requires a provider to return any funding for residential services, prevocational services, or supported employment services that exceeds the cost of those services to the care management organization in a contract for services covered by the family care benefit.

(3) CERTIFICATION; REQUIREMENTS. (a) If an entity meets the requirements under par. (b) and applicable rules of the department and submits to the department an application for initial certification or certification renewal, the department shall certify that the entity meets the requirements for a care management organization.

(b) To be certified as a care management organization, an applicant shall demonstrate or ensure all of the following:

1. Adequate availability of providers with the expertise and ability to provide services that are responsive to the disabilities or conditions of all of the applicant's proposed enrollees and sufficient representation of programmatic philosophies and cultural orientations to accommodate a variety of enrollee preferences and needs.

2. Adequate availability of providers that can meet the preferences and needs of its proposed service recipients for services at various times, including evenings, weekends and, when applicable, on a 24−hour basis.

3. Adequate availability of providers that are able and willing to perform all of the tasks that are likely to be identified in proposed enrollees' service and care plans.

4. Adequate availability of residential and day services that are geographically accessible to proposed enrollees' homes, families or friends.

5. Adequate supported living arrangements of the types and sizes that meet proposed enrollees' preference and needs.

6. Expertise in determining and meeting the needs of every target population that the applicant proposes to serve and connections to the appropriate service providers.

7. Thorough knowledge of local long−term care and other community resources.

8. The ability to manage and deliver, either directly or through subcontracts or partnerships with other organizations, the full range of benefits to be included in the monthly payment amount.

9. Thorough knowledge of methods for maximizing informal caregivers and community resources and integrating them into a service or care plan.

10. Coverage for a geographic area specified by the department.

11. The ability to develop strong linkages with systems and services that are not directly within the scope of the applicant's responsibility but that are important to the target group that it proposes to serve, including primary and acute health care services.

12. Adequate and competent staffing by qualified personnel to perform all of the functions that the applicant proposes to undertake.

(3m) PERMIT REQUIRED. A care management organization that is described under s. 600.01 (1) (b) 10. a., to which s. 600.01 (1) (b) 10. b. does not apply and that is certified under sub. (3) shall apply for a permit with the office of the commissioner of insurance under ch. 648.

(4) DUTIES. A care management organization shall, in addition to meeting all contract requirements, do all of the following:

(a) Accept requested enrollment of any person who is entitled to the family care benefit and of any person who is eligible for the family care benefit and for whom funding is available. No care management organization may disenroll any enrollee, except under circumstances specified by the department by contract. No care management organization may encourage any enrollee to disenroll in order to obtain long−term care services under the medical assistance fee−for−service system. No involuntary disenrollment is effective unless the department has reviewed and approved it.

(b) Conduct a comprehensive assessment for each enrollee, including an in−person interview with the enrollee, using a standard format developed by the department.

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(c) With the enrollee and the enrollee's family or guardian, if appropriate, develop a comprehensive care plan that reflects the enrollee's values and preferences.

(d) Provide or contract for the provision of necessary services and monitor the provided or contracted services.

(e) Provide, within guidelines established by the department, a mechanism by which an enrollee may arrange for, manage, and monitor his or her family care benefit directly or with the assistance of another person chosen by the enrollee. The care management organization shall provide each enrollee with a form on which the enrollee shall indicate whether he or she has been offered the option under this paragraph and whether he or she has accepted or declined the option. If the enrollee accepts the option, the care management organization shall monitor the enrollee's use of a fixed budget for purchase of services or support items from any qualified provider, monitor the health and safety of the enrollee, and provide assistance in management of the enrollee's budget and services at a level tailored to the enrollee's need and desire for the assistance.

(f) Provide, on a fee−for−service basis, case management services to persons who are functionally eligible but not financially eligible for the family care benefit.

(g) Meet all performance standards required by the federal government or promulgated by the department by rule.

(h) Submit to the department reports and data required or requested by the department.

(i) Implement internal quality improvement and assurance processes that meet standards prescribed by the department by rule.

(j) Cooperate with external quality assurance reviews.

(k) Meet departmental requirements for protection of solvency.

(L) Annually submit to the department an independent financial audit that meets federal requirements.

(5) FUNDING AND RISK−SHARING. (a) From the appropriation accounts under s. 20.435 (4) (b), (g), (gm), (im), (o), and (w) and (7) (b), (bd), and (g), the department shall provide funding on a capitated payment basis for the provision of services under this section. Notwithstanding s. 46.036 (3) and (5m), a care management organization that is under contract with the department may expend the funds, consistent with this section, including providing payment, on a capitated basis, to providers of services under the family care benefit.

(b) If the expenditures by a care management organization under par. (a) exceed payments received from the department under par. (a), as determined by the department by contract, the department may share the loss with the care management organization, within the limits prescribed under the contract with the department.

(c) If the payments received from the department under par. (a) exceed the expenditures by a care management organization under par. (a), as determined by the department by contract, the care management organization may retain a portion of the excess payments, within the limits prescribed under the contract with the department, and shall return the remainder to the department.

(d) The department may, by contract, impose solvency protections that the department determines are reasonable and necessary to retain federal financial participation. These protections may include all of the following:

1. The requirement that a care management organization segregate a risk reserve from other funds of the care management organization or the authorizing body for the care management organization.

2. The requirement that interest accruing to the risk reserve remain in the escrow account for the risk reserve.

3. Limitations on the distribution of funds from the risk reserve.

4. The requirement that a care management organization place funds in a risk reserve and maintain the risk reserve in an interest−bearing escrow account with a financial institution, as defined in s. 69.30 (1) (b), or invest funds as specified in s. 46.2895 (4) (j) 2. or 3. Moneys in the risk reserve or invested as specified in this subdivision may be expended only for the provision of services under this section. If a care management organization ceases participation under this section, the funds in the risk reserve or invested as specified in this subdivision, minus any contribution of moneys other than those specified in par. (c), shall be returned to the department. The department shall expend the moneys for the payment of outstanding debts to providers of family care benefit services and for the continuation of family care benefit services to enrollees.

(e) 1. Subject to subd. 2., a care management organization may enter into contracts with providers of family care benefit services and may limit profits of the providers under the contracts.

2. The department shall review the contracts in subd. 1., including rates for the provision of service, to ensure that the contract terms protect services access by enrollees and financial viability of the care management organization, and may require contract revision.

(6) GOVERNING BOARD. A care management organization shall have a governing board that reflects the ethnic and economic diversity of the geographic area served by the care management organization. At least one−fourth of the members of the governing board shall be representative of the client group or groups whom the care management organization is contracted to serve or those clients' family members, guardians, or other advocates.

(7) CONFIDENTIALITY; EXCHANGE OF INFORMATION. No record, as defined in s. 19.32 (2), of a care management organization that contains personally identifiable information, as defined in s. 19.62 (5), concerning an individual who receives services from the care management organization may be disclosed by the care management organization without the individual's informed consent, except as follows:

(a) A care management organization may provide information as required to comply with s. 16.009 (2) (p) or 49.45 (4) or as necessary for the department to administer the program under ss. 46.2805 to 46.2895.

(b) Notwithstanding ss. 48.78 (2) (a), 49.45 (4), 49.83, 51.30, 51.45 (14) (a), 55.22 (3), 146.82, 252.11 (7), 253.07 (3) (c) and 938.78 (2) (a), a care management organization acting under this section may exchange confidential information about a client, as defined in s. 46.287 (1), without the informed consent of the client, under s. 46.21 (2m) (c), 46.215 (1m), 46.22 (1) (dm), 46.23 (3) (e), 46.283 (7), 46.2895 (10), 51.42 (3) (e) or 51.437 (4r) (b) in the county of the care management organization, if necessary to enable the care management organization to perform its duties or to coordinate the delivery of services to the client.

History: 1999 a. 9; 2001 a. 16, 103; 2003 a. 33; 2005 a. 264, 386; 2007 a. 20; 2009 a. 2, 28; 2011 a. 10, 32, 126; s. 13.92 (1) (bm) 2.

46.285 Operation of resource center and care management organization. In order to meet federal requirements and assure federal financial participation in funding of the family care benefit, a county, a tribe or band, a long−term care district or an organization, including a private, nonprofit corporation, may not directly operate both a resource center and a care management organization, except as follows:

(1) For an entity with which the department has contracted under s. 46.281 (1) (e) 1., 2005 stats., provision of the services specified under s. 46.283 (3) (b), (e), (f) and (g) shall be structurally separate from the provision of services of the care management organization by January 1, 2001.

(2) The department may approve separation of the functions of a resource center from those of a care management organization by a means other than creating a long−term care district under s.

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46.2895 to serve either as a resource center or as a care management organization.

History: 1999 a. 9; 2005 a. 386; 2007 a. 20.

46.286 Family care benefit. (1) ELIGIBILITY. A person is eligible for, but not necessarily entitled to, the family care benefit if the person is at least 18 years of age; has a physical disability, as defined in s. 15.197 (4) (a) 2., or a developmental disability, as defined in s. 51.01 (5) (a), or is a frail elder; and meets all of the following criteria:

(a) *Functional eligibility.* A person is functionally eligible if the person's level of care need, as determined by the department or its designee, is either of the following:

1m. The nursing home level, if the person has a long−term or irreversible condition, expected to last at least 90 days or result in death within one year of the date of application, and requires ongoing care, assistance or supervision.

2m. The non−nursing home level, if the person has a condition that is expected to last at least 90 days or result in death within 12 months after the date of application, and is at risk of losing his or her independence or functional capacity unless he or she receives assistance from others.

(b) *Financial eligibility.* 1c. In this paragraph, "medical assistance" does not include coverage of the benefits under s. 49.471 (11).

2m. A person is financially eligible if any of the following apply:

a. The person is eligible under ch. 49 for medical assistance and, unless he or she is exempt from acceptance under rules promulgated by the department, accepts medical assistance.

b. The person was receiving the family care benefit on October 27, 2007, the person would qualify for medical assistance except for financial or disability criteria, and the projected cost of the person's care plan, as calculated by the department or its designee, exceeds the person's gross monthly income, plus one−twelfth of his or her countable assets, less deductions and allowances permitted by rule by the department.

(2) COST SHARING. (a) A person who is determined to be financially eligible under sub. (1) (b) shall contribute to the cost of his or her care an amount that is calculated by the department or its designee after subtracting from the person's gross income, plus one−twelfth of countable assets, the deductions and allowances permitted by the department by rule.

(b) Funds received under par. (a) shall be used by a care management organization to pay for services under the family care benefit.

(c) A person who is required to contribute to the cost of his or her care but who fails to make the required contributions is ineligible for the family care benefit unless he or she is exempt from the requirement under rules promulgated by the department.

(3) ENTITLEMENT. (a) Subject to par. (c), a person is entitled to and may receive the family care benefit through enrollment in a care management organization if all of the following apply:

1m. The person is at least 18 years of age.

2m. The person has a physical disability, as defined in s. 15.197 (4) (a) 2., a developmental disability, as defined in s. 51.01 (5) (a), or is a frail elder.

3m. The person is functionally eligible under sub. (1) (a).

4m. The person is financially eligible under sub. (1) (b) 2m. a., and fulfills any applicable cost−sharing requirements.

(b) An entitled individual who is enrolled in a care management organization may not be involuntarily disenrolled except as follows:

1. For cause, subject to the requirements of s. 46.284 (4) (a).

2. If the contract between the care management organization and the department is canceled or not renewed. If this circumstance occurs, the department shall assure that enrollees continue to receive needed services through another care management organization or through the medical assistance fee−for−service system or any of the following programs:

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

b. Home and community−based waiver programs under 42 USC 1396n (c), including a community integration program under s. 46.275, 46.277, or 46.278 and the Community Opportunities and Recovery Program under s. 46.2785.

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

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

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

3. The department or its designee determines that the person no longer meets eligibility criteria under sub. (1).

(c) Within each county and for each client group, par. (a) shall first apply on the effective date of a contract under which a care management organization accepts a per person per month payment to provide services under the family care benefit to eligible persons in that client group in the county. Within 36 months after this date, the department shall assure that sufficient capacity exists within one or more care management organizations to provide the family care benefit to all entitled persons in that client group in the county.

(3m) INFORMATION ABOUT ENROLLEES. The department shall obtain and share information about family care enrollees as provided in s. 49.475.

(4) DIVESTMENT; RULES. The department shall promulgate rules relating to prohibitions on divestment of assets of persons who receive the family care benefit, that are substantially similar to applicable provisions under s. 49.453.

(5) TREATMENT OF TRUST AMOUNTS; RULES. The department shall promulgate rules relating to treatment of trust amounts of persons who receive the family care benefit, that are substantially similar to applicable provisions under s. 49.454.

(6) PROTECTION OF INCOME AND RESOURCES OF COUPLE FOR MAINTENANCE OF COMMUNITY SPOUSE; RULES. The department shall promulgate rules relating to protection of income and resources of couples for the maintenance of the spouse in the community with regard to persons who receive the family care benefit, that are substantially similar to applicable provisions under s. 49.455.

(7) RECOVERY OF FAMILY CARE BENEFIT PAYMENTS; RULES. The department shall promulgate rules relating to the recovery from persons who receive the family care benefit, including by liens and from estates, of correctly and incorrectly paid family care benefits, that are substantially similar to applicable provisions under ss. 49.496 and 49.497.

History: 1999 a. 9, 185; 2001 a. 16, 109; 2003 a. 33; 2005 a. 25, 264, 388; 2007 a. 20; 2009 a. 28.

Cross−reference: See also ch. DHS 10, Wis. adm. code.

46.287 Hearings. (1) DEFINITION. In this section, "client" means a person applying for eligibility for the family care benefit, an eligible person or an enrollee.

(2) HEARING. (a) 1. Except as provided in subd. 2., a client may contest any of the following applicable matters by filing, within 45 days of the failure of a resource center or care management organization to act on the contested matter within the time frames specified by rule by the department or within 45 days after receipt of notice of a decision in a contested matter, a written request for a hearing under s. 227.44 to the division of hearings and appeals created under s. 15.103 (1):

a. Denial of eligibility under s. 46.286 (1).

b. Determination of cost sharing under s. 46.286 (2).

c. Denial of entitlement under s. 46.286 (3).

d. Failure to provide timely services and support items that are included in the plan of care.

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e. Reduction of services or support items under the family care benefit.

f. Development of a plan of care that is unacceptable because the plan of care requires the enrollee to live in a place that is unacceptable to the enrollee or the plan of care provides care, treatment or support items that are insufficient to meet the enrollee's needs, are unnecessarily restrictive or are unwanted by the enrollee.

g. Termination of the family care benefit.

h. Imposition of ineligibility for the family care benefit under s. 46.286 (4).

i. Denial of eligibility or reduction of the amounts of the family care benefit under s. 46.286 (5).

j. Determinations similar to those specified under s. 49.455 (8) (a), made under s. 46.286 (6).

k. Recovery of family care benefit payments under s. 46.286 (7).

2. An applicant for or recipient of medical assistance is not entitled to a hearing concerning the identical dispute or matter under both this section and 42 CFR 431.200 to 431.246.

(b) An enrollee may contest a decision, omission or action of a care management organization other than those specified in par. (a), or may contest the choice of service provider. In these instances, the enrollee shall first send a written request for review by the unit of the department that monitors care management organization contracts. This unit shall review and attempt to resolve the dispute. If the dispute is not resolved to the satisfaction of the enrollee, he or she may request a hearing under the procedures specified in par. (a) 1. (intro.).

(c) Information regarding the availability of advocacy services and notice of adverse actions taken and appeal rights shall be provided to a client by the resource center or care management organization in a form and manner that is prescribed by the department by rule.

History: 1999 a. 9; 2003 a. 33.

46.288 Rule−making. The department shall promulgate as rules all of the following:

(1) Standards for performance by resource centers and for certification of care management organizations, including requirements for maintaining quality assurance and quality improvement.

(2) Criteria and procedures for determining functional eligibility under s. 46.286 (1) (a), financial eligibility under s. 46.286 (1) (b), and cost sharing under s. 46.286 (2) (a). The rules for determining functional eligibility under s. 46.286 (1) (a) 1m. shall be substantially similar to eligibility criteria for receipt of the long−term support community options program under s. 46.27. Rules under this subsection shall include definitions of the following terms applicable to s. 46.286:

(d) "Long−term or irreversible".

(e) "Requires ongoing care, assistance or supervision".

(f) "Condition that is expected to last at least 90 days or result in death within one year".

(g) "At risk of losing independence or functional capacity".

(h) "Gross monthly income".

(i) "Deductions and allowances".

(j) "Countable assets".

(3) Procedures and standards for procedures for s. 46.287 (2), including time frames for action by a resource center or a care management organization on a contested matter.

History: 1999 a. 9; 2007 a. 20; 2009 a. 28.

46.2895 Long−term care district. (1) CREATION. (a) A county, a tribe or band, or any combination of counties or tribes or bands, may create a special purpose district that is termed a "long−term care district", that is a local unit of government, that is separate and distinct from, and independent of, the state and the county or tribe or band that created it, and that has the powers and duties specified in this section, if each county or tribe or band that participates in creating the district does all of the following:

1. Adopts an enabling resolution that does all of the following:

a. Declares the need for establishing the long−term care district.

b. Specifies the long−term care district's primary purpose, which shall be to operate, under contract with the department, a resource center under s. 46.283, a care management organization under s. 46.284, or a program described under s. 46.2805 (1) (a) or (b).

c. Specifies the number of individuals who shall be appointed as members of the long−term care district board, the length of their terms, and, if the long−term care district is created by more than one county or tribe or band, how many members shall be appointed by each county or tribe or band.

2. Files copies of the enabling resolution with the secretary of administration, the secretary of health services and the secretary of revenue.

(c) A long−term care district may not operate a care management organization under s. 46.284 or a program described under s. 46.2805 (1) (a) or (b) if the district operates a resource center under s. 46.283.

(d) A county or tribe or band may create more than one long−term care district.

(e) A long−term care district may change its primary purpose specified under par. (a) 1. b. if all the counties or tribes or bands that created the district and that have not withdrawn or been removed from the district under sub. (14), adopt a resolution approving the change in primary purpose and if the change in purpose does not violate par. (c) or any provision of a contract between the department and the district.

(2) JURISDICTION. A long−term care district's jurisdiction is the geographical area of the county or counties that created the long−term care district and the geographic area of the reservation of, or lands held in trust for, any tribe or band that created the long−term care district.

(3) LONG−TERM CARE DISTRICT BOARD. (a) The county board of supervisors of a county or, in a county with a county administrator or county executive, the county administrator or county executive shall appoint the long−term care district board members whom the county is allotted, by resolutions adopted under sub. (1) (a) 1. c., to appoint.

(b) 1. At least one−fourth of the members of a long−term care district board shall be representative of the client group or groups whom it is the long−term care district's primary purpose to serve or those clients' family members, guardians, or other advocates.

3. Membership of a long−term care district board shall reflect the ethnic and economic diversity in the jurisdiction of the long−term care district.

4. No member of a long−term care district board may have a private financial interest in or profit directly or indirectly from any contract or other business of the long−term care district.

5. Only individuals who reside within the jurisdiction of a long−term care district may serve as members of the long−term care district board.

(d) As soon as possible after the appointment of the initial members of the long−term care district board, the board shall organize for the transaction of business and elect a chairperson and other necessary officers. Each chairperson shall be elected by the board from time to time for the term of that chairperson's office as a member of the board or for the term of 3 years, whichever is shorter, and shall be eligible for reelection. A majority of the board shall constitute a quorum. Unless specified otherwise in a bylaw adopted by the board, the board may act based on the affirmative vote of a majority of a quorum.

(4) POWERS. Subject to sub. (1) (c), a long−term care district has all the powers necessary or convenient to carry out the pur-

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poses and provisions of ss. 46.2805 to 46.2895. In addition to all these powers, a long−term care district may do all of the following:

(a) Adopt and alter, at pleasure, an official seal.

(b) Adopt bylaws and policies and procedures for the regulation of its affairs and the conduct of its business. The bylaws, policies and procedures shall be consistent with ss. 46.2805 to 46.2895 and, if the long−term care district contracts with the department under par. (d) or (dm), with the terms of that contract.

(c) Sue and be sued.

(d) Negotiate and enter into leases or contracts, including a contract with the department to operate either a resource center or a portion of its functions under s. 46.283 or a care management organization under s. 46.284, but not both a resource center or its functions and a care management organization.

(dm) Subject to sub. (1) (c), enter into a contract with the department to operate a program described under s. 46.2805 (1) (a) or (b) and provide services related to the contracted services.

(e) Provide services related to services available under the family care benefit, to older persons and persons with disabilities, in addition to the services funded under the contract with the department that is specified under par. (d).

(f) Acquire, construct, equip, maintain, improve or manage a resource center under s. 46.283 or a care management organization under s. 46.284, but not both.

(g) Subject to sub. (8), employ any agent, employee, or special adviser that the long−term care district finds necessary, fix and regulate his or her compensation and provide, either directly or subject to an agreement under s. 66.0301 as a participant in a benefit plan of another governmental entity, any employee benefits, including an employee pension plan.

(h) Mortgage, pledge or otherwise encumber the long−term care district's property or funds.

(i) Buy, sell or lease property, including real estate, and maintain or dispose of the property.

(j) Invest any funds not required for immediate disbursement in any of the following:

1. An interest−bearing escrow account with a financial institution, as defined in s. 69.30 (1) (b).

2. Time deposits in any financial institution, as defined in s. 69.30 (1) (b), if the time deposits mature in not more than 2 years.

3. Bonds or securities issued or guaranteed as to principal and interest by the federal government or by a commission, board or other instrumentality of the federal government.

(k) Create a risk reserve or other special reserve as the long−term care district board desires or as the department requires under the contract with the department that is specified under par. (d).

(L) Accept aid, including loans, to accomplish the purpose of the long−term care district from any local, state or federal governmental agency or accept gifts, loans, grants or bequests from individuals or entities, if the conditions under which the aid, loan, gift, grant or bequest is furnished are not in conflict with this section.

(m) Make and execute other instruments necessary or convenient to exercise the powers of the long−term care district.

(5) LIMITATION ON POWERS. A long−term care district may not issue bonds or levy a tax or assessment.

(6) DUTIES. The long−term care district board shall do all of the following:

(a) Appoint a director, who shall hold office at the pleasure of the board.

(b) Subject to sub. (8), develop and implement a personnel structure and other employment policies for employees of the long−term care district.

(c) Assure compliance with the terms of any contract with the department under sub. (4) (d) or (dm).

(d) Establish a fiscal operating year and annually adopt a budget for the long−term care district.

(e) Contract for any legal services required for the long−term care district.

(f) Subject to sub. (8), procure liability insurance covering its officers, employees, and agents, insurance against any loss in connection with its property and other assets and other necessary insurance; establish and administer a plan of self−insurance; or, subject to an agreement under s. 66.0301, participate in a governmental plan of insurance or self−insurance.

(7) DIRECTOR; DUTIES. The director appointed under sub. (6) (a) shall do all of the following:

(a) Manage the property and business of the long−term care district and manage the employees of the district, subject to the general control of the long−term care district board.

(b) Comply with the bylaws and direct enforcement of all policies and procedures adopted by the long−term care district board.

(c) Perform duties in addition to those specified in pars. (a) and (b) as are prescribed by the long−term care district board.

(8) EMPLOYMENT AND EMPLOYEE BENEFITS OF CERTAIN EMPLOYEES. (a) A long−term care district board that is created at least in part by a county shall do all of the following:

1. If the long−term care district offers employment to any individual who was previously employed by a county, which participated in creating the district and at the time of the offer had not withdrawn or been removed from the district under sub. (14), and who while employed by the county performed duties relating to the same or a substantially similar function for which the individual is offered employment by the district and whose wages were established in a collective bargaining agreement with the county under subch. IV of ch. 111 that is in effect on the date that the individual commences employment with the district, with respect to that individual, abide by the terms of the collective bargaining agreement concerning the individual's wages until the time of the expiration of that collective bargaining agreement or adoption of a collective bargaining agreement with the district under subch. IV of ch. 111 covering the individual as an employee of the district, whichever occurs first.

3. If the long−term care district offers employment to any individual who was previously employed by a county, which participated in creating the district and at the time of the offer had not withdrawn or been removed from the district under sub. (14), and who while employed by the county performed duties relating to the same or a substantially similar function for which the individual is offered employment by the district, with respect to that individual, recognize all years of service with the county for any benefit provided or program operated by the district for which an employee's years of service may affect the provision of the benefit or the operation of the program.

4. If the county has not established its own retirement system for county employees, adopt a resolution that the long−term care district be included within the provisions of the Wisconsin retirement system under s. 40.21 (1). In this resolution, the long−term care district shall agree to recognize 100% of the prior creditable service of its employees earned by the employees while employed by the district.

(b) The county board of supervisors of each county that creates a long−term care district shall do all of the following:

1. If the county has established its own retirement system for county employees, provide that long−term care district employees are eligible to participate in the county retirement system.

2m. If the long−term care district employs any individual who was previously employed by the county, provide the individual health care coverage that is similar to the health care coverage that the county provided the individual when he or she was employed by the county.

(c) A long−term care district and any county that created the district and has not withdrawn from or been removed from the district under sub. (14) may enter into an agreement allocating the costs of providing benefits described under this section between the district and the county.

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(9) CONFIDENTIALITY OF RECORDS. No record, as defined in s. 19.32 (2), of a long−term care district that contains personally identifiable information, as defined in s. 19.62 (5), concerning an individual who receives services from the long−term care district may be disclosed by the long−term care district without the individual's informed consent, except as required to comply with s. 16.009 (2) (p) or 49.45 (4).

(10) EXCHANGE OF INFORMATION. Notwithstanding sub. (9) and ss. 48.78 (2) (a), 49.45 (4), 49.83, 51.30, 51.45 (14) (a), 55.22 (3), 146.82, 252.11 (7), 253.07 (3) (c) and 938.78 (2) (a), a long−term care district acting under this section may exchange confidential information about a client, as defined in s. 46.287 (1), without the informed consent of the client, under s. 46.21 (2m) (c), 46.215 (1m), 46.22 (1) (dm), 46.23 (3) (e), 46.283 (7), 46.284 (7), 51.42 (3) (e) or 51.437 (4r) (b) in the jurisdiction of the long−term care district, if necessary to enable the long−term care district to perform its duties or to coordinate the delivery of services to the client.

(11) OBLIGATIONS, DEBTS, AND RESPONSIBILITIES NOT THOSE OF COUNTY. The obligations and debts of a long−term care district are not the obligations or debts of any county that created the district. If a long−term care district is obligated by statute or contract to provide or pay for services or benefits, no county is responsible for providing or paying for those services or benefits.

(12) ASSISTANCE TO LONG−TERM CARE DISTRICT. From moneys in a county treasury that are not appropriated to some other purpose, the county board of supervisors may appropriate moneys to a long−term care district that the county participated in creating as a gift or may lend moneys to the long−term care district.

(13) DISSOLUTION. Subject to the performance of the contractual obligations of a long−term care district and if first approved by the secretary of the department, the long−term care district may be dissolved by the joint action of the long−term care district board and each county or tribe or band that created the long−term care district and has not withdrawn or been removed from the district under sub. (14). If a long−term care district that is created by one county or tribe or band is dissolved, the property of the district shall be transferred to the county or tribe or band that created it. If a long−term care district is created by more than one county or tribe or band, all of the counties or tribes or bands that created the district and that have not withdrawn or been removed from the district under sub. (14) shall agree on the apportioning of the long−term care district's property before the district may be dissolved. If the long−term care district operates a care management organization under s. 46.284, disposition of any remaining funds in the risk reserve under s. 46.284 (5) (e) shall be made under the terms of the district's contract with the department.

(14) WITHDRAWAL OR REMOVAL OF A COUNTY OR TRIBE OR BAND. Subject to approval from the department, a long−term care district may establish conditions for a county or tribe or band that participated with one or more counties or tribes or bands in creating the district to withdraw from the district or for the district to remove the county or tribe or band from the district.

History: 1999 a. 9, 185; 2001 a. 30; 2005 a. 25, 264; 2007 a. 20 ss. 1021 to 1073, 9121 (6) (a); 2009 a. 180; 2011 a. 10.

46.2897 Self−directed services option; advocacy services. The department shall allow a participant in the self−directed services option that is operated under a waiver from the secretary of the federal department of health and human services under 42 USC 1396n (c) to access the advocacy services contracted for by the department under s. 46.281 (1n) (e).

History: 2009 a. 28.

46.29 Council on physical disabilities. (1) From the appropriation account under s. 20.435 (7) (a), the department shall distribute at least $16,100 in each fiscal year for operation of the council on physical disabilities. The council on physical disabilities shall do all of the following:

(a) Develop, approve and continue modification of a state plan, for services to physically disabled persons, that encompasses services from the entities specified under sub. (3).

(b) Request reports or other information from the entities specified under sub. (3) concerning programs, funding, clients or services as they relate to physically disabled persons.

(c) Advise the secretary of the department and make recommendations, including recommendations for legislation, to the entities specified under sub. (3) concerning funding, programs, policies and operations of those entities and other matters with respect to physically disabled persons.

(d) Encourage public understanding of the needs of and issues concerning physically disabled persons.

(e) Consider all questions and matters concerning physically disabled persons arising within the council or brought to the council for review.

(em) Approve educational material relating to the parking privileges of physically disabled persons for placement on vehicles as provided in s. 346.94 (4). The council may delegate to a member of the council or an officer or employee of a state agency the authority granted under this paragraph.

(fm) By April 15, 1996, and biennially thereafter, submit a report to the legislature under s. 13.172 (2) concerning the time limitations imposed by any ordinances enacted under s. 346.50 (3m) on spaces reserved for use by a motor vehicle used by a physically disabled person, including any recommended changes to s. 346.50 (3m) and copies of any reports submitted from cities as required by s. 346.50 (3m) (b) 5.

(g) Meet at least 4 times annually.

(2) The council on physical disabilities may do all of the following:

(a) Report to the public concerning needs of physically disabled persons and issues that affect those persons.

(b) Promote programs related to the prevention of physical disability.

(c) Form committees for consideration of policies or programs for physically disabled persons.

(3) All of the following shall maintain liaison with and periodically report to the council on physical disabilities concerning progress in achieving objectives in the state plan developed under sub. (1) (a):

(a) The state superintendent of public instruction.

(b) The secretary of transportation.

(c) The secretary of workforce development.

(d) The director of the office of state employment relations.

(e) The secretary of safety and professional services.

(f) The commissioner of insurance.

(g) The president of the University of Wisconsin System.

(h) The president of the technical college system board.

(i) The executive director of the board on aging and long−term care.

History: 1989 a. 202; 1991 a. 39; 1993 a. 256, 399; 1995 a. 27 ss. 9116 (5), 9130 (4), 9145 (1); 1995 a. 131; 1997 a. 3, 27; 1999 a. 9; 2001 a. 16; 2003 a. 33 ss. 1142, 9160; 2007 a. 20, 96; 2009 a. 28; 2011 a. 32.

46.293 Specialized programs for the blind and visually impaired. The department shall provide rehabilitation teaching services for persons who are blind or visually impaired including elderly persons and young persons and their parents or guardians, regardless of their eligibility for vocational rehabilitation services. These services may include assessments of each client's service needs, development of an individual service plan, instruction in braille, training in orientation and movement in the person's home or neighborhood, counseling and guidance to increase the blind or visually impaired person's independence, instruction in the use of low−vision aids, personal and home management

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training and instruction in leisure activities. In conjunction with the provision of these services the department shall:

(1) Work with blind and visually impaired persons, in a setting appropriate to each individual, to form rehabilitation plans for independent living to enable them to increase their self−reliance.

(2) Assist blind and visually impaired persons in physical orientation and personal adjustment.

History: 1995 a. 27 ss. 2270, 2413; Stats. 1995 s. 46.293.

46.295 Interpreters for the hearing−impaired. (1) The department may, on the request of any hearing−impaired person, city, village, town, or county or private agency, provide funds from the appropriation accounts under s. 20.435 (7) (d) and (hs) to reimburse interpreters for hearing−impaired persons for the provision of interpreter services.

(2) The department shall grant priority to requests to pay fees charged by interpreters for the following, in the following order:

(a) Emergencies.

(b) Medical, mental health, alcohol and drug abuse, psychiatric and psychological services.

(c) Legal services and civil court proceedings.

(d) Matters concerning law enforcement personnel.

(e) Matters concerning any federal, state, county or municipal agency.

(3) The department shall maintain lists of qualified interpreters under s. 885.37 (5) (b).

(4) The department may use as an interpreter for hearing−impaired persons only the following:

(a) An interpreter for hearing−impaired persons who is certified by the national registry of interpreters for the deaf.

(b) If an interpreter under par. (a) is unavailable, an interpreter for hearing−impaired persons whose qualifications have been determined appropriate by the department.

(5) The department may bill any public or private agency at the rates established by the department for interpreter services for hearing−impaired persons commensurate with the certification or qualification level of the interpreter providing services if the department determines that the agency is required under state or federal law to provide interpreter services to a hearing−impaired person or if the agency agrees to pay for the services.

(6) The department shall promulgate rules to implement this section.

History: 1995 a. 27 ss. 2271, 2417; Stats. 1995 s. 46.295; 2003 a. 33; 2009 a. 28.
Cross−reference: See also ch. DHS 77, Wis. adm. code.

46.297 Telecommunication aid for the hearing impaired. (1) ASSISTANCE. From the appropriation under s. 20.435 (7) (d), the department shall, subject to the availability of funds, provide assistance to hearing−impaired persons to secure telecommunication devices capable of serving their needs. Except in extraordinary circumstances, the department shall purchase or provide funds for the purchase of telecommunication devices.

(2) ELIGIBILITY. A person is eligible to receive assistance under sub. (1) if all of the following conditions are met:

(a) The person is certified as deaf or severely hearing impaired by a physician, an audiologist licensed under subch. II of ch. 459 or the department.

(b) The adjusted gross income of the person's family is equal to or less than 200% of the poverty line established under 42 USC 9902 (2).

(3) HEARING RIGHTS. Any person aggrieved by a decision of the department under this section has a right to a contested case hearing under ch. 227.

(4) DEPARTMENTAL DUTIES. The department shall:

(a) Promulgate rules necessary for the administration of this section.

(b) Establish application procedures and determine eligibility.

History: 1983 a. 427; Stats. 1983 s. 46.90; 1983 a. 538 s. 51; Stats. 1983 s. 46.92; 1987 a. 27; 1987 a. 257 s. 2; 1989 a. 173 s. 3; Stats. 1989 s. 47.20; 1989 a. 316; 1995 a. 27 s. 2421; Stats. 1995 s. 46.297.
Cross−reference: See also ch. DHS 77, 78, and 143, Wis. adm. code.

46.298 Vehicle sticker for the hearing impaired. Upon the request of a person who is certified as hearing impaired by the department, by a physician, by a hearing instrument specialist licensed under subch. I of ch. 459 or by an audiologist licensed under subch. II of ch. 459, the department shall issue to the person a decal or sticker for display on a motor vehicle owned or frequently operated by the person to apprise law enforcement officers of the fact that the vehicle is owned or operated by a hearing−impaired person. No charge shall be made for issuance of the decal or sticker. The department shall specify the design of the decal or sticker. The department shall designate the location on the vehicle at which the decal or sticker shall be affixed by its own adhesive.

History: 1987 a. 257; 1989 a. 31; 1989 a. 173 s. 4; Stats. 1989 s. 47.25; 1989 a. 316; 1995 a. 27 s. 2422; Stats. s. 46.298.

46.33 Employee counseling referral programs. The department may provide technical assistance to municipalities, counties, school districts and private employers for referral programs for employee counseling. The department may charge fees to cover the costs of these services.

History: 1989 a. 31.

46.34 Emission standards for hazardous air contaminants. The department may assist the department of natural resources in the development of emission standards for hazardous air contaminants under s. 285.27 (2) (b).

History: 1993 a. 16; 1995 a. 227.

46.37 Certain water and sewerage service in Winnebago County. The department, as a member of the tri−institutional Winnebago Mental Health Institute, Winnebago County Asylum, and Sunny View Sanatorium sewer agreement in Winnebago County, is authorized to furnish and charge for water and sewerage services to business and dwelling units located in the privately owned area lying west of the Winnebago Mental Health Institute and bounded on the west by the railroad properties and on the north, east, and south by the grounds of the Winnebago Mental Health Institute, together with any dwelling or other units located on the railroad−owned and state−owned property adjacent to this area.

History: 1973 c. 90 s. 560 (3); 2001 a. 103.

46.40 Community aids funding. (1) DISTRIBUTION LIMITS. (a) Within the limits of available federal funds and of the appropriations under s. 20.435 (7) (b) and (o), the department shall distribute funds for community social, mental health, developmental disabilities, and alcohol and other drug abuse services and for services under ss. 46.87, 46.985, and 51.421 to county departments under ss. 46.215, 46.22, 46.23, 51.42, and 51.437 and to county aging units, as provided in subs. (2), (2m), and (7) to (9).

(d) If the department of health services receives any federal moneys under 42 USC 1396 to 1396v in reimbursement of the cost of preventing out−of−home placements of children, the department of health services shall transfer those moneys to the department of children and families, and the department of children and families shall use those moneys as the first source of moneys used to meet the amount of the allocation under s. 48.563 (2) that is budgeted from federal funds.

(2) BASIC COUNTY ALLOCATION. Subject to sub. (9), for social services under s. 46.495 (1) (d) and services under s. 51.423 (2), the department shall distribute not more than $176,068,400 in each fiscal year.

(2m) FEDERAL BLOCK GRANT ALLOCATIONS. (a) *Prevention and treatment of substance abuse.* For prevention and treatment of substance abuse under 42 USC 300x−21 to 300x−35, the

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department shall distribute not more than $13,975,500 in fiscal year 2009−10 and $9,735,700 in each fiscal year thereafter.

(b) *Community mental health services.* For community mental health services under 42 USC 300x to 300x−9, the department shall distribute $2,513,400 in each fiscal year.

(7) FAMILY SUPPORT ALLOCATION. For family support programs for the families of disabled children under s. 46.985, the department shall distribute not more than $5,089,800 in each fiscal year.

(8) ALZHEIMER'S FAMILY AND CAREGIVER SUPPORT ALLOCATION. Subject to sub. (9), for services to persons with Alzheimer's disease and their caregivers under s. 46.87, the department shall distribute not more than $2,342,800 in each fiscal year.

(9) TRANSFER OR ADJUSTMENT OF COMMUNITY AIDS ALLOCATIONS. (ag) *Adjustment for family care.* If a care management organization under s. 46.284 is available in a county and the county has under s. 46.281 (4) agreed to a reduction in its distribution under sub. (2), the department shall use the amount established under s. 46.281 (4) to fund the services of care management organizations under s. 46.284 (4).

(ar) *Transfer to family care program and adult protective services allocation.* If a care management organization under s. 46.284 is available in a county, the department may, of the amount allocated under sub. (8), dispose of the lesser of up to 60% or the amount remaining after subtracting an amount necessary to maintain funding for recipients under sub. (8) who, on September 1, 2001, are ineligible for the family care benefit under s. 46.286, to that county, as follows:

1. By transferring a portion of that amount, as determined by the department, to the family care program to fund the services of resource centers under s. 46.283 (5) and the services of care management organizations under s. 46.284 (4).

2. By transferring a portion of that amount, as determined by the department, to the county's adult protective services allocation under par. (b).

(b) *Adult protective services allocation.* For adult protective services, the department shall distribute the amounts transferred under par. (ar) 2. in each fiscal year.

(c) *Adjustment for medical assistance buy−in program.* If a former recipient of services funded under the allocation under sub. (2) is a participant in the medical assistance buy−in program under s. 49.472, the department may decrease that allocation by the amount that the department estimates it will incur in providing services to that participant under s. 49.472.

(d) *Payment adjustments for certain Medical Assistance services.* The department may decrease a county's allocation under sub. (2) by the amount of any payment adjustments under s. 49.45 (52) (a) made for that county from the appropriation account under s. 20.435 (7) (b) for services described under s. 49.45 (52) (a) 1. The total amount of the decrease for a county under this paragraph during any fiscal year may not exceed that part of the county's allocation under sub. (2) that derives from the appropriation account under s. 20.435 (7) (b) for that fiscal year.

(e) *County income maintenance administration.* Beginning in calendar year 2012, the department shall decrease the allocation under sub. (2) for a county with a population of 750,000 or more from the appropriation under s. 20.435 (7) (b) by $2,700,000.

(14m) COUNTY COMMUNITY AIDS BUDGETS. Before December 1 of each year, each county department under ss. 46.215, 46.22, 46.23, 51.42 and 51.437 and each tribal governing body shall submit to the department a proposed budget for the expenditure of funds allocated under this section or carried forward under s. 46.45 (3) (a). The proposed budget shall be submitted on a form developed by the department and approved by the department of administration.

History: 1987 a. 27, 399, 405; 1989 a. 31, 122, 336; 1991 a. 6, 39, 189, 269, 275, 315; 1993 a. 16, 437, 446; 1995 a. 27, 275, 303, 404; 1997 a. 27, 35, 237, 292; 1999 a. 9, 185; 2001 a. 16; 2003 a. 33, 318; 2005 a. 25 ss. 879, 2501, 2510; 2007 a. 20 ss. 1096 to 1104g, 9121 (6) (a); 2009 a. 28, 180; 2011 a. 32.

46.45 Carry−over of community aids funds. Funds allocated by the department under ss. 46.495 (1) (d), 46.87 (3) (c) 4. and (4) and 51.423 (2) but not spent or encumbered by counties, governing bodies of federally recognized American Indian tribes or private nonprofit organizations by December 31 of each year and funds recovered under ss. 46.495 (2) (b) and 51.423 (15) and deposited in the appropriation under s. 20.435 (7) (b) lapse to the general fund on the succeeding January 1 unless carried forward to the next calendar year under s. 20.435 (7) (b) or as follows:

(3) (a) Except as provided in par. (b), at the request of a county, tribal governing body, or private nonprofit organization, the department shall carry forward up to 3% of the total amount allocated to the county, tribal governing body, or nonprofit organization for a calendar year, not including the amount allocated to the county under s. 46.40 (7), which amount may be carried forward as provided in par. (c). All funds carried forward for a tribal governing body or nonprofit organization and all funds allocated under s. 46.40 (2m) carried forward for a county shall be used for the purpose for which the funds were originally allocated. Other funds carried forward under this paragraph may be used for any purpose under s. 20.435 (7) (b), except that a county may not use any funds carried forward under this paragraph for administrative or staff costs. An allocation of carried−forward funding under this paragraph does not affect a county's base allocations under s. 46.40 (2), (2m), (8), and (9).

(b) The department may not carry forward funds allocated to a private nonprofit organization for a calendar year for use in the next calendar year unless the organization continues to be eligible to receive an allocation under s. 46.87 (4) in the next calendar year.

(c) At the request of a county, the department shall carry forward up to 5% of the amount allocated to the county under s. 46.40 (7) for a calendar year. All funds carried forward under this paragraph shall be used for the purpose for which the funds were originally allocated, except that a county may not use any of those funds for administrative or staff costs. All funds carried forward under this paragraph that are not spent or encumbered by a county by December 31 of the calendar year to which those funds were carried forward shall lapse to the general fund on the succeeding January 1. An allocation of carried−forward funding under this paragraph does not affect a county's base allocation under s. 46.40 (7).

(6) (a) The department may carry forward 10% of any funds specified in sub. (3) (a) that are not carried forward under sub. (3) (a) for emergencies, for justifiable unit services costs above planned levels, and for increased costs due to population shifts. An allocation of carried−forward funding under this paragraph does not affect a county's base allocations under s. 46.40 (2), (2m), (8), and (9).

(b) The department may carry forward any funds specified in sub. (3) (c) that are not carried forward under sub. (3) (c) for emergencies, for justifiable unit services costs above planned levels, and for increased costs due to population shifts. An allocation of carried−forward funding under this paragraph does not affect a county's base allocation under s. 46.40 (7).

History: 1987 a. 27, 399, 405; 1989 a. 31, 122, 336; 1991 a. 39, 269; 1993 a. 16; 1995 a. 27, 404; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 33, 320; 2007 a. 20.

46.46 Expenditure of income augmentation services receipts. (1) From the appropriation account under s. 20.435 (8) (mb), the department shall support costs that are exclusively related to the ongoing and recurring operational costs of augmenting the amount of moneys received under 42 USC 1395 to 1395ddd and 42 USC 1396 to 1396v and to any other purpose provided for by the legislature by law or in budget determinations and shall distribute moneys to counties as provided in sub. (1g). In addition, the department may expend moneys from the appropriation account under s. 20.435 (8) (mb) as provided in sub. (2).

(1g) The department shall distribute not less than 50% of the moneys received under 42 USC 1396 to 1396v as a result of the augmentation activities specified in sub. (1) and credited to the

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appropriation account under s. 20.435 (8) (mb) to counties that are participating in those activities for community social, mental health, developmental disabilities, and alcohol and other drug abuse services under s. 46.40. The department may distribute any moneys received under 42 USC 1396 to 1396v as a result of the augmentation activities specified in sub. (1) and credited to the appropriation account under s. 20.435 (8) (mb) that are not distributed under this subsection to counties that are participating in those activities as provided in sub. (2).

(2) If the department proposes to use any moneys from the appropriation account under s. 20.435 (8) (mb) for any purpose other than the purposes specified in subs. (1) and (1g), the department shall submit a plan for the proposed use of those moneys to the secretary of administration by September 1 of the fiscal year after the fiscal year in which those moneys were received. If the secretary of administration approves the plan, he or she shall submit the plan to the joint committee on finance by October 1 of the fiscal year after the fiscal year in which those moneys were received. If the cochairpersons of the committee do not notify the secretary of administration within 14 working days after the date of submittal of the plan that the committee has scheduled a meeting for the purpose of reviewing the plan, the department may implement the plan. If within 14 working days after the date of the submittal by the secretary of administration the cochairpersons of the committee notify him or her that the committee has scheduled a meeting for the purpose of reviewing the plan, the department may implement the plan only with the approval of the committee.

History: 1997 a. 27, 86; 1999 a. 9; 2001 a. 16; 2003 a. 33; 2007 a. 20.

46.48 Grants for community programs. (1) GENERAL. From the appropriation accounts under s. 20.435 (5) (bc) and (7) (bc), the department shall award grants for community programs as provided in this section.

(4) TREATMENT ALTERNATIVE PROGRAM. For grants under s. 46.65, the department shall award not more than $261,300 in each fiscal year as grants to applicants that have previously received grants under s. 46.65.

(5) ALCOHOL AND OTHER DRUG ABUSE RESIDENTIAL TREATMENT. For funding of at least 8 beds at a community−based residential facility in which English and Spanish are spoken, to provide treatment for alcohol and other drug abuse to residents of a 1st class city, the department may distribute not more than $248,200 for each fiscal year as a grant to the New Beginning residential treatment program in the city of Milwaukee.

(8) PRISONER REINTEGRATION PROGRAM. (a) In this subsection, "prisoner" has the meaning given in s. 301.01 (2).

(b) The department shall award $125,000 in each fiscal year as a grant to an organization or a group of organizations to provide a pilot program in Milwaukee County for prisoner reintegration.

(c) The department shall provide application procedures and selection criteria for awarding the grant under par. (b) in accordance with that department's request−for−proposal procedures.

(d) The program under par. (b) shall provide at least all of the following:

1. The use of liaisons to meet with prospective program participants to provide information about the program and to assist program participants, prior to their release on extended supervision or parole, in planning for and obtaining the housing, employment, education and treatment that they will need upon release.

2. The use of mentors to assist participants in their reintegration into the community.

(13) SUPPORTED EMPLOYMENT OPPORTUNITIES. The department shall distribute at least $60,000 in each fiscal year for programs to provide supported employment opportunities for severely disabled persons.

(14) EPILEPSY SERVICES GRANTS. The department shall distribute not more than $150,000 in each fiscal year for grants under s. 46.57 for services to persons with epilepsy.

(18) OUTREACH SERVICES. The department shall distribute $84,000 in each fiscal year as grants to community organizations in southeastern and south central Wisconsin to provide outreach services relating to health, mental health, housing, assisted living, domestic violence, and other services.

(26) COMMUNITY IMPROVEMENT JOB TRAINING. The department shall award $250,000 in each fiscal year, beginning in fiscal year 1994−95, as a grant to a community organization to conduct a community improvement job training program which shall do all of the following:

(a) Provide job training, counseling and education for persons 16 to 23 years of age who reside in neighborhoods that have gang problems.

(b) Provide projects to rebuild and strengthen neighborhoods that have gang problems.

(c) Assist program participants who want to start their own small businesses by referring those participants to sources of grants, loans, venture capital and other funding and by assisting those participants with the funding application process.

(d) Encourage former gang members to participate in the program.

(29) ARC COMMUNITY SERVICES, INC. The department shall distribute $175,000 in each fiscal year to ARC Community Services, Inc., for a program to provide substance abuse day treatment services for pregnant and postpartum women and their infants.

(30) SUBSTANCE ABUSE TREATMENT GRANTS. (a) From the appropriation account under s. 20.435 (7) (bc), the department shall distribute grants on a competitive basis to county departments of social services and to private nonprofit organizations, as defined in s. 103.21 (2), for the provision of alcohol and other drug abuse treatment services in counties with a population of 500,000 or more. Grants distributed under this subsection may be used only to provide treatment for alcohol and other drug abuse to individuals who are eligible for federal temporary assistance for needy families under 42 USC 601 et. seq. and who have a family income of not more than 200% of the poverty line, as defined in s. 49.001 (5).

(b) Notwithstanding par. (a), the department may distribute grants under par. (a) only to the extent that the distribution meets the maintenance−of−effort requirement under the federal temporary assistance for needy families program under 42 USC 601 et. seq.

History: 1989 a. 31 ss. 1085, 1090, 1092 to 1094, 1099; 1989 a. 122, 336, 359; 1991 a. 39, 269; 1993 a. 16, 98, 446; 1995 a. 27 ss. 2301m to 2304, 2600, 2601; 1997 a. 27, 283; 1999 a. 9; 2001 a. 16; 2003 a. 33; 2005 a. 25; 2007 a. 20; 2009 a. 28; 2011 a. 10.

46.485 Mental health services for severely emotionally disturbed children. (1) In this section:

(a) "Inpatient facility" has the meaning given in s. 51.01 (10).

(b) "Limited service health organization" has the meaning given in s. 609.01 (3).

(c) "Serious emotional disturbance" has the meaning given in 42 USC 290ff−4 (d) (4).

(d) "Severely emotionally disturbed child" has the meaning given in s. 49.45 (25) (a).

(2g) From the appropriation account under s. 20.435 (4) (b), the department may in each fiscal year transfer funds to the appropriation account under s. 20.435 (5) (kc) for distribution under this section and from the appropriation account under s. 20.435 (7) (mb) the department may not distribute more than $1,330,500 in each fiscal year to applying counties in this state that meet all of the following requirements, as determined by the department:

(a) Any of the following applies to the county:

1. The county receives a grant under 42 USC 290ff to 290ff−4 for community mental health services for children with serious emotional disturbances.

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2. The county receives any grant for services to severely emotionally disturbed children.

3. The county is in compliance with the requirements of s. 46.56, except that the county need not receive funding under s. 46.56 (15).

(b) Any of the following applies to the county:

1. The county submits to the department a plan that specifies the proposed use of funds to implement the program under this section, including, at the time of termination of funding under this section, enrollment of children served under the program in a limited service health organization that covers both inpatient and outpatient expenses.

2. The county provides service coordination, as defined in s. 46.56 (1) (L), on behalf of a child with a serious emotional disturbance and the child's family in the county.

(3g) The amount that the department may transfer under sub. (2g) for counties may not exceed the estimated state share of payments under s. 49.45, 49.46, 49.47, or 49.471 for mental health care and treatment that is provided in inpatient facilities for children with severe emotional disturbances.

(3m) Funds that are distributed under sub. (2g) may be used for all of the following:

(a) Mental health care and treatment, other than care and treatment under s. 51.35 (3), in an inpatient facility for children with severe emotional disturbances.

(b) Community mental health services for children with severe emotional disturbances.

(3r) Funds from the appropriation account under s. 20.435 (5) (kc) that the department does not distribute to a county before 24 months after June 30 of the fiscal year in which the department allocated the funds to the county under sub. (2g) lapse to the appropriation account under s. 20.435 (4) (b). A county may at any time expend funds that the department distributes to the county, consistent with the requirements under sub. (3m).

(4) The county receiving funds under sub. (2g) is not liable for payment for any care and treatment of the type authorized to be paid under sub. (3m) that is above the amount transferred under sub. (2g) (intro.).

History: 1989 a. 336; 1991 a. 39, 269; 1993 a. 16, 437; 1995 a. 27; 1997 a. 27; 1999 a. 9; 2003 a. 33; 2007 a. 20; 2009 a. 2, 28.

46.49 Allocation of federal funds for community aids. (1) If the department receives unanticipated federal community mental health services block grant funds under 42 USC 300x to 300x−9 or federal prevention and treatment of substance abuse block grant funds under 42 USC 300x−21 to 300x−35 and if the department proposes to allocate the unanticipated funds so that an allocation limit in s. 46.40 is exceeded, the department shall submit a plan for the proposed allocation to the secretary of administration. If the secretary of administration approves the plan, he or she shall submit it to the joint committee on finance. If the cochairpersons of the committee do not notify the secretary of administration that the committee has scheduled a meeting for the purpose of reviewing the plan within 14 working days after the date of his or her submittal, the department may implement the plan, notwithstanding any allocation limits under s. 46.40. If within 14 working days after the date of the submittal by the secretary of administration the cochairpersons of the committee notify him or her that the committee has scheduled a meeting for the purpose of reviewing the plan, the department may implement the plan, notwithstanding s. 46.40, only with the approval of the committee.

(2) If the department receives unanticipated federal social services block grant funds under 42 USC 1397 to 1397e, the department shall deposit the moneys in the appropriation under s. 20.435 (7) (o), unless the funds are for a specified purpose that is not included in s. 20.435 (7) (o), in which case the department shall deposit the moneys in the appropriation under s. 20.435 (7) (md) or (me), as appropriate.

History: 1989 a. 31; 1991 a. 269, 275, 315; 1993 a. 16, 437, 446; 1995 a. 27, 404; 1997 a. 27; 2007 a. 20.

46.495 Distribution of community aids funds to counties. (1) (am) The department shall reimburse each county from the appropriations under s. 20.435 (7) (b) and (o) for social services as approved by the department under ss. 46.215 (1), (2) (c) 1., and (3) and 46.22 (1) (b) 1. d. and (e) 3. a. except that no reimbursement may be made for the administration of or aid granted under s. 49.02, 2009 stats.

(d) From the appropriations under s. 20.435 (7) (b) and (o), the department shall distribute the funding for social services to county departments under ss. 46.215, 46.22, and 46.23 as provided under s. 46.40. County matching funds are required for the distributions under s. 46.40 (2), (8), and (9) (b). Each county's required match for the distribution under s. 46.40 (2) shall be specified in a schedule established annually by the department. Each county's required match for the distribution under s. 46.40 (8) for a year equals 9.89% of the total of the county's distributions under s. 46.40 (8) for that year for which matching funds are required plus the amount the county was required by s. 46.26 (2) (c), 1985 stats., to spend for juvenile delinquency−related services from its distribution for 1987. Each county's required match for the distribution under s. 46.40 (9) (b) for a year equals 9.89% of that county's amounts described in s. 46.40 (9) (ar) (intro.) for that year. Matching funds may be from county tax levies, federal and state revenue sharing funds, or private donations to the county that meet the requirements specified in s. 51.423 (5). Private donations may not exceed 25% of the total county match. If the county match is less than the amount required to generate the full amount of state and federal funds distributed for this period, the decrease in the amount of state and federal funds equals the difference between the required and the actual amount of county matching funds.

(dc) The department shall prorate the amount allocated to any county department under s. 46.215 or 46.22 under par. (d) to reflect actual federal funds available.

(f) 1. If any state matching funds allocated under par. (d) to match county funds are not claimed, the funds shall be redistributed for the purposes the department designates.

2. The county allocation to match aid increases shall be included in the contract under s. 46.031 (2g) and approved by January 1 of the year for which funds are allocated, in order to generate state aid matching funds. All funds allocated under par. (d) shall be included in the contract under s. 46.031 (2g) and approved.

(2) (a) The county treasurer and each director of a county department under s. 46.215, 46.22 or 46.23 shall monthly certify under oath to the department in such manner as the department prescribes the claim of the county for state reimbursement under this section and if the department approves such claim it shall certify to the department of administration for reimbursement to the county for amounts due under this subsection and payment claimed to be made to the counties monthly. The department may make advance payments prior to the beginning of each month equal to one−twelfth of the contracted amount.

(b) To facilitate prompt reimbursement the certificate of the department may be based on the certified statements of the county officers filed under par. (a). Funds recovered from audit adjustments from a prior fiscal year may be included in subsequent certifications only to pay counties owed funds as a result of any audit adjustment. By September 30 of each year the department shall submit a report to the appropriate standing committees under s.

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13.172 (3) on funds recovered and paid out during the previous calendar year as a result of audit adjustments.

History: 1995 a. 27 ss. 3129, 3132, 3135 to 3139; 1995 a. 289, 404; 1997 a. 3, 27, 252; 1999 a. 9; 2001 a. 16; 2003 a. 318; 2005 a. 25 ss. 883, 884, 2502, 2510; 2007 a. 20; 2009 a. 28.

46.50 State mental health authority. In order to promote coordination and efficient development of mental health services by the state and by municipalities in the state, the department is declared to be the state mental health authority of Wisconsin and as such is authorized to receive federal grants in aid and to cooperate with the federal government in promoting the extension of such services.

46.52 Systems change grants. From the appropriation under s. 20.435 (7) (md), the department shall distribute funds to each grant recipient under this section so as to permit initial phasing in of recovery−oriented system changes, prevention and early intervention strategies, and consumer and family involvement for individuals with mental illness. At least 10% of the funds distributed shall be for children with mental illness.

History: 1995 a. 27, 216; 1997 a. 27; 2001 a. 16; 2005 a. 25.

46.53 Mental health treatment provider training. From the appropriation under s. 20.435 (7) (md), the department may not distribute more than $182,000 in each fiscal year to provide training for mental health treatment professionals on new mental health treatment approaches in working with special populations, including seriously mentally ill individuals and children with serious emotional disturbances, and on the use of new mental health treatment medications.

History: 1995 a. 27; 1997 a. 27.

46.54 Consumer and family self−help and peer−support programs. From the appropriation under s. 20.435 (7) (md), the department shall distribute $874,000 in each fiscal year to increase support for mental health family support projects, employment projects operated by consumers of mental health services, mental health crisis intervention and drop−in projects, and public mental health information activities.

History: 1995 a. 27, 216; 1997 a. 27; 2001 a. 16; 2007 a. 20.

46.55 Grants for services to persons in treatment. (1) The department shall award grants to county departments under s. 46.23 or 51.42 for the purpose of providing services to persons who are receiving alcohol and other drug abuse treatment, including child care services for the children of the persons.

(2) A county department under s. 46.23 or 51.42 may apply to the department for a grant under sub. (1). The department shall select applicants to receive grants under sub. (1) based on criteria developed by the department.

(3) A county department under s. 46.23 or 51.42 which receives a grant under sub. (1) shall give priority for the services to a family whose income is below 150% of the poverty line, under 42 USC 9902 (2), or to a family with only one parent living in the home.

(3m) Within the limits of available funding under s. 20.435 (7) (mb), the department shall award grants under this section in a total amount for all grants of not more than $250,000 in each fiscal year.

History: 1987 a. 339; 1989 a. 31; 1991 a. 39; 1993 a. 16.

46.56 Initiatives to provide coordinated services for children and families. (1) DEFINITIONS. In this section:

(a) "Administering agency" means a department designated by a county board of supervisors or by a tribe to administer an initiative.

(ar) "Advocacy" means all of the following:

1. Actively supporting a child who is involved in 2 or more systems of care and his or her family under an initiative to enable their receipt of the full benefits of the initiative by ensuring that the coordinated services team approach to providing services and principles are followed.

2. Helping families of a child who is involved in 2 or more systems of care gain access to and a voice in the decision making that establishes the child's and family's plan of care.

3. Fostering strong working relationships among families, systems of care, and providers, with the goal of improving the lives of children who are involved in 2 or more systems of care and their families.

(b) "Agency" means a public, tribal, or private organization that provides services and other resources for children and families.

(bm) "Child" means an individual under the age of 18.

(ce) "Coordinated services" means treatment, education, care, services, and other resources provided, in a coordinated manner, for a child who is involved in 2 or more systems of care and his or her family.

(cm) "Coordinated services plan of care" means a plan under sub. (8) (h) for a child who is involved in 2 or more systems of care and his or her family.

(cs) "Coordinated services team" means a group of individuals, including family members, service providers, and informal resource persons, who work together to respond to service needs of a child who is involved in 2 or more systems of care and his or her family.

(d) "County department" means a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437, unless the context requires otherwise.

(de) "Family" means a child's primary caregiver or caregivers and the child's siblings.

(dm) "Family resources" means housing, environment, institutions, sources of income, services, education, a child's extended family and community relationships, and other resources families need to raise their children.

(ds) "Initiative" means a system that is based on the strengths of children and their families for providing coordinated services to children who are involved in 2 or more systems of care and their families.

(e) "Intake" means the process by which a service coordination agency or individuals designated by the coordinating committee under sub. (3) initially screen a child who is involved in 2 or more systems of care and his or her family to determine eligibility for an initiative and the process by which the service coordination agency determines the need for a comprehensive clinical mental health assessment.

(h) "Interagency agreement" means a written document of understanding among service providers and other partner agencies that are represented on a coordinating committee under sub. (3) that identifies mutual responsibilities for implementing coordinated services for children who are involved in 2 or more systems of care and their families.

(j) "Parent" means a parent who has legal custody, as defined in s. 767.001 (2), of a child, or a guardian or legal custodian of a child, as defined in s. 48.02 (8) and (11).

(L) "Service coordination" means the coordination of multiple service providers and family resources that are serving a particular child who is involved in 2 or more systems of care and his or her family. The term includes coordination of the assessment process, development of a coordinated services plan of care based on the strengths and needs identified in the assessment, advocacy, monitoring of the progress of the child or his or her family, facilitation of periodic reviews of the coordinated services plan of care, and coordination and maintenance of clear lines of communication among all family resources providers, the child, and his or her family.

(m) "Service coordination agency" means a county department, tribe, agency, school district, cooperative educational service agency, or county children with disabilities education board

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designated in an interagency agreement by a coordinating committee under sub. (3) to provide intake and service coordination for one or more target groups of children who are involved in 2 or more systems of care and their families.

(n) "Service coordinator" means an individual who is qualified by specialized training and experience with children who are involved in 2 or more systems of care and their families and who is appointed by the service coordination agency to provide service coordination for eligible children and their families.

(nm) "Service provider" means a professional from a system of care who meets one or more of the following criteria:

1. Is skilled in providing treatment services, education, and other family resources for children who are involved in 2 or more systems of care and their families.

2. Conducts comprehensive evaluations of the needs of children who are involved in 2 or more systems of care and their families for family resources.

3. Possesses skills appropriate for and knowledge of the specific types of needs or dysfunctions presented by a child who is involved in 2 or more systems of care and is undergoing an assessment.

4. Is currently providing treatment, education, or other family resources for a child who is involved in 2 or more systems of care, a family of such a child, or both.

(om) "Severe disability" means a mental, physical, sensory, behavioral, emotional, or developmental disability, including severe emotional disturbance, or a combination of these disabilities, that meets all of the following conditions:

1. Is severe in degree.

2. Has persisted for at least one year or is expected to persist for at least one year.

3. Causes substantial limitations in a child's ability to function in his or her family, school, or community and with his or her ability to cope with the ordinary demands of life.

4. Causes a child to need services or other resources from 2 or more systems of care.

(op) "Severely emotionally disturbed child" has the meaning given in s. 49.45 (25) (a).

(or) "System of care" means a public or private organization that provides specialized services for children with mental, physical, sensory, behavioral, emotional, or developmental disabilities or that provides child welfare, juvenile justice, educational, economic support, alcohol or other drug abuse, or health care services for children.

(p) "Treatment services" means the individualized social, emotional, behavioral and medical services designed to bring about habilitation, rehabilitation and appropriate developmental growth of a child.

(q) "Tribe" means a federally recognized American Indian tribe or band in this state.

(2) COORDINATING COMMITTEE; ADMINISTERING AGENCY; INITIATIVE FUNDING. If a county board of supervisors establishes an initiative under s. 59.53 (7) or if a tribe establishes an initiative, the county board or tribe shall appoint a coordinating committee and designate an administering agency. The initiative may be funded by the county or tribe or the county board of supervisors or tribe may apply for funding by the state in accordance with sub. (15).

(3) COORDINATING COMMITTEE. (a) The coordinating committee shall include representatives from all of the following:

1. The county department responsible for child welfare and protection services or, for an initiative established by a tribe, the tribal agency responsible for child welfare and protection services.

2. The county department responsible for mental health and alcohol and drug abuse services for children and families or, for an initiative established by a tribe, the tribal agency responsible for these services.

3. The county department responsible for providing services for children who have developmental disability or, for an initiative established by a tribe, the tribal agency responsible for providing these services.

4. The family support program under s. 46.985 if the county or tribe has a family support program.

5. The juvenile court administrator or another representative appointed by the judge responsible for cases heard under chs. 48 and 938 or, for an initiative established by a tribe, a representative of the tribal court.

6. The largest school district in the county and any cooperative educational service agency, if it provides special education in the county, or any county children with disabilities education board in the county, and any other school district in the county that is willing to participate in the initiative, at the discretion of the administering agency. For an initiative established by a tribe, the coordinating committee shall include a representative of the school district serving the majority of pupils who reside on the reservation of the tribe or on trust lands held for the tribe and any cooperative educational service agency providing special education services to these pupils.

7. At least 2 parents, or the number that equals 25% of the coordinating committee's membership, whichever is greater, of children who are involved in 2 or more systems of care.

8. The agency responsible for economic support programs.

(b) The coordinating committee may include any of the following:

1. Representatives of the vocational rehabilitation office that provides services to the county or, for an initiative established by a tribe, that provides services to the tribe.

2. Representatives of a technical college district that is located in the county or, for an initiative established by a tribe, that serves members of the tribe.

3. Physicians specializing in care for children.

4. Representatives of health maintenance organizations that are operating in the county or, for an initiative established by a tribe, are serving members of the tribe.

5. Representatives of law enforcement agencies that are located in the county or, for an initiative established by a tribe, are representatives of a tribal law enforcement agency.

6. Representatives of the county health department established under s. 251.02 (1) or city−county health department established under s. 251.02 (1m).

7. Representatives of agencies that are located in the county or, for an initiative established by a tribe, are serving members of the tribe.

8. Local elected officials.

9. Representatives of a vocational and technical school.

10. Local business representatives.

11. Representatives of the county board or, for an initiative established by a tribe, representatives of the elected governing body of the tribe.

12. Representatives of the regional offices of the department.

13. Representatives of the local faith−based community.

14. Representatives of probation and parole agencies.

15. Representatives of economic support agencies and the Wisconsin Works agency under subch. III of ch. 49, if a different agency.

16. Representatives of vocational rehabilitation programs.

(c) An existing committee within the county may serve as the coordinating committee if it has the membership required under par. (a) and agrees to undertake the responsibilities in par. (d).

(d) The coordinating committee shall:

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3. Oversee the development and implementation of the initiative.

4. Prepare one or more interagency agreements in accordance with sub. (5) that all participatory organizations in the initiative agree to follow in creating and operating an initiative.

5. Assess how the initiative relates to other service coordination programs operating at the county, tribal, or local level and take steps to work with the other service coordination programs and to avoid duplication of activities, services, and resources.

6. If a county or tribe applies for funding under sub. (15), assist the administering agency in developing the application required under sub. (15) (b).

7. Review determinations by the service coordination agency regarding eligibility for assessment, appropriate family resources, or funding of services, at the request of any applicant, recipient, parent of a child who is involved in 2 or more systems of care, or participating county department or tribal agency, school district, cooperative educational service agency, or county children with disabilities education board. The coordinating committee shall adopt written procedures for conducting reviews.

8. Establish operational policies and procedures, such as referral and screening procedures, a conflict management policy, and a flexible funding policy, and ensure that the policies and procedures are monitored and adhered to.

9. Ensure quality, including adherence to core values as adopted by the state advisory committee established under sub. (14) (a).

10. Develop a plan for orientation of new coordinating committee members and coordinated services team members to the coordinated services team approach to providing services to a child and his or her family.

11. Identify and address gaps in services for children and families who are enrolled in the initiative.

12. Ensure client and partner agency satisfaction through performance of a client and partner agency satisfaction survey.

13. Plan for sustainability of the system change started by the initiative beginning in the first year of any funding received for the initiative and thereafter by acting as a consortium to pursue additional funding for the initiative through grants from the state or federal government or private foundations; maintaining formal collaborative agency relationships; including families in the process by emphasizing rights and advocacy; addressing funding and issues related to providing matching funds required under sub. (15) (c); and recommending a plan for realized savings from substitute care budgets to be reinvested in community−based care.

14. Establish target groups of children who are involved in 2 or more systems of care and their families to be served by the initiative. For a county or tribe that applies for funding under sub. (15), severely emotionally disturbed children are required to be a priority target group.

15. Distribute information about the availability and operation of the initiative to the general public and to public or private service providers who might seek to make referrals to the initiative.

(e) The coordinating committee may direct the initiative coordinator or another person to do any of the following:

1. Maintain data of enrollments in the initiative and results of screening.

2. Establish and report monitoring and evaluation results.

3. Monitor, or ensure proper monitoring by the appropriate entity of, targeted case management and in−home services provided under the Medical Assistance Program, under subch. IV of ch. 49, including record−keeping and billing processes.

4. Assist in developing and maintaining additional funding sources, including collaborative efforts with system partners.

5. Assist in the development and implementation of advocacy for families.

(4) ROLE OF ADMINISTERING AGENCY. The administering agency designated under sub. (2) shall do all of the following:

(a) Assist the coordinating committee in overseeing the development and implementation of the initiative and designate the staff needed for the initiative.

(b) Assist the coordinating committee in drafting and executing interagency agreements and any other policies and procedures necessary for the start−up and operation of the initiative.

(c) Assist the coordinating committee in distributing information about the availability and operation of the initiative to the general public and to public or private service providers who might seek to make referrals to the initiative.

(d) If the county board of supervisors or tribe decides to seek state funding under sub. (15), develop the application in cooperation with the coordinating committee.

(e) Undertake such other activities in compliance with other statutes, rules, department guidelines, interagency agreements, and the directions of the coordinating committee as are necessary to ensure the effective and efficient operation of the initiative.

(5) INTERAGENCY AGREEMENT. An interagency agreement shall include all of the following:

(a) The identity of every county department, tribal agency, agency, school district, cooperative educational service agency, county children with disabilities education board, technical college district, or other organization that will participate in the initiative.

(b) The identification of services and resources that the participating organizations will commit to the initiative or will seek to obtain, including joint funding of services and resources and funding for the qualified staff needed to support the initiative, such as by cash or contribution of in−kind services and resources as determined by the department under sub. (15) (c). This identification shall specify the roles and responsibilities of the coordinated services team and the coordinating committee.

(c) The designation of service coordination agencies.

(d) The identification of any group of children who will be targeted for services and resources through the initiative.

(e) The procedures for outreach, referral, intake, assessment, case planning, and service coordination that the initiative will use.

(f) The specific criteria, based on sub. (7), that will be used for deciding whether a child and his or her family are eligible for services and resources through the initiative.

(g) The procedures to be followed to obtain any required authorizations for sharing of confidential information among organizations providing treatment, services, education, and other resources to a child and his or her family.

(h) The procedures that will be used for managing conflicts among service providers or coordinated services team members or between a child or his or her family and service providers.

(i) The methods that will be used to measure initiative effectiveness, including satisfaction of a child and his or her family, and for revising the operation of the initiative in light of evaluation results.

(j) The mission and core values of the initiative.

(k) Expectations for organizations represented on the coordinating committee under sub. (3), including provision of the funding match required under sub. (15) (c).

(6) ROLES OF SERVICE COORDINATION AGENCY, SERVICE COORDINATOR, INITIATIVE COORDINATOR, AND COORDINATED SERVICES TEAM. (a) One or more service coordination agencies may participate under the initiative. The organizations and the target groups that are to be served shall be identified in the interagency agreement under sub. (5). All of the following applies to a service coordination agency:

1. The service coordination agency shall be selected based on its experience in providing services and resources.

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2. The service coordination agency shall do all of the following:

a. Identify a specific individual to act as service coordinator for each child who is enrolled in the initiative and his or her family to facilitate the implementation of the coordinated services plan of care.

b. Provide or arrange for intake, assessment, development of the plan of care, and service coordination under sub. (8).

c. Act as a source for information about other services and resources for children who are involved in 2 or more systems of care and their families who are not eligible for the initiative, if the coordinating committee determines that the service coordination agency can provide the information without interfering with the primary purpose of the initiative.

(b) The service coordinator shall have the functions specified in sub. (8) (f) to (h), (n), and (r).

(c) The coordinated services team has the functions specified under sub. (8) (f), (h), and (i).

(cr) Every county and tribe that operates any initiative shall develop written policies and procedures specifying the selection process for the initiative coordinator.

(d) The primary responsibility of the initiative coordinator is to promote collaborative relationships between systems of care. The initiative coordinator shall do all of the following:

1. Bring together parents and relevant staff from various agencies and organizations to comprise the coordinating committee under sub. (3) (a) and (b), and support their activities, in order to ensure compliance with established policies and procedures specified in sub. (3) (d).

2. Work with the coordinating committee to maintain and support agency participation as established in the interagency agreement.

3. Work with the coordinating committee and service coordination agency to receive and review referrals.

4. Work with the coordinating committee and service coordination agency to assure provision of service coordination services for all groups of people working with the child and his or her family.

5. Guide the development of the coordinated service team working with the child and his or her family in order to ensure compliance with basic principles of the initiative core values.

6. Review plans of care, including crisis response plans, for consistency with the coordinated services team approach to providing services to a child and his or her family and core values.

7. Assist the coordinating committee and coordinated services teams in establishing consistent measures for the development, implementation, evaluation, and monitoring of the initiative and its outcomes.

8. Facilitate public education and awareness of issues and programs for children who are involved in 2 or more systems of care and their families.

9. Ensure provision of ongoing support and training that is related to the coordinated services team process for families, service coordinators, and providers and ensure orientation for coordinated services team members.

10. Support service providers in developing strategies to enhance existing programs, to increase resources, and to establish new resources relevant to project goals and objectives.

11. Ensure that local and state agencies submit data and reports in an accurate and timely manner.

12. If directed to do so by the coordinating committee, perform any of the duties set forth in sub. (3) (e).

(7) ELIGIBILITY OF CHILDREN AND FAMILIES. Children who are involved in 2 of more systems of care and their families shall be eligible for the initiative, except that the coordinating committee may establish specific additional criteria for eligibility for services and may establish certain target groups of children who are involved in 2 or more systems of care to receive services. If target groups are established, only children falling within the target groups may be enrolled in the initiative. Any eligibility criteria shall meet all of the following conditions:

(a) Be based on a community assessment that identifies areas of greatest need for coordinated services.

(b) Give priority to children who are at risk of placement outside the home or who are in an institution and are not receiving coordinated services based in the community and other resources, or who would be able to return to community placement or their homes from an institutional placement if the services and other resources were provided.

(c) Not exclude a child or his or her family from services or other resources because of lack of ability to pay.

(8) REFERRAL, INTAKE, ASSESSMENT, PLAN OF CARE DEVELOPMENT, AND SERVICE COORDINATION. (a) Referrals to the initiative may come from county departments, tribal agencies, agencies, school districts, cooperative educational service agencies, county children with disabilities education boards, technical college districts, courts assigned to exercise jurisdiction under chs. 48 and 938, tribal courts, or any other organization, or a child who is involved in 2 or more systems of care or his or her family may contact the administering agency or service coordination agency to request services and resources.

(b) Upon referral, staff from the service coordination agency or individuals designated by the coordinating committee shall screen the referral to determine if the child and his or her family appear to meet the eligibility criteria and any target group requirements established by the coordinating committee. If the child and his or her family appear to be eligible, the staff shall assist the entity that made the referral under par. (a), and the parent or parents, in gathering information necessary to prepare an application for the initiative.

(c) Consent for release of information relating to a child shall be obtained from the child's parent, or the child, if appropriate or required by federal statute or regulation or state statute or rule, or by order of a court with appropriate jurisdiction.

(cm) Consent for participation of a child and his or her family in the initiative and in the initiative evaluation shall be obtained from the child's parent or, if appropriate, the child.

(d) The service coordination agency or individuals designated by the coordinating committee shall review the completed application with the family, and, in light of the eligibility criteria in the interagency agreement and sub. (7), determine whether the child and his or her family are eligible for and appropriate for enrollment in the initiative. The service coordination agency or the individuals designated by the coordinating committee shall approve or disapprove each application within 30 days after the date on which the application was completed.

(e) If the child who is involved in 2 or more systems of care and his or her family are found to be ineligible, or if it is determined that enrollment in the initiative is not the best method of meeting the needs of the child and his or her family, staff from the service coordination agency or individuals designated by the coordinating committee shall assist the child and family in identifying and accessing needed services or resources from appropriate providers.

(f) If the child and his or her family are found to be eligible for and are enrolled in the initiative, the agency shall assign a service coordinator who shall assemble a coordinated services team to assess the strengths and needs of the child and his or her family's need for treatment, education, care, and support. The service coordinator shall coordinate the operations of the coordinated services team.

(g) The service coordinator shall assemble the results of all prior relevant assessments and evaluations documenting the strengths and needs of a child enrolled in the initiative and his or her family, including educational, medical, vocational, and psychosocial evaluations.

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(h) The coordinated services team, the family of the child enrolled in the initiative, and the service coordinator shall, based on a review of a summary of existing assessments of strengths and needs that have been assembled and any additional evaluations and plans that the team, the coordinator, or the family finds to be necessary, prepare a strength−based, gender−competent and culturally competent, family−centered, coordinated services plan of care within 60 days after the date on which the application was approved. The coordinated services plan of care shall include all of the following:

1. The child's present level of functioning expressed in objective terms that will permit ongoing evaluation of the child's progress.

2. The short−term and long−term goals to address the needs of the child and his or her family.

3. The services and resources needed by the child and his or her family, including the identity of each individual and organization that will be responsible for providing the services and other resources. The coordinated services plan of care shall place emphasis on services and resources that are available through community and informal sources.

4. Criteria for measuring the effectiveness and appropriateness of the coordinated services plan of care so that it can be modified as needed to better meet the child's and the child's family's needs. A coordinated services plan of care shall be oriented so as to produce meaningful outcomes and to provide services in the least restrictive setting possible.

5. Identification of any administrative or judicial procedures under ch. 48, 51, 55, 115, 118, or 938 that may be necessary in order to fully implement the coordinated services plan of care and the identity of the individual or organization that will be responsible for initiating those procedures, if any are required.

6. Identification of available sources of funding to support the services and other resources needed for the child and his or her family and an allocation of funding responsibility among organizations if more than one organization is responsible for the child's and his or her family's treatment, education and support services.

7. Clear statements articulating the specific needs of the child and family that are to be addressed. Needs may not be stated solely in terms of the need for services but may be described in a strength−based manner with a response that is readily achievable.

8. Plans for responding to possible crisis situations that may occur with the child and his or her family.

(i) If additional evaluations are needed, the coordinated services team shall arrange for them or assist the child's family in obtaining them.

(j) The proposed coordinated services plan of care shall be submitted to any service providers who are included in the proposed plan of care.

(k) Upon written approval of the coordinated services plan of care by the proposed service providers, the child's family, and the coordinated services team, the plan of care shall be implemented by the service coordination agency and the individuals and organizations designated to provide services and other resources under the plan of care.

(m) Each organization or service provider designated to provide services and other resources under the coordinated services plan of care shall identify a specific individual who shall serve as the ongoing contact person to ensure continuity and communication while services are being provided to the child and his or her family under the plan of care.

(n) The service coordinator shall advocate for the child and his or her family and ensure that they are provided the opportunity to participate in assessment, planning, and ongoing review of services to the fullest extent possible.

(o) Services and other resources under this section shall be provided in the community, preferably in the child's home or home community, in the least restrictive and least intrusive setting and manner that meets the best interests of the child.

(r) On a regular basis, and at least every 3 months, the service coordinator shall assemble the coordinated services team, the family of the child, the child if appropriate, and any counsel, guardian ad litem, or other person advocating for the interests of the child or his or her family to review the plan of care and progress toward the goals of the plan of care, establish new goals, request the inclusion of new participating organizations or individuals, or otherwise modify the coordinated services plan of care to better meet the needs of the child and his or her family. Decisions to amend the coordinated services plan of care must be approved by the service coordinator, the coordinated services team, the family and, if the plan of care is being provided under a court order, the court.

(s) Coordination of services by a coordinated services team may be ended by the agreement of all participants on the coordinated services team that the goals of treatment and support have been met or are being met; by withdrawal of the family of the child; by the service coordination agency upon a recommendation from the service coordinator and the coordinated services team; by the family's refusal to participate in the process; if the child and his or her family no longer meet the eligibility criteria for the coordinated services team; or by court order, if services are being provided under court order.

(9) IMMEDIATE CARE. Individual county departments, tribal agencies, other agencies, and other service providers shall provide immediate services and other resources as necessary and appropriate to children who are involved in 2 or more systems of care and their families who have been referred for an evaluation of eligibility for and appropriateness of enrollment in the initiative while assessment and planning take place.

(10) RELATION TO OTHER SUPPORT PROGRAMS. In any county or for a tribe that has a family support program under s. 46.985 or other support programs, including comprehensive community services or office of justice assistance programs, the initiative shall coordinate its activities with the support programs.

(11) CONFLICT MANAGEMENT. The department, administering agency, service coordination agencies, and service coordinators shall establish and use informal means for conflict management, including consultation, mediation, and independent assessment, whenever possible. A formal conflict management policy shall be established in writing by the coordinating committee for use by families, providers, and other individuals involved in the initiative.

(12) ADMINISTRATIVE APPEALS. Decisions by the service coordination agency regarding eligibility, enrollment, denial, termination, reduction, or appropriateness of services and decisions by the individuals designated by the coordinating committee regarding eligibility, enrollment, or denial may be appealed to the coordinating committee by a child who is a service applicant or recipient or by the parent or guardian or guardian ad litem of the applicant or recipient. Decisions of the coordinating committee may be appealed to the department under ch. 227.

(13) REVIEW OF ACTIONS BY INDIVIDUAL AGENCIES. Nothing in this section shall limit, modify, or expand the rights, remedies, or procedures established in federal statutes or regulations or state statutes or rules for individuals or families receiving services provided by individual organizations that are participating in the coordinated services plan of care.

(14) DUTIES OF DEPARTMENT. (a) In order to support the development of a comprehensive service system of coordinated care for children who are involved in 2 or more systems of care and their families, the department shall establish a state advisory committee with representatives of county departments and tribal governing bodies, the department of public instruction, educational agencies, the department of children and families, the department of corrections, the juvenile correctional system, professionals expe-

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rienced in the provision of services to children who are involved in 2 or more systems of care and their families, advocates for such families and their children, the subunit of the department of workforce development that administers vocational rehabilitation, a representative of the local workforce development board established under 29 USC 2832, a representative of the philanthropy community, the technical college system, health care providers, courts assigned to exercise jurisdiction under chs. 48 and 938, child welfare officials, and other appropriate persons as selected by the department. The department may use an existing committee for this purpose if it has representatives from the listed groups and is willing to perform the required functions. This committee shall establish principles and core values for administering initiatives, monitor the development of initiatives throughout the state, and support communication and mutual assistance among operating initiatives as well as those that are being developed.

(b) The department shall provide, either directly or through purchase of services, the following support services to the counties and tribes that elect to participate in the initiative:

1. Consultation in the areas of developing and maintaining individual initiatives and finding appropriate resources.

2. Mediation to assist in the management of conflict among service providers or funding organizations or between service recipients and organizations.

3. Assessment resources for cases where no local evaluation resource is available or sufficient to enable development of an effective coordinated services plan of care. These resources may be provided directly through state−operated programs or by referral to private service providers.

(c) The department shall evaluate the initiatives funded under this section. All organizations participating in the initiatives shall cooperate with the evaluation. The evaluation shall include information about all of the following:

1. The number of days that children enrolled in the initiative spent in out−of−home placement compared to other children who are involved in 2 or more systems of care and are not enrolled in the initiative and the costs associated with these placements.

3. A comparison between any changes in problem behaviors of enrollees before and after enrollment in the initiative.

4. A comparison between school attendance and performance of enrollees before and after enrollment in the initiative.

5. A comparison between recidivism rates of enrollees who have a history of delinquency.

6. Parent and child satisfaction with the initiative.

7. Types of services provided to children and their families through the initiative and the cost of these services.

9. A systems change and sustainability plan under sub. (3) (d) 13.

(d) Notwithstanding eligibility requirements for enrollment in the initiative, if the state is funding the initiative in a particular county or for a tribe under sub. (15), the department may permit the county or tribe to serve under this section any individual who has a severe disability and who has not attained 22 years of age, and his or her family, if the individual's mental, physical, sensory, behavioral, emotional, or developmental disability or whose combination of multiple disabilities meets the requirements specified in sub. (1) (om) 1. to 4.

(15) FUNDING. (a) From the appropriation account under s. 20.435 (5) (co), the department shall make available funds to implement initiatives under this section.

(b) In order to apply for funds under this subsection the county board of supervisors or tribe shall do all of the following:

1. Establish a coordinating committee and designate an administering agency under sub. (2).

1r. Demonstrate that the coordinating services team approach to providing services to children who are involved in 2 or more systems of care and families will be followed, and principles and core values, as outlined by the advisory committee established by the department, will be adhered to.

2. Establish the priority target group to be served by the initiative as severely emotionally disturbed children.

3. Submit a plan to the department for implementation of the initiative in accordance with the requirements of this section.

4. Submit a description of the existing services and other resources in the county or tribe for children who are involved in 2 or more systems of care, an assessment of any gaps in services, and a plan for using the funds received under this subsection or funds from other sources to develop or expand the initiative.

5. Agree to comply with this section.

(c) In order for a county or tribe to obtain funds under this subsection, all of the participating agencies and organizations shall provide matching funds that, in total, equal 20% of the requested funding. The match may be cash or in−kind. The department shall determine what may be used as in−kind match.

(d) In order to apply for funding, a county or tribe shall have a coordinating committee that meets the requirements under sub. (3) (a) and (b), that will carry out the responsibilities under sub. (3) (d).

(f) Funds allocated under this subsection may not be used to replace any other state and federal funds or any county funds that are being used to fund services for children who are involved in 2 or more systems of care.

History: 1989 a. 31; 1993 a. 27, 399, 446; 1995 a. 27 ss. 2317, 2318, 9130 (4), 9145 (1); 1995 a. 77, 201; 1997 a. 3, 27, 114, 164; 2001 a. 16; 2009 a. 28, 334; 2011 a. 260.

46.57 Grants for services to persons with epilepsy.

(1) DEFINITIONS. In this section:

(a) "Agency" means a private nonprofit organization or a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 which provides or proposes to provide direct services or indirect services to or on behalf of persons with epilepsy, their families or both.

(b) "Direct services" means services provided to a person with epilepsy or a member of the family of a person with epilepsy and includes counseling, referral to other services, case management, daily living skills training, providing information, parent helper services, employment services and support group services.

(c) "Indirect services" means services provided to a person working with or on behalf of a person with epilepsy and includes service provider training, community education, prevention programs and advocacy.

(2) PURPOSE; ALLOCATION. (a) As provided under s. 46.48 (14), the department shall distribute funds to agencies to provide direct services or indirect services to or on behalf of persons with epilepsy or their families or both.

(b) The department may not allocate more than $50,000 per year to any agency for the program under this section.

(3) CRITERIA FOR AWARDING GRANTS. In reviewing applications for grants, the department shall consider the following:

(a) The need for direct services and indirect services to persons with epilepsy and their families in the area in which the applicant provides services or proposes to provide services.

(b) Ways to ensure that both urban and rural areas receive services under the grant program.

(4) REPORTING. After each year that an agency operates a program funded under this section the agency shall provide the following information to the department:

(a) The estimated number of persons with epilepsy that reside within the area served by the agency.

(b) The number of persons with epilepsy and other persons and organizations who received services within the area served by the agency.

History: 1987 a. 399; 1989 a. 31; 1991 a. 39; 1993 a. 16.

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46.65 Treatment alternative program. (1) The department shall implement a treatment alternative program. The department shall make grants to provide alcohol or other drug abuse services, as a treatment alternative in lieu of imprisonment, for eligible persons in need of those services. The department shall make grants so that the treatment alternative program serves a variety of geographic locations.

(2) The department shall promulgate rules to implement the treatment alternative program. The rules shall include all of the following:

(a) Organizational and administrative requirements for independent program units.

(b) Procedures for communicating and reaching agreements with representatives of the criminal justice system and treatment providers.

(c) Eligibility criteria for participants who obtain services under the program.

(d) Procedures for early identification of eligible participants.

(e) Assessment, referral, treatment and monitoring procedures.

(f) Policies and procedures for staff training.

(g) A data collection system to be used for program management and evaluation.

(h) A requirement that 75% of any recipient's grant must be used to provide treatment services to clients in the program.

History: 1987 a. 339; 1989 a. 122.
Cross−reference: See also ch. DHS 66, Wis. adm. code.

46.70 Delivery of services to American Indians. To facilitate the delivery of accessible, available and culturally appropriate social services and mental hygiene services to American Indians by county departments under s. 46.215, 46.22, 51.42 or 51.437, the department may fund federally recognized tribal governing bodies in this state from the appropriation account under s. 20.435 (5) (kL).

History: 1981 c. 20; 1983 a. 27; 1985 a. 29, 176; 1989 a. 31; 1991 a. 39; 1999 a. 9, 103; 2009 a. 28.

46.71 American Indian drug abuse prevention, treatment and education. (1) From the appropriation account under s. 20.435 (5) (km), the department shall, for the development of new drug abuse prevention, treatment and education programs that are culturally specific with respect to American Indians or to supplement like existing programs, allocate a total of not more than $500,000 in each fiscal year to all the elected governing bodies of federally recognized American Indian tribes or bands that submit to the department plans, approved by the department, that do all of the following:

(a) Demonstrate the need for the proposed funding.

(b) Outline the manner in which the funds will be used.

(2) The amount of funds allocated by the department under sub. (1) may not exceed the amounts appropriated under the appropriation account under s. 20.435 (5) (km).

History: 1989 a. 122, 336; 1991 a. 39; 1993 a. 16.; 1995 a. 27; 1999 a. 9; 2009 a. 28, 276.

46.75 Food distribution grants. (1) DEFINITIONS. In this section:

(a) "Agency" means a public agency or private nonprofit organization.

(b) "Food distribution program" means a program that provides food directly to needy individuals or a program that collects and distributes food to persons who provide the food directly to needy individuals.

(2) PURPOSE; AMOUNT. (a) From the appropriation under s. 20.435 (1) (dn), the department shall award grants to agencies to operate food distribution programs that qualify for participation in the emergency food assistance program under 7 USC ch. 102.

(b) The department may not award more than $20,000 to any agency for the program under this section.

(3) CRITERIA FOR AWARDING GRANTS. In evaluating applications for grants, the department shall give priority to food distribution programs that do the following:

(a) Serve areas that are not served or are underserved by food distribution services.

(b) Operate a program that routinely provides prepared meals to homeless persons.

(c) Provide information to individuals with low incomes concerning other services available to those individuals.

(e) Use simple methods to determine eligibility.

(f) Appear likely to continue operation after using the grant under this section.

History: 2009 a. 28 s. 1218; Stats. 2009 s. 46.75.

46.77 Food distribution administration. From the appropriation under s. 20.435 (1) (dn), the department shall allocate funds to eligible recipient agencies, as defined in 7 USC 7501 (3), for the storage, transportation, and distribution of commodities provided under 7 USC ch. 102.

History: 2009 a. 28 s. 1219; Stats. 2009 s. 46.77.

46.80 Aging. (1) The department's primary responsibility to elderly persons is to assure that all elderly and disabled persons have available and accessible a continuum of care or a wide range of community and supportive services so that they may remain in their homes and neighborhoods for as long as it is possible. The department shall be the mechanism by which governmental and nongovernmental agencies may coordinate their policies, plans and activities with regard to the aging. To this end it shall:

(a) Conduct a continuous review of the scope and degree of coordination of all state programs and activities on the aging and make recommendations to the appropriate agencies regarding the expansion, coordination, consolidation and reorganization of particular activities as a means of developing a more effective and efficient total program for the aging.

(b) Examine the need for future activities, programs, services and facilities for the aging on the state, local and voluntary levels.

(c) Encourage, promote and aid in the establishment of programs and services for the aging within subordinate units of government and nongovernmental groups, and assist organizations and committees in the development of programs in such manner as the division deems appropriate.

(d) Gather and disseminate information about programs, services, activities and facilities for the aging.

(e) Conduct a continuous program to stimulate public awareness and understanding of the needs and potentials of the aging.

(f) Provide consultant service to assist in the development of local housing for the aged.

(2) The several state agencies shall cooperate with the department in making available to it such available data as will facilitate the work of the department. The department shall make available to the several state agencies such information as it secures which will facilitate the effective operation of their programs for the aging.

(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 to 3030. The department need not promulgate as rules under ch. 227 the formulas developed under this subdivision.

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

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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). If the department operates that project, the department shall distribute funds from the appropriation under s. 20.435 (7) (dh) to supplement any federal foster grandparent project funds received under 42 USC 5011 (a).

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

(3) The department may accept, on behalf of the state, and use gifts and grants for the purposes of this section. It shall use, to the fullest extent legally possible, all available grants from federal, state and other public or private sources to fund community home care services or programs which offer alternatives to institutionalization and which provide comprehensive services at the community level. The state plan for the older Americans act shall detail objectives designed to accomplish this purpose.

(4) The secretary shall appoint such technical staff as is necessary to carry out the functions of this program.

(5) (a) From the appropriation under s. 20.435 (7) (dh), the department shall provide a state supplement to the federal congregate nutrition projects under 42 USC 3030e, in effect on April 30, 1980, which will promote expansion of projects throughout the state and, from the appropriation under s. 20.435 (7) (kn), the department shall provide a state supplement to the federal congregate nutrition projects of $450,000 for home−delivered meals and $50,000 for congregate meals. Except as provided in par. (b), the department shall allocate these funds based on the formulas developed by the department under sub. (2m) (a) 2. A county that receives federal funds for congregate nutrition projects on or after July 1, 1977, may not receive under this paragraph an amount that is less than the 1976−77 allocation as a result of the program expansion. This paragraph does not require that federal limitations on the use of federal congregate nutrition funds for home delivered meals apply to the state supplement.

(b) The department may use up to 10% of the funds provided under par. (a) to reduce county losses, if any, as a result of changes in census data or revisions in the formula for distribution under sub. (2m) (a) 2.

History: 1971 c. 164; 1975 c. 39, 200; 1977 c. 29; 1979 c. 34 ss. 828g to 829, 2102 (20) (a); 1979 c. 221; 1981 c. 20; 1983 a. 27 s. 2202 (20); 1985 a. 332; 1987 a. 27; 1989 a. 31; 1991 a. 235; 1993 a. 16; 1997 a. 27; 1999 a. 52.

46.81 Benefit specialist program. (1) In this section:

(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 corporation that is organized under ch. 181 and that is a nonprofit corporation, as defined in s. 181.0103 (17).

(b) "Area agency on aging" means the agency designated under 42 USC 3025 (a) (2) (A).

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

(2) From the appropriation account under s. 20.435 (7) (dh), the department shall allocate $2,298,400 in each fiscal year to aging units to provide benefit specialist services for older 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 individuals who reside in a county.

(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 individuals. Aging units may also use other funds to provide benefit specialist services.

(4) Benefit specialists shall offer information, advice and assistance to older 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 individuals in need of legal representation to the private bar or other available legal resources.

(5) From the appropriation under s. 20.435 (7) (dh) the department shall allocate $182,500 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 benefit specialists within its area.

History: 1987 a. 27, 399; 1989 a. 31; 1991 a. 39, 235, 269, 315; 1993 a. 16; 1995 a. 27; 1997 a. 41, 79; 1999 a. 9; 2005 a. 25.

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 corporation that is organized under ch. 181 and that is a nonprofit corporation, as defined in s. 181.0103 (17).

(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 provi-

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sions 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. As specified under 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.

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.

19. If an aging unit under sub. (1) (a) 1. or 2. and if authorized under s. 46.283 (1) (a) 1., apply to the department to operate a resource center under s. 46.283 and, if the department contracts with the county under s. 46.283 (2), operate the resource center.

20. If an aging unit under sub. (1) (a) 1. or 2. and if authorized under s. 46.284 (1) (a) 1., apply to the department to operate a care management organization under s. 46.284 and, if the department contracts with the county under s. 46.284 (2), operate the care management organization and, if appropriate, place funds in a risk reserve.

(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 corporation. 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 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 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).

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(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 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) (b) 3. shall make the appointment, subject to ch. 181.

History: 1991 a. 235; 1993 a. 213; 1995 a. 27 ss. 2332, 9126 (19); 1997 a. 79; 1999 a. 9; 2007 a. 20 s. 9121 (6) (a).

46.85 Programs for older individuals. (1) The department may establish and operate a Senior Companion Program modeled after the federal Senior Companion Program under 42 USC 5011 (b), in effect on April 30, 1980. If operated, the program shall engage the services of low−income persons aged 60 or over to provide supportive person−to−person assistance in health, education, recreation, welfare and related fields to persons aged 60 or over with special needs who reside in their own homes, and it may engage other persons aged 60 or older, regardless of income, as volunteers in similar activities. The department may also establish and operate a Retired Senior Volunteer Program modeled after the federal Retired Senior Volunteer Program under 42 USC 5001, in effect on April 30, 1980, to provide voluntary services in a community. If operated, the program shall engage persons aged 55 or older as volunteers.

(2) If the department establishes a program under this section, it shall promulgate rules for the operation of the program. Such rules shall include:

(a) A definition of "low income" which shall at least equal the guidelines of the federal ACTION program.

(b) A requirement that program units provide accident and liability insurance coverage during working hours for all program participants, including volunteers.

(c) A requirement that program units receiving federal funds establish advisory councils empowered according to, but not limited by, applicable federal guidelines. Council members may be reimbursed for transportation and other expenses incurred in service to the program.

(3m) (a) From the appropriation under s. 20.435 (7) (dh), the department shall provide a state supplement to federally funded Senior Companion Program and Retired Senior Volunteer Program units that were in operation on December 1, 1988, and administered by qualified public and non−profit private agencies.

(b) From the appropriation under s. 20.435 (7) (dh), the department shall allocate funds, based on the percentage of the state's population of low−income persons over age 60 who reside in each county or are members of an American Indian tribe, and distribute the funds to counties and federally recognized tribal governing bodies to supplement any of the following:

1. Federally and nonfederally funded senior companion and retired senior volunteer programs.

2. Federal projects providing supportive services under 42 USC 3030d, congregate nutrition services under 42 USC 3030e, home−delivered meals under 42 USC 3030f and 3030g, in−home services for frail older individuals under 42 USC 3030h, 3030i, 3030j and 3030k and preventive health services under 42 USC 3030m, 3030n and 3030o.

(4) Low income older persons employed in a senior companion program shall be paid a stipend which compensates them for no more than 20 hours per week at an hourly rate not to exceed the federal minimum wage, and in addition shall receive reimbursement for the cost of one meal per working day.

(5) All persons engaged in a program under this section, whether for compensation or as volunteers, are eligible for:

(a) Transportation assistance, not to exceed mileage payments for 20 miles per day.

(b) Accident and liability insurance coverage during working hours.

History: 1977 c. 418; 1979 c. 34, 221; 1981 c. 20; 1983 a. 27 s. 2202 (20); 1987 a. 27; 1989 a. 31; 1993 a. 16; 2003 a. 33.

46.856 Alzheimer's disease; training and information grants. (1) In this section:

(a) "Private nonprofit organization" has the meaning given in s. 108.02 (19).

(b) "Public agency" means a county, city, village, town or school district or an agency of this state or of a county, city, village, town or school district.

(2) From the appropriation under s. 20.435 (7) (bg), the department shall award a grant to at least one public agency or private nonprofit organization to do all of the following:

(a) Provide training and technical assistance to the staff of county departments under ss. 46.215, 46.22 and 46.23, to the staff of administering agencies designated under s. 46.87 (3) (c) and to other providers of services to persons with Alzheimer's disease, as defined in s. 46.87 (1) (a).

(b) Determine the need for and create appropriate services to persons with Alzheimer's disease in coordination with local agencies and service providers.

(c) Collect and disseminate information on Alzheimer's disease, coordinate public awareness activities related to the disease and advise the department on public policy issues concerning the disease.

History: 1995 a. 464; 1999 a. 9.

46.86 Treatment programs. (1) From the appropriation under s. 20.435 (7) (md) the department may award not more than $125,500 in each fiscal year as grants to counties and private nonprofit entities for treatment for pregnant women and mothers with alcohol and other drug abuse treatment needs; mothers who have alcohol and other drug abuse treatment needs and dependent children up to the age of 5 years; and the dependent children up to the age of 5 years of those mothers. The grants shall be awarded in accordance with the department's request−for−proposal procedures. The grants shall be used to establish community−based programs, residential family−centered treatment programs or home−based treatment programs. The program under a grant must include alcohol and other drug abuse treatment services, parent education, support services for the children of the women who are enrolled in the program, vocational assistance and housing assistance. Any program funded under this subsection must also provide follow−up aftercare services to each woman and her children for at least 2 years after the date on which a woman has left the program.

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(2m) (a) In this subsection, "long−term treatment" means treatment that is, in the majority of instances, not less than 5 months nor more than 12 months in duration.

(b) From the appropriation under s. 20.435 (7) (md), the department shall distribute not more than $79,500 in each fiscal year for residential long−term treatment for alcohol and other drug abuse, including treatment with respect to family relationships, antisocial behavior and employability, in a treatment facility, as defined in s. 51.01 (19), in a 1st class city.

(3m) From the appropriation under s. 20.435 (7) (md), the department may not distribute more than $900,000 in each fiscal year to fund a multidisciplinary prevention and treatment team in Milwaukee County for cocaine−abusing women and their children. The multidisciplinary prevention and treatment team must coordinate its activities with other prevention and treatment programs in Milwaukee County for cocaine−abusing women and their children. Residents from other counties may be served by the multidisciplinary prevention and treatment team. The department may carry forward funds distributed under this subsection, but not encumbered by December 31, for distribution for the purpose under this subsection in the following calendar year.

(5) From the appropriation under s. 20.435 (7) (md), the department may not distribute more than $235,000 in each fiscal year as a grant to ARC Community Services, Inc., for women and children in Dane County, to provide funding for staff of the center and transportation and meal expenses for chemically dependent women who receive services from the center.

(6) (a) From the appropriation account under s. 20.435 (7) (md), the department may award up to $1,330,800 in each fiscal year, and from the appropriation account under s. 20.435 (5) (gb), the department may award not more than $319,500 in each fiscal year, as grants to counties and private entities to provide community−based alcohol and other drug abuse treatment programs that do all of the following:

1. Meet special needs of women with problems resulting from alcohol or other drug abuse.

2. Emphasize parent education, vocational and housing assistance and coordination with other community programs and with treatment under intensive care.

(b) The department shall do all of the following with respect to the grants under par. (a):

1. Award the grants in accordance with the department's request−for−proposal procedures.

2. Ensure that the grants are distributed in both urban and rural communities.

3. Evaluate the programs under the grants by use of client−outcome measurements that the department develops.

History: 1989 a. 122; 1991 a. 39; 1993 a. 16 ss. 998, 1001, 1005, 1012, 1061 to 1066; 1995 a. 27; 1997 a. 27; 1999 a. 9, 32; 2001 a. 16; 2009 a. 28.

46.87 Alzheimer's family and caregiver support program. (1) In this section:

(a) "Alzheimer's disease" means a degenerative disease of the central nervous system characterized especially by premature senile mental deterioration, and also includes any other irreversible deterioration of intellectual faculties with concomitant emotional disturbance resulting from organic brain disorder.

(b) "Caregiver" means any person other than a paid provider who provides care for a person with Alzheimer's disease.

(2) From the appropriations under s. 20.435 (7) (b) and (o), the department shall allocate funds to agencies designated under sub. (3) (c), to be used for the administration and implementation of an Alzheimer's family and caregiver support program for persons with Alzheimer's disease and their caregivers.

(3) (a) A county board may apply to initially participate in the program created under this section by submitting to the department a one−time letter of intent to participate which includes a description of the program and services related to Alzheimer's disease which the county board intends to provide.

(b) The department shall select counties to participate in the program on the basis of criteria promulgated by rule.

(c) The county board for each county selected to participate shall designate one of the following as the administering agency for the program:

1. The county department under s. 46.215 or 46.22.

2. The county department under s. 51.42 or 51.437.

3. The county department under s. 46.23.

4. An aging unit, as defined in s. 46.82 (1) (a).

5. The local health department, if any, established under s. 251.02.

(4) If a county board does not submit an application under sub. (3) (a) by January 1, 1986, the department shall make that county's allocation available to a private nonprofit organization, as defined under s. 108.02 (19), to administer the program created under this section and shall select the organization according to criteria promulgated by rule. An organization selected as the administering agency under this subsection shall continue to be eligible to receive the county's allocation unless the county board subsequently submits to the department a letter of intent to participate and receives approval of its proposed program.

(5) The administering agency in each county may use the funds allocated to it to do any or all of the following:

(a) Provide or contract for the provision of services and goods or make payments for services to households that meet all of the following conditions:

1. At least one member of the household must be a person who has been diagnosed by a physician as having Alzheimer's disease.

2. Either the person with Alzheimer's disease or the person's caregiver resides in the county to which the household applies for participation in the program.

3. The household meets financial eligibility requirements specified by the department by rule, and persons in the household are ineligible for the family care benefit under s. 46.286 in a county in which a care management organization under s. 46.284 operates.

(b) Provide or contract for the provision of services and goods or make payments for services to a person with Alzheimer's disease living in a residential facility in the county who meets financial eligibility requirements specified by the department by rule and is ineligible for the family care benefit under s. 46.286 in a county in which a care management organization under s. 46.284 operates.

(bm) Maintain a contract in effect on June 30, 1987, with a service provider under funds allocated under sub. (2).

(c) Contract with service providers to develop new programs or expand services, under this section, as defined by the department by rule.

(e) Provide outreach or other activities designed to develop public awareness of Alzheimer's disease.

(6) (a) For the purpose of distributing funds allocated under this section to households or individuals participating in the program, the administering agency shall determine all of the following:

1. The services and goods needed by the household to enable it to maintain the person with Alzheimer's disease as a member of the household, or the services or goods needed by a person with Alzheimer's disease living in a residential facility, and the cost of each service or good that is needed.

2. The ability of the household or of the person to pay for the services and goods identified under subd. 1., using as the basis for the determination the uniform fee schedule established by the department under s. 46.03 (18).

(b) 1. An administering agency may pay to or expend on behalf of a participating household or individual person the cost of any goods and services identified under par. (a) 1., less any amount paid under subd. 2., except that the amount paid or

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expended may not exceed $4,000 in any calendar year for each person with Alzheimer's disease in the household or for an individual person living in a residential facility.

2. An administering agency:

a. Shall require that the household or person with Alzheimer's disease pay, if able as determined under par. (a) 2., for services and goods provided under sub. (5) (a), (b) and (bm) unless the contract is determined to be a contract under sub. (5) (c).

b. May require that the household or person with Alzheimer's disease pay, if able as determined under par. (a) 2., for services and goods provided under sub. (5) (c).

(7) The county board shall notify the department if any of the following occurs:

(a) The administering agency in the county is replaced by another.

(b) The county board intends to terminate participation in the program.

(c) The county's program and services related to Alzheimer's disease contain a substantial difference, as defined by rule, from the description of the county's program and services contained in the county board's letter of intent most recently submitted to the department under sub. (3) (a).

(8) The department shall collect and analyze information about persons with Alzheimer's disease who are served under this section and about caregivers.

History: 1985 a. 29, 176; 1987 a. 27, 255, 403; 1989 a. 31, 336; 1991 a. 235; 1993 a. 27; 1997 a. 27; 2001 a. 16.

Cross−reference: See also ch. DHS 68, Wis. adm. code.

46.90 Elder abuse reporting system. (1) DEFINITIONS. In this section:

(a) "Abuse" means any of the following:

1. Physical abuse.

2. Emotional abuse.

3. Sexual abuse.

4. Treatment without consent.

5. Unreasonable confinement or restraint.

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

(aj) "Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.

(an) "Caregiver" means a person who has assumed responsibility for all or a portion of an individual's care voluntarily, by contract, or by agreement, including a person acting or claiming to act as a legal guardian.

(ar) "Case management" means an assessment of need for direct services, development of a direct service plan and coordination and monitoring of the provision of direct services.

(bm) "Direct services" includes temporary shelter, relocation assistance, housing, respite care, emergency funds for food and clothing and legal assistance.

(br) "Elder adult at risk" means any person age 60 or older who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self−neglect, or financial exploitation.

(bt) "Elder−adult−at−risk agency" means the agency designated by the county board of supervisors under sub. (2) to receive, respond to, and investigate reports of abuse, neglect, self−neglect, and financial exploitation under sub. (4).

(cm) "Emotional abuse" means language or behavior that serves no legitimate purpose and is intended to be intimidating, humiliating, threatening, frightening, or otherwise harassing, and that does or reasonably could intimidate, humiliate, threaten, frighten, or otherwise harass the individual to whom the conduct or language is directed.

(ed) "Financial exploitation" means any of the following:

1. Obtaining an individual's money or property by deceiving or enticing the individual, or by forcing, compelling, or coercing the individual to give, sell at less than fair market value, or in other ways convey money or property against his or her will without his or her informed consent.

2. Theft, as prohibited in s. 943.20.

3. The substantial failure or neglect of a fiscal agent to fulfill his or her responsibilities.

4. Unauthorized use of an individual's personal identifying information or documents, as prohibited in s. 943.201.

5. Unauthorized use of an entity's identifying information or documents, as prohibited in s. 943.203.

6. Forgery, as prohibited in s. 943.38.

7. Financial transaction card crimes, as prohibited in s. 943.41.

(eg) "Fiscal agent" includes any of the following:

1. A guardian of the estate appointed under s. 54.10.

2. A conservator appointed under s. 54.76.

3. An agent under a power of attorney under ch. 244.

4. A representative payee under 20 CFR 416.635.

5. A conservatorship under the U.S. department of veterans affairs.

(er) "Investigative agency" means a law enforcement or a city, town, village, county, or state governmental agency or unit with functions relating to protecting health, welfare, safety, or property, including an agency concerned with animal protection, public health, building code enforcement, consumer protection, or insurance or financial institution regulation.

(f) "Neglect" means the failure of a caregiver, as evidenced by an act, omission, or course of conduct, to endeavor to secure or maintain adequate care, services, or supervision for an individual, including food, clothing, shelter, or physical or mental health care, and creating significant risk or danger to the individual's physical or mental health. "Neglect" does not include a decision that is made to not seek medical care for an individual, if that decision is consistent with the individual's previously executed declaration or do−not−resuscitate order under ch. 154, a power of attorney for health care under ch. 155, or as otherwise authorized by law.

(fg) "Physical abuse" means the intentional or reckless infliction of bodily harm.

(g) "Self−neglect" means a significant danger to an individual's physical or mental health because the individual is responsible for his or her own care but fails to obtain adequate care, including food, shelter, clothing, or medical or dental care.

(gd) "Sexual abuse" means a violation of s. 940.225 (1), (2), (3), or (3m).

(gf) "State governmental agency" has the meaning given for "agency" in s. 16.417 (1) (a).

(gr) "State official" means any law enforcement officer employed by the state or an employee of one of the following:

1. The department of health services.

2. The department of justice.

3. The department of safety and professional services.

4. The board on aging and long−term care.

5. A state governmental agency other than those specified in subds. 1. to 4. with functions relating to protecting health and safety.

(h) "Treatment without consent" means the administration of medication to an individual who has not provided informed consent, or the performance of psychosurgery, electroconvulsive therapy, or experimental research on an individual who has not provided informed consent, with the knowledge that no lawful authority exists for the administration or performance.

(i) "Unreasonable confinement or restraint" includes the intentional and unreasonable confinement of an individual in a locked room, involuntary separation of an individual from his or her living area, use on an individual of physical restraining devices, or the provision of unnecessary or excessive medication to an individual, but does not include the use of these methods or devices in entities regulated by the department if the methods or devices

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are employed in conformance with state and federal standards governing confinement and restraint.

(2) ELDER−ADULT−AT−RISK AGENCY DESIGNATION. Each county board shall designate an agency in the county as the elder−adult−at−risk agency for the purposes of this section.

(3) ELDER−ADULT−AT−RISK AGENCY DUTIES. (a) Each elder−adult−at−risk agency shall develop a policy for notifying other investigative agencies, including law enforcement officials in appropriate cases, and shall establish an elder abuse reporting system to carry out the purposes of this section. Each elder−adult−at−risk agency shall enter into a memorandum of understanding regarding the operation of the system with the county department under s. 46.215 or 46.22 and with any private or public agency, including a county department under s. 51.42 or 51.437, within the county that is participating in the elder abuse reporting system. The memorandum of understanding shall, at a minimum, identify the agencies that are responsible for the investigation of reports of abuse, financial exploitation, neglect, or self−neglect of elder adults at risk and for the provision of specific direct services.

(b) Each elder−adult−at−risk agency shall receive reports of abuse, financial exploitation, neglect, or self−neglect of elder adults at risk.

(c) Each elder−adult−at−risk agency shall publicize the existence of an elder abuse reporting system in the county and shall provide a publicized telephone number that can be used by persons wishing to report suspected cases of abuse, financial exploitation, neglect, or self−neglect of elder adults at risk. Each elder−adult−at−risk agency shall also provide a telephone number that can be used to make reports after the elder−adult−at−risk agency's regular business hours.

(4) REPORTING. (ab) The following persons shall file reports as specified in par. (ad):

1. An employee of any entity that is licensed, certified, or approved by or registered with the department.

3. A health care provider, as defined in s. 155.01 (7).

4. A social worker, professional counselor, or marriage and family therapist certified under ch. 457.

(ad) Except as provided in par. (ae), a person specified in par. (ab) who has seen an elder adult at risk in the course of the person's professional duties shall file a report with the county department, the elder−adult−at−risk agency, a state or local law enforcement agency, the department, or the board on aging and long−term care if the elder adult at risk has requested the person to make the report, or if the person has reasonable cause to believe that any of the following situations exist:

1. The elder adult at risk is at imminent risk of serious bodily harm, death, sexual assault, or significant property loss and is unable to make an informed judgment about whether to report the risk.

2. An elder adult at risk other than the subject of the report is at risk of serious bodily harm, death, sexual assault, or significant property loss inflicted by a suspected perpetrator.

(ae) A person specified in par. (ab) to whom any of the following applies is not required to file a report as provided in par. (ad):

1. If the person believes that filing a report would not be in the best interest of the elder adult at risk. If the person so believes, the person shall document the reasons for this belief in the case file that the person maintains on the elder adult at risk.

2. If a health care provider provides treatment by spiritual means through prayer for healing in lieu of medical care in accordance with his or her religious tradition and his or her communications with patients are required by his or her religious denomination to be held confidential.

(ar) Any person, including an attorney or a person working under the supervision of an attorney, may report to the county department, the elder−adult−at−risk agency, a state or local law enforcement agency, the department, or the board on aging and long−term care that he or she believes that abuse, financial exploitation, neglect, or self−neglect of an elder adult at risk has occurred if the person is aware of facts or circumstances that would lead a reasonable person to believe or suspect that abuse, financial exploitation, neglect, or self−neglect of an elder adult at risk has occurred. The person shall indicate the facts and circumstances of the situation as part of the report.

(b) 1. a. No person may discharge or otherwise retaliate or discriminate against any person for reporting in good faith under this subsection.

b. No person may discharge or otherwise retaliate or discriminate against any individual on whose behalf another person has reported in good faith under this subsection.

cm. Any discharge of a person or act of retaliation or discrimination that is taken against a person who makes a report under this subsection, within 120 days after the report is made, establishes a rebuttable presumption that the discharge or act is made in response to the report. This presumption may be rebutted by a preponderance of evidence that the discharge or act was not made in response to the report.

2. b. Any employee who is discharged or otherwise discriminated against may file a complaint with the department of workforce development under s. 106.54 (5).

c. Any person not described in subd. 2. b. who is retaliated or discriminated against in violation of subd. 1. a. or b. may commence an action in circuit court for damages incurred as a result of the violation.

(c) No person may be held civilly or criminally liable or be found guilty of unprofessional conduct for reporting in good faith under this subsection and within the scope of his or her authority, or for filing a report with an agency not listed in par. (ad) (intro.) or (ar) if the person had a good faith belief that the report was filed correctly with one of the listed agencies.

(d) If a report under par. (ad) or (ar) is made to a state official, the state official shall refer the report to the appropriate elder−adult−at−risk agency. The requirement under this paragraph does not apply to an employee of the board on aging and long−term care who determines that his or her referral would be in violation of 42 USC 3058g (d).

(e) Any person making a report under this subsection is presumed to have reported in good faith.

(5) RESPONSE AND INVESTIGATION. (a) 1. Except as otherwise provided, upon receiving a report of alleged abuse, financial exploitation, neglect, or self−neglect of an elder adult at risk, the elder−adult−at−risk agency shall either respond to the report including, if necessary, by conducting an investigation, or refer the report to another agency for investigation. Upon receiving a report of alleged abuse, financial exploitation, neglect, or self−neglect of a client, as defined in s. 50.065 (1) (b), of an entity, as defined in s. 50.065 (1) (c), if the person suspected of perpetrating the alleged abuse, financial exploitation, or neglect is a caregiver or a nonclient resident of the entity, the elder−adult−at−risk agency shall refer the report within 24 hours after the report is received to the department for investigation. The department shall coordinate its investigatory efforts with other investigative agencies or authorities as appropriate. An elder−adult−at−risk agency's response to or another investigative agency's investigation of a report of alleged abuse, financial exploitation, neglect, or self−neglect that is not referred to the department shall be commenced within 24 hours after a report is received, excluding Saturdays, Sundays and legal holidays.

2. If an agent or employee of an elder−adult−at−risk agency required to respond under this subsection is the subject of a report, or if the elder−adult−at−risk agency or an agency under contract with the county department determines that the relationship between the elder−adult−at−risk agency and the agency under contract with the county department would not allow for an unbiased response, the elder−adult−at−risk agency shall, after taking any action necessary to protect the elder adult at risk, notify the department. Upon receipt of the notice, the department or a

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county department under s. 46.215, 46.22, 51.42, or 51.437 designated by the department shall conduct an independent investigation. The powers and duties of a county department making an independent investigation are those given to an elder−adult−at−risk agency under pars. (b) to (f) and sub. (6).

(b) The elder−adult−at−risk agency's response or another investigative agency's investigation may include one or more of the following:

1. A visit to the residence of the elder adult at risk.

2. Observation of the elder adult at risk, with or without consent of his or her guardian or agent under an activated power of attorney for health care, if any.

3. An interview with the elder adult at risk, in private to the extent practicable, and with or without the consent of his or her guardian or agent under an activated power of attorney for health care, if any.

4. An interview with the guardian or agent under an activated power of attorney for health care, if any, and with any caregiver of the elder adult at risk.

5. A review of the treatment and patient health care records of the elder adult at risk.

6. A review of any financial records of the elder adult at risk that are maintained by a financial institution, as defined in s. 705.01 (3); by an entity, as defined in s. 50.065; by any caregiver of the elder adult at risk; or by a member of the immediate family of the elder adult at risk or caregiver. The records shall be released without informed consent in either of the following circumstances:

a. To an elder−adult−at−risk agency or other investigative agency under this section. The financial record holder may release financial record information by initiating contact with the elder−adult−at−risk agency or other investigative agency without first receiving a request for release of the information from the elder−adult−at−risk agency or other investigative agency.

b. Under a lawful order of a court of record.

(br) The elder−adult−at−risk agency or other investigative agency may transport the elder adult at risk for performance of a medical examination by a physician if any of the following applies:

1. The elder adult at risk or his or her guardian or agent under an activated power of attorney for health care, if any, consents to the examination.

2. The elder adult at risk is incapable of consenting to the examination and one of the following applies:

a. The elder adult at risk has no guardian or agent under an activated power of attorney for health care.

b. The elder adult at risk has a guardian or an agent under an activated power of attorney for health care, but that guardian or agent is the person suspected of abusing, neglecting, or financially exploiting the elder adult at risk.

c. The examination is authorized by order of a court.

(c) The elder−adult−at−risk agency may request a sheriff or police officer to accompany the elder−adult−at−risk agency investigator or worker during visits to the residence of the elder adult at risk or request other assistance as needed. If the request is made, a sheriff or police officer shall accompany the elder−adult−at−risk agency investigator or worker to the residence of the elder adult at risk and shall provide other assistance as requested or necessary.

(d) If a person interferes with the response or investigation under this subsection or interferes with the delivery of protective services under ch. 55 to the elder adult at risk, the elder−adult−at−risk agency investigator or worker may apply for an order under s. 813.123 prohibiting the interference.

(f) If the elder−adult−at−risk agency worker or investigator or other agency investigator has reason to believe that substantial physical harm, irreparable injury, or death may occur to an elder adult at risk, the worker or investigator shall request immediate assistance in either initiating a protective services action under ch. 55 or contact law enforcement or another public agency, as appropriate.

(h) No person may be held civilly or criminally liable or be found guilty of unprofessional conduct for responding to a report or for participating in or conducting an investigation under this subsection, including the taking of photographs or the conducting of a medical examination, if the response or investigation was performed in good faith and within the scope of his or her authority.

(5m) OFFER OF SERVICES AND REFERRAL OF CASES. (a) Upon responding to a report, the elder−adult−at−risk agency or the investigative agency shall determine whether the elder adult at risk or any other individual involved in the alleged abuse, financial exploitation, neglect, or self−neglect is in need of services under this chapter or ch. 47, 49, 51, 54, or 55. From the appropriation under s. 20.435 (7) (dh), the department shall allocate to selected counties not less than $25,000 in each fiscal year, and within the limits of these funds and of available state and federal funds and of county funds appropriated to match the state and federal funds, the elder−adult−at−risk agency shall provide the necessary direct services to the elder adult at risk or other individual or arrange for the provision of the direct services with other agencies or individuals. Those direct services provided shall be rendered under the least restrictive conditions necessary to achieve their objective.

(b) If the elder−adult−at−risk agency is not the aging unit, the elder−adult−at−risk agency in each county shall consult with and accept advice from the aging unit with respect to the distribution of the funds for direct services that are allocated under par. (a).

(br) If, after responding to a report, the elder−adult−at−risk agency has reason to believe that the elder adult at risk has been the subject of abuse, financial exploitation, neglect, or self−neglect, the elder−adult−at−risk agency may do any of the following:

1. Request immediate assistance in initiating a protective services action under ch. 55 or contact an investigative agency, as appropriate.

2. Take appropriate emergency action, including emergency protective placement under s. 55.135, if the elder−adult−at−risk agency determines that the emergency action is in the best interests of the elder adult at risk and the emergency action is the least restrictive appropriate intervention.

3. Refer the case to law enforcement officials, as specified in sub. (3) (a), for further investigation or to the district attorney, if the elder−adult−at−risk agency has reason to believe that a crime has been committed.

4. Refer the case to the licensing, permitting, registration, or certification authorities of the department or to other regulatory bodies if the residence, facility, or program for the elder adult at risk is or should be licensed, permitted, registered, or certified or is otherwise regulated.

5. Refer the case to the department of safety and professional services if the financial exploitation, neglect, self−neglect, or abuse involves an individual who is required to hold a credential, as defined in s. 440.01 (2) (a), under chs. 440 to 460.

6. Bring a petition for a guardianship and protective services or protective placement under ch. 55 or a review of an existing guardianship if necessary to prevent financial exploitation, neglect, self−neglect, or abuse and if the elder adult at risk would otherwise be at risk of serious harm because of an inability to arrange for necessary food, clothing, shelter, or services.

(c) An elder adult at risk may refuse to accept services unless a guardian authorizes the services. The elder−adult−at−risk agency or other provider agency shall notify the elder adult at risk of this right to refuse before providing services.

(6) RECORDS; CONFIDENTIALITY. (ac) In this subsection:

1. "Departmental report form" includes documentation of an elder−adult−at−risk agency's response to or investigation of a report made under sub. (5) and is the information required to be submitted to the department.

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2. "Record" includes any document relating to the response, investigation, assessment, and disposition of a report made under this section.

(am) The elder−adult−at−risk agency shall prepare a departmental report form of its response under sub. (5) to a report of suspected abuse, financial exploitation, neglect, or self−neglect. If the elder−adult−at−risk agency refers the report to an investigative agency, the investigative agency shall advise the elder−adult−at−risk agency in writing of its response to the report. The elder−adult−at−risk agency shall maintain records of suspected abuse, financial exploitation, neglect, or self−neglect.

(b) Departmental report forms are confidential and may not be released by the elder−adult−at−risk agency or other investigative agency, except under the following circumstances:

1. To the elder adult at risk, any person named in a departmental report form who is suspected of abusing, neglecting, or financially exploiting an elder adult at risk, and the suspect's attorney. These persons may inspect the departmental report form, except that information identifying the person who initially reported the suspected abuse, financial exploitation, neglect, or self−neglect, or any other person whose safety might be endangered through disclosure, may not be released.

2. To the agency or other entity from which assistance is requested under sub. (5) (f). Information obtained under this subdivision shall remain confidential.

3. To an individual, organization, or agency designated by the department or as required by law for the purposes of management audits or program monitoring and evaluation. Information obtained under this subdivision shall remain confidential and may not be used in any way that discloses the names of or other identifying information about the individuals involved.

4. For purposes of research, if the research project has been approved by the department or the elder−adult−at−risk agency and the researcher has provided assurances that the information will be used only for the purposes for which it was provided to the researcher, the information will not be released to a person not connected with the study under consideration, and the final product of the research will not reveal information that may serve to identify the individuals involved. The information shall remain confidential. In approving the use of information under this subdivision, the department shall impose any additional safeguards needed to prevent unwarranted disclosure of information.

5. Under a lawful order of a court of record.

6. To any agency or individual that provides direct services under sub. (5m), including an attending physician for purposes of diagnosis and treatment, and within the department to coordinate treatment for mental illness, developmental disabilities, alcoholism, or drug abuse of individuals committed to or under the supervision of the department. Information obtained under this subdivision shall remain confidential.

7. To the guardian of the elder adult at risk or the guardian of any person named in a report who is suspected of abusing, neglecting, or financially exploiting an elder adult at risk. These persons may inspect the departmental report form, except that information identifying the person who initially reported the suspected abuse, financial exploitation, neglect, or self−neglect, or any other person whose safety might be endangered through disclosure, may not be released.

8. To law enforcement officials in accordance with the policy developed under sub. (3) (a).

9. To a federal agency, state governmental agency, agency of any other state, or local governmental unit in this state or any other state that has a need for a departmental report form in order to carry out its responsibility to protect elder adults at risk from abuse, financial exploitation, neglect, or self−neglect.

10. To the reporter who made a report in his or her professional capacity, regarding action to be taken to protect or provide services to the alleged victim of abuse, financial exploitation, neglect, or self−neglect.

(bd) If a person requesting a departmental report form is not one of the persons or entities specified in par. (b), the elder−adult−at−risk agency may release information indicating only whether or not a report was received and whether or not statutory responsibility was fulfilled.

(br) Notwithstanding par. (b) 1. to 10., an elder−adult−at−risk agency or an investigative agency may not release departmental report forms under this section if any of the following applies:

1. The elder−adult−at−risk agency determines that the release would be contrary to the best interests of the elder adult at risk who is the subject of the departmental report form or of another person residing with the subject of the departmental report form, or the release is likely to cause mental, emotional, or physical harm to the subject of the departmental report form or to any other individual.

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

3. The elder−adult−at−risk agency determines that disclosure would jeopardize ongoing or future civil investigations or proceedings or would jeopardize the fairness of such a legal proceeding.

(bt) Subject to pars. (b), (bd), (br), (bv), and (bw), records under this subsection are confidential and may not be released by the elder−adult−at−risk agency or other investigative agency, except under the following circumstances, upon request:

1. To the elder adult at risk who is the alleged victim named in the record.

2. To the legal guardian, conservator, or other legal representative of the elder adult at risk who is the alleged victim named in the record, if the legal guardian, conservator, or other legal representative of the alleged victim is not the alleged perpetrator of the abuse, financial exploitation, or neglect.

3. To law enforcement officials and agencies in accordance with the policy developed under sub. (3) (a) or with investigations conducted under sub. (5), or a district attorney, for purposes of investigation or prosecution.

4. To the department, under s. 51.03 (2), or for death investigations under s. 50.04 (2t) or 50.035 (5); or to a sheriff, police department, or district attorney for death investigations under s. 51.64 (2) (a).

5. To an employee of a county department under s. 51.42 or 51.437 that is providing services either to the elder adult at risk who is the alleged victim named in the record or to the alleged perpetrator of abuse, to determine whether the alleged victim should be transferred to a less restrictive or more appropriate treatment modality or facility.

6. To a court, tribal court, or state governmental agency for a proceeding relating to the licensure or regulation of an individual or entity regulated or licensed by the state governmental agency, that was an alleged perpetrator of abuse, financial exploitation, or neglect.

7. To the department, for management, audit, program monitoring, evaluation, billing, or collection purposes.

8. To the attorney or guardian ad litem for the elder adult at risk who is the alleged victim named in the record, to assist in preparing for any proceeding under ch. 48, 51, 54, 55, 813, 971, or 975 pertaining to the alleged victim.

9. To a coroner, medical examiner, pathologist, or other physician investigating the cause of death of an elder adult at risk that is unexplained or unusual or is associated with unexplained or suspicious circumstances.

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10. To staff members of the protection and advocacy agency designated under s. 51.62 and the board on aging and long−term care under s. 16.009.

11. To an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of abuse, neglect, or financial exploitation of an elder adult at risk.

12. To a grand jury, if it determines that access to specified records is necessary for the conduct of its official business.

13. Under a lawful order of a court of record.

(bv) The identity of a person making a report of alleged abuse, neglect, self−neglect, or financial exploitation shall be deleted from any record prior to its release under par. (bt) or from any departmental report form prior to its release under par. (b). The identity of any reporter may only be released with the written consent of the reporter or under a lawful order of a court of record.

(bw) A person to whom a departmental report form or a record is disclosed under this subsection may not further disclose it, except to the persons and for the purposes specified in this subsection.

(by) A custodian of records or departmental report forms incurs no civil or criminal liability under this subsection and may not be found guilty of unprofessional conduct for the release or nonrelease of records or departmental report forms in accordance with this subsection while acting in good faith and within the scope of his or her authority.

(d) Any person who requests or obtains confidential information under this subsection under false pretenses may be fined not more than $500 or imprisoned not more than one year in the county jail or both.

(e) Any employee who violates this subsection may be subject to discharge or suspension without pay.

(7) EXCEPTION. Nothing in this section may be construed to mean that a person is abused, financially exploited, neglected or in need of direct or protective services solely because he or she consistently relies upon treatment by spiritual means through prayer for healing in lieu of medical care in accordance with his or her religious tradition.

(8) DEPARTMENT DUTIES. (a) The department shall develop a plan to assist elder−adult−at−risk agencies in determining appropriate responses to reports of abuse, financial exploitation, neglect, or self−neglect.

(b) The department shall prepare and distribute sample departmental report forms for use by elder−adult−at−risk agencies.

(c) The department shall collect statistical information from each county pertaining to each reported case of abuse, financial exploitation, neglect, or self−neglect. The department may require elder−adult−at−risk agency workers or investigators to submit departmental report forms to the department that summarize the information being reported. These departmental report forms may not name or otherwise identify individuals. The department shall use this information to review the effectiveness of this section, to plan program changes, and to formulate reports.

(d) The department shall develop and disseminate information on elder−adult−at−risk abuse and the elder abuse reporting system under this section. The department shall also develop informational materials to be used by elder−adult−at−risk agencies regarding abuse of elder adults at risk and regarding the elder abuse reporting system. The department shall solicit contributions of labor, materials, and expertise from private sources to assist in developing the informational materials.

(9) PENALTIES. (a) Any person, including the state or any political subdivision of the state, violating sub. (6) is liable to any person damaged as a result of the violation for such damages as may be proved, together with exemplary damages of not less than $100 nor more than $500 for each violation and the costs and reasonable actual attorney fees that are incurred by the person damaged.

(b) In any action brought under par. (a) in which the court determines that the violator acted in a manner that was knowing and willful, the violator shall be liable for such damages as may be proved together with exemplary damages of not less than $500 nor more than $1,000 for each violation, together with costs and reasonable actual attorney fees as may be incurred. It is not a prerequisite to an action under par. (a) that the plaintiff suffer or be threatened with actual damages.

(c) An individual may bring an action to enjoin any violation of sub. (6) or to compel compliance with sub. (6), and may in the same action seek damages as provided in this subsection. The individual may recover costs and reasonable actual attorney fees incurred in the action, if he or she prevails.

(d) Any person who violates sub. (4) (b) 1. may be fined not more than $10,000 or imprisoned for not more than 6 months or both.

(e) Whoever intentionally violates sub. (4) (ad) by failure to report as required may be fined not more than $500 or imprisoned not more than 6 months or both.

History: 1983 a. 398, 1985 a. 176; 1989 a. 31; 1991 a. 39, 235; 1993 a. 27; 1995 a. 27 ss. 2334, 9130 (4); 1995 a. 225; 1997 a. 3, 131; 1999 a. 82; 2003 a. 33; 2005 a. 264, 388; 2007 a. 20 s. 9121 (6) (a); 2007 a. 45; 2009 a. 319; 2011 a. 32.

Failure of a defamation plaintiff to assert any facts to support a finding of bad faith on the part of a person who reported possible material abuse resulted in a concession that the reporter was acting in good faith at the time he made the elder abuse report and thus his statements were entitled to protection or privilege under sub. (4) (c). A ruling finding good faith did not resolve a counterclaim under sub. (4) (b) 2. c. that the lawsuit was retaliatory. Attorney fees are not recoverable as damages resulting from the statutory tort of retaliation. Schaul v. Kordell, 2009 WI App 135, 321 Wis. 2d 105, 773 N.W.2d 454, 08−2571.

Abuse and Neglect in Long−term Care Facilities: The Civil Justice System's Response. Studinski. Wis. Law. Aug. 2004.

Preventing Abuse and Neglect in Health Care Settings: The Regulatory Agency's Responsibility. Dawson. Wis. Law. Aug. 2004.

Seeking Justice in Death's Waiting Room: Barriers to Effectively Prosecuting Crime in Long−term Care Facilities. Hanrahan. Wis. Law. Aug. 2004.

A Response: Issues Affecting Long−term Care. Purtell. Wis. Law. Oct. 2004.

46.96 Independent living center grants. (1) In this section:

(ad) "Cross−disability basis" has the meaning given under 29 USC 796f−4 (b) (2).

(ah) "Independent living center" means a community−based, nonresidential private nonprofit agency that vests power and authority in individuals with disabilities, that is designed and operated within a local community by individuals with disabilities and that provides an array of independent living services, including independent living core services, on a cross−disability basis.

(am) "Independent living core services" means information and referral services, independent living skills training, peer counseling and individual and systems advocacy.

(ap) "Independent living services" has the meaning given under 29 USC 705 (18).

(at) "Individual with a disability" has the meaning given under 29 USC 705 (20).

(b) "Severely disabled individual" means any individual with a severe physical or mental impairment whose ability to function independently in his or her family or community or whose ability to obtain, maintain or advance in employment is substantially limited and for whom the delivery of independent living services will improve either his or her ability to function independently in his or her family or community or his or her ability to engage in employment.

(2) The department shall make grants from the appropriations under s. 20.435 (7) (c) or (kc) to independent living centers for nonresidential services to severely disabled individuals.

(3m) (a) By July 1, 1994, an independent living center that receives funds under sub. (2) shall comply with all of the following requirements:

1. The independent living center shall have a board of directors that is the principal governing body of the independent living center.

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2. Severely disabled individuals shall be substantially involved in policy direction and management of the independent living center and shall be employed by the independent living center.

3. The independent living center shall offer severely disabled individuals a combination of independent living services that includes, as appropriate, those services that assist severely disabled individuals to increase personal self−determination and to minimize unnecessary dependence upon others.

(am) Notwithstanding par. (a), all of the following apply:

1. Any independent living center that first receives funding under this section after June 21, 1996, shall comply with requirements that are specified under 29 USC 796f−4.

2. Any independent living center that is receiving funding under this section on June 21, 1996, shall comply with requirements under 29 USC 796f−4 by July 1, 1998.

(b) The department shall periodically review independent living centers and identify instances of noncompliance with the requirements of par. (a), if any. If the department identifies an instance of noncompliance, the department shall direct the noncomplying independent living center to comply within a reasonable period of time, which may not be less than 60 days after the date of the directive.

History: 1983 a. 27; 1985 a. 29 ss. 903, 903m, 3202 (23); 1985 a. 120; 1989 a. 31; 1993 a. 16; 1995 a. 27, 398; 2009 a. 28.

46.972 Primary health for homeless individuals. (1) In this subsection, "primary health services" has the meaning given in 42 USC 254c (b) (1).

(2) From the appropriation account under s. 20.435 (1) (ce), the department shall award up to $125,000 in each fiscal year as grants to applying public or nonprofit private entities for the costs of providing primary health services and any other services that may be funded by the program under 42 USC 256 to homeless individuals. Entities that receive funds awarded by the department under this paragraph shall provide the primary health services as required under 42 USC 256 (f). The department may award to an applying entity up to 100% of the amount of matching funds required under 42 USC 256 (e).

History: 1989. a. 31; 1991 a. 39, 189; 1993 a. 16; 1997 a. 27; 2001 a. 16; 2005 a. 25; 2009 a. 28.

46.973 Drug dependence program. (1) In this section:

(a) "Drug" means a controlled substance, as defined in s. 961.01 (4), or a controlled substance analog, as defined in s. 961.01 (4m).

(b) "Drug abuse" means the use of a drug in such a manner as to endanger the public health, safety or welfare.

(c) "Drug dependence" means a condition arising from the periodic or continuous use of a drug which may result in psychic or physical dependence which would affect or potentially affect the public health, safety or welfare.

(2) A drug dependence and drug abuse program is established in the department. The secretary may develop and carry out programs concerned with education about and prevention of drug dependence and drug abuse, and programs concerned with treatment and rehabilitation of drug dependent persons and persons who abuse drugs. The secretary shall appoint a drug dependence program coordinator to handle liaison with other departments and agencies, including the state council on alcohol and other drug abuse. These programs may include, but are not limited to:

(a) Education regarding use of drugs and the prevention of drug dependence and drug abuse.

(b) Diagnosis, treatment and rehabilitation of patients who are drug dependent persons or persons who abuse drugs.

(c) Development of standards and provision of consultation for local drug dependence and drug abuse programs.

(d) Evaluation of programs conducted pursuant to the authority of this subsection as to their effectiveness and relationship to the public health, safety and welfare and the development of improved techniques for the prevention and treatment of drug dependence and drug abuse.

(e) Promotion and establishment of cooperative relationship with public and private agencies which have a responsibility for the prevention and treatment of drug dependence and drug abuse.

(2m) Within the availability of funding, the department shall establish a program that includes, but is not limited to all of the following:

(a) Collection and analysis of data on drug abuse treatment from all approved public and private treatment facilities as defined in s. 51.45 (2) (b) and (c) which shall include, but not be limited to, all of the following information:

1. The total number of persons who received treatment for drug abuse statewide.

2. The type and amount of treatment that persons receive from alcohol and other drug abuse provider facilities.

3. The primary drug of abuse, the primary means of administration of drugs and the diagnosis of clients.

4. The number of persons on waiting lists for alcohol and other drug abuse provider facilities.

5. The total costs of drug abuse treatment statewide.

6. The sources and amounts of federal, state, local, insurance and private financing of alcohol and other drug abuse treatment programs.

7. The amount of funds retained by counties under s. 59.25 (3) (j).

(b) Collection of data which indicates the extent of illicit drug use, the prevalence of drug abuse and which illicit drugs are available and being abused. Data shall be collected from law enforcement agencies, courts, criminal justice agencies, emergency medical treatment providers, other medical care facilities and agencies designated by the department.

(c) A report summarizing the data collected under pars. (a) and (b) which shall be written annually and submitted to the state council on alcohol and other drug abuse by June 30 of every year and which shall include all of the following:

1. The nature and extent of this state's drug abuse problems.

2. The use and abuse of each controlled substance or controlled substance analog specified in ch. 961.

3. The changes in the use and abuse of drugs noted by the facilities specified in par. (a) (intro.) including those changes resulting from initiatives of the state council on alcohol and other drug abuse or other state agencies.

(3) The department may accept, receive, administer, and expend any money, material, or other gifts or grants of any description for purposes related to those set forth in this section. Moneys and grants received under this section shall be deposited with the secretary of administration and shall be credited to the department under s. 20.435 (2) (i) and expended by the department or the state council on alcohol and other drug abuse for the purposes specified.

History: 1971 c. 219; 1975 c. 370; 1979 c. 221; 1983 a. 189; 1987 a. 339; 1993 a. 27 s. 248; Stats. 1993 s. 46.973; 1995 a. 201, 448; 2003 a. 33.

46.975 Grant and funding program; services related to alcohol and other drug abuse. (1) DEFINITION. In this section, "organization" means a nonprofit corporation or a public agency that proposes to provide services for individuals with alcohol or other drug abuse problems.

(2) DISTRIBUTION OF FUNDS. The department shall allocate funds for programs as follows:

(a) The department shall make grants to applying community−based organizations to provide in−home and community−based alcohol and other drug abuse intervention, treatment or family support services directed at low−income Hispanics and Black Americans in urban areas and make funds available to any of the federally recognized tribal governing bodies in this state to

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increase the capacity of reservations to provide outpatient, intervention, treatment or family support services for alcohol and other drug abusers.

(b) The department shall make a grant to an applying organization to implement an alcohol and other drug abuse treatment program which meets the special needs of women with alcohol or other drug abuse problems.

(c) The department shall make grants to applying organizations for the purpose of organizing community initiatives to combat alcohol and other drug abuse in youth.

History: 1987 a. 339.

46.977 Guardianship grants. (1) DEFINITIONS. In this section:

(a) "Guardian" has the meaning given in s. 54.01 (10).

(b) "Organization" means a private, nonprofit agency or a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437.

(2) GRANT APPLICATIONS AND AWARDS. (a) From the appropriation under s. 20.435 (7) (cg), the department may under this section, based on the criteria under par. (c), award grants to applying organizations for the purpose of training and assisting guardians for individuals found incompetent under ch. 54. No grant may be paid unless the awardee provides matching funds equal to 10% of the amount of the award.

(b) Organizations awarded grants under par. (a) shall do all of the following:

2. Provide training and technical assistance on guardianship issues.

4. Provide technical assistance to recruited guardians in performing their duties.

(c) In reviewing applications for grants, the department shall consider the extent to which the proposed program will effectively train and assist guardians for individuals found incompetent under ch. 54.

History: 1987 a. 368; 1989 a. 31; 1995 a. 27, 464; 2005 a. 25, 387.

46.985 Family support program. (1) DEFINITIONS. In this section:

(a) "Administering agency" means a county department or a human service agency that administers the program under a contract with a county department.

(b) "Child" means a person under 24 years of age.

(c) "County department", unless otherwise qualified, means a county department under s. 46.23, 51.42 or 51.437.

(d) "Disabled" means having a severe physical, emotional or mental impairment which is diagnosed medically, behaviorally or psychologically, which is characterized by the need for individually planned and coordinated care, treatment, vocational rehabilitation or other services and which has resulted or is likely to result in a substantial limitation on the ability to function in at least 3 of the following areas:

1. Self−care.
2. Receptive and expressive language.
3. Learning.
4. Mobility.
5. Self−direction.
6. Capacity for independent living.
7. Economic self−sufficiency.

(e) "Family" means a group that lives together and that consists of at least one disabled child and his or her parent.

(f) "Parent" means a parent, guardian, legal custodian, or a person acting in the place of a parent, but does not include a foster parent or any other paid care provider.

(g) "Program" means the family support program in a service area.

(h) "Service area" means a county or group of counties served by a county department.

(2) DEPARTMENTAL POWERS AND DUTIES. In order to enable the parents of disabled children to care for their disabled children in their homes rather than placing the children in institutions or other out−of−home placements, thereby enhancing the quality of family life; to improve the availability and coordination of community services to families; and to increase the control of families over the types of services and goods provided to them, the department shall:

(a) After consulting with county departments under ss. 46.215, 46.22, 46.23, 51.42 and 51.437, providers of educational programs and services to families and representatives of families, promulgate rules for implementing the program, including all of the following:

1. Criteria for participation in the family support program and application procedures for county departments.

3. Methods for ensuring the accountability of the program in each service area.

4. Procedures for coordinating the family support program and the use of its funds, throughout this state and in each service area, with other publicly funded programs including the community options program under s. 46.27; a community integration program under ss. 46.275, 46.277, and 46.278; the Community Opportunity and Recovery Program under s. 46.2785; the social services, mental health, and developmental disabilities programs under ss. 46.495, 51.42, and 51.437; the independent living center program under s. 46.96; and the Medical Assistance program under subch. IV of ch. 49.

5. Criteria for determining family eligibility for the program, in addition to the requirements specified in sub. (5).

6. Procedures for applying to an administering agency for family participation in the program.

7. Procedures for performing family needs assessments and developing service plans.

8. Criteria for determining a family's ability to bear the cost of the services and goods it needs which shall take into account the family's size, family income, the number of disabled children in the family and the medical and other expenses related to the exceptional needs of the disabled child.

9. Types of services and goods that may be approved for funding through the program.

10. Criteria for determining whether to provide a family with funding in excess of the amount specified in sub. (6) (g).

11. Criteria for determining approval of funding for a family in which the disabled child is 21 years of age or over.

(b) Select participants from among the county departments that apply based on the criteria promulgated under par. (a) 1. and on the availability of funding.

(c) Specify the required content of the annual county department program plan.

(d) Review and approve or disapprove each program plan submitted under sub. (3) (c).

(e) Annually submit to the governor and to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3), a report on the family support program.

(f) Establish criteria for priority of services that take into account urgency of need, statewide consistency, developmental impact on eligible children, and other factors, so as to ensure that available funds are used consistently and effectively.

(3) DUTIES OF PARTICIPATING COUNTY DEPARTMENTS. Each participating county department shall do all of the following:

(a) Appoint members to a family support advisory committee or appoint an existing committee in the service area as the family support advisory committee to assist in developing the program plan and to monitor the program. The committee shall include, but need not be limited to, the following members:

1. Parents of disabled children including, if possible, parents from families that participate in the program. To the maximum

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extent possible, the parents shall be representative of the various disability, racial and ethnic groups in the service area. The members specified under this subdivision shall constitute a majority of the membership of the committee.

2. Persons from the service area representing the county department under s. 46.23, 51.42 or 51.437 and the county department under s. 46.215 or 46.22, school districts and local health departments, as defined in s. 250.01 (4). At least one of the committee members selected under this subdivision shall be a person providing community social services to disabled children or families eligible for the program.

3. Persons in the service area who provide social or educational services to disabled children other than the providers specified in subd. 2.

(b) Cooperate with the committee appointed under par. (a) to prepare a program plan. The program plan shall include all of the following:

1. A description of the proposed program.

2. The estimated number of families that will be assessed and served.

3. A list of specific groups, if any, that will be given priority for available funding.

4. A description of the outreach procedures that will be used to ensure that the program will be made available to children with physical, emotional and mental impairments.

5. The procedures that will be used to determine family needs.

6. A description of the methods that will be used for the development and monitoring of service plans and for coordinating the provision of services and goods to participating families.

7. A description of the methods that will be used to promote the creation of informal support and advocacy systems for families.

8. A description of the method that will be used to monitor the program.

(c) Submit the proposed program plan to the county board of supervisors in each county in the service area for review. After approval by the county board of supervisors in each county in which families are eligible to participate in the program, the county department shall submit the proposed program plan to the department.

(d) Administer the program or contract with a human service agency in the service area to administer the program within the limits of state and federal funds allocated under sub. (7).

(e) In conjunction with the county department under s. 46.215 or 46.22, if any, in the service area and with the administering agency, if it is not the county department under s. 46.23, 51.42 or 51.437, coordinate the administration of the program with the administration of other publicly funded programs that serve disabled children.

(f) Submit all information and reports required by the department.

(4) DUTIES OF ADMINISTERING AGENCIES. In addition to the duties specified under sub. (6), each administering agency shall:

(a) Cooperate in the development of the program plan under sub. (3) (b).

(b) Provide information about the program and other programs for disabled children to families in the service area.

(c) Implement the program in accordance with the program plan.

(d) Designate one of its employees as the coordinator for each participating family.

(5) FAMILY ELIGIBILITY. A family is eligible to receive services and goods from the program if it meets all of the following requirements:

(a) The parent has a disabled child whom the parent wants to keep at home or return to the home from an institution or other out−of−home placement.

(b) The parent will be able to take care of the disabled child at home if financial, physical or other barriers are reduced or eliminated and adequate community support services are provided.

(6) APPLICATION, ASSESSMENT AND SERVICE PLAN. (a) A parent shall apply for the program to the administering agency in the county in which the family resides. The administering agency shall determine whether the family is eligible according to sub. (5) and the criteria promulgated under sub. (2) (a) 5. and shall approve or disapprove each application within 30 days after its receipt.

(b) If the administering agency approves an application under par. (a), it shall arrange for an assessment of the family's needs, except that an administering agency is not required to do an assessment if no program funds are available to provide services and goods to additional families. The assessment shall be performed in accordance with the procedures promulgated under sub. (2) (a) 7. either by an employee of the administering agency or, under a contract, by a person who is knowledgeable about the disabled child's condition and the related needs of the family. The person conducting the assessment shall do all of the following:

1. Ensure that the family participates in the assessment to the greatest extent possible.

2. Involve other persons who are knowledgeable about the disabled child's condition and who can identify and assist the family in assessing the social, psychological and medical needs of all family members.

3. Identify services and goods that the family is currently receiving, other services and goods available to the family through public and private agencies, friends and relatives and services and goods that the family is not currently receiving which the parent needs to maintain the disabled child at home.

4. Identify the services and goods needed by the family that are available from publicly funded sources other than the program or from private sources, including friends and relatives.

5. Identify the services and goods needed by the family that are available for funding through the program.

(c) For each family whose application is approved, the administering agency shall develop a service plan within 60 days after receipt of the application. In developing the service plan, the administering agency shall ensure that the family members are the primary decision makers. Each service plan shall include all of the following:

1. A description of the needs of the family, based on the assessment under par. (b).

2. A list of the services and goods the family receives that are provided through public or private funding sources other than the program.

3. A list of the services and goods that will be funded through the program, the estimated cost of each and an estimate of the length of time each one will need to be funded through the program.

4. A written participation agreement, which shall be signed by a parent and a representative of the administering agency, governing expenditure of program funds by or on behalf of the family.

(d) The administering agency shall review each service plan at least once every 6 months, or more often at a parent's request. The participation agreement under par. (c) 4. may be amended by written agreement between the parent and the administering agency.

(e) The administering agency may approve funding for all or any part of the cost of any services and goods that have been identified as necessary in a family's service plan and which meet the criteria promulgated under sub. (2) (a) 9.

(f) An administering agency may approve the expenditure of program funds for a family whose disabled child is 21 years of age or over only with the approval of the department in accordance with the rules promulgated under sub. (2) (a) 11.

(g) Using the criteria promulgated under sub. (2) (a) 8., the administering agency shall determine the amount that will be paid

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to or expended on behalf of each participating family for the services and goods approved under par. (e). The amount that may be paid to or expended on behalf of a family may not exceed $3,000 in any 12−month period for each disabled child in the family, except that the department may, upon request by an administering agency, approve a greater amount for a specific family with exceptional needs.

(h) If an administering agency denies an application or if it terminates a family's participation agreement, it shall provide the parent with a written notice of that fact stating the reason for the denial or termination and shall refer the family to other available agencies and resources. A parent whose application is denied or whose participation agreement is terminated may file a request with the department for a hearing under s. 227.42.

(7) FUNDING. (a) From the appropriations under s. 20.435 (7) (b) and (o), the department shall allocate to county departments funds for the administration and implementation of the program.

(b) Funds allocated under this subsection may not be used to replace any other state and federal funds or any county funds that are currently being provided to a family under any program.

(c) The total amount of a county department's allocation used to pay for staff salaries and other administrative costs associated with the program may not exceed 10% of the allocation.

History: 1985 a. 29, 120, 176; 1985 a. 182 s. 57; 1987 a. 27, 186; 1989 a. 31; 1993 a. 27, 446; 1995 a. 27; 1997 a. 27; 2001 a. 16; 2005 a. 25; 2007 a. 20; 2009 a. 28.

46.986 Respite care program. (1) DEFINITIONS. In this section:

(a) "Abuse" means the willful infliction on a person of physical pain or injury or unreasonable confinement.

(b) "Caregiver" means an individual who lives in the home of a person with special needs and provides care or supervision for that person.

(c) "County department" means a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437.

(d) "Neglect" means an act, omission or course of conduct that, because of the failure to provide adequate food, shelter, clothing, medical care or dental care, creates a significant danger to the physical and mental health of a person.

(e) "Provider" means an individual or agency that a caregiver selects, with input to the selection by the person with special needs, if competent, to provide respite care to the person with special needs.

(f) "Respite care" means care that is provided to a person with special needs, or a person at risk of abuse or neglect, in order to provide temporary relief to the caregiver of that person or when the caregiver is unable to provide care.

(g) "Special need" means a person's need resulting from an emotional, behavioral, cognitive, physical or personal condition that necessitates receipt of care or supervision in order to meet the person's basic needs or to prevent harm from occurring to him or her.

(h) "Tribe or band" means the governing body of a federally recognized American Indian tribe or band in this state.

(2) PROGRAM. (a) From the appropriation account under s. 20.435 (7) (br), the department shall contract for the administration of life−span respite care projects with an organization to which all of the following apply:

1. The organization is a private, nonprofit organization, as defined in s. 108.02 (19), that is capable of operating on a statewide basis and has expertise in respite care issues.

2. At least 51% of the members of the organization's governing board are consumers of respite care or caregivers.

3. The membership of the organization's governing board includes providers and elected officials and represents the diverse geographical areas and cultural groups of the state.

(b) The organization with which the department contracts under par. (a) shall do all of the following:

1. After consulting with the department, county departments, tribes or bands, providers and caregivers, prescribe criteria for the distribution of grants to conduct life−span respite care projects. The criteria shall include the requirement that grant funds be equally distributed among 5 administrative regions of the state, as prescribed by the department.

2. Solicit applications from and, using the criteria under subd. 1., award in each state fiscal biennium up to one grant in each of the 5 administrative regions prescribed by the department to any of the following to conduct a life−span respite care project:

a. A county department.

b. A tribe or band.

c. A community−based private, nonprofit entity.

d. A community−based private entity that is operated for profit.

3. Require that the grantee contribute matching funds to the operation of the life−span respite care project in the following amounts:

a. Ten percent of the amount of the grant awarded by the organization, as direct services, which shall be used by the grantee to fund payments from caregivers to providers.

b. Fifteen percent of the amount of the grant awarded by the organization, as in−kind services.

4. Oversee grants awarded under subd. 2., and monitor, provide technical assistance to and evaluate the life−span respite care projects.

5. Develop best practice guidelines and a training curriculum that may be used by life−span respite care projects that are funded under this section and that may be used, if appropriate, by any other respite care providers in the state.

6. Promote the exchange of information and coordination among the state, local governments, life−span respite care projects, entities serving persons with special needs, families of persons with special needs and persons in favor of the promotion of respite care services, to encourage the efficient provision of respite care services.

7. Act as a statewide clearinghouse of information about respite care and existing respite care programs and resources and operate a library of materials that may be lent to persons or organizations upon request.

8. Conduct analyses of respite care policies and proposals, and identify and promote resolution of respite care policy concerns at legislative, state and local levels.

(3) GRANTS NOT TO SUPPLANT OTHER MONEYS. Moneys awarded as grants under sub. (2) (b) may not be used to supplant moneys otherwise available and, prior to receipt of the grant, dedicated by the grantee to respite care.

(4) LIFE−SPAN RESPITE CARE PROJECT REQUIREMENTS. Life−span respite care projects for which a grant is awarded under sub. (2) (b) 2. shall do all of the following:

(a) Operate in a culturally competent manner and be sensitive to the unique needs and strengths of a person with special needs and his or her family or caregiver.

(b) Identify, coordinate and develop resources for respite care that are built, to the extent possible, on existing community support services.

(c) Recruit and screen providers.

(d) Identify training resources and organize training programs for providers that address different populations in need of respite care.

(e) Facilitate access by caregivers and families of persons with special needs to an array of respite care service options for which the person with special needs is eligible, that are responsive to caregiver and family needs and that are available before families and primary caregivers reach a crisis situation.

(f) Assist caregivers and families of persons with special needs to identify and coordinate funds and resources available for

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respite care for which the person with special needs is eligible, and authorize and provide a variety of funds and resources to make available additional respite care services for persons with special needs, under eligibility criteria established by the project.

(5) ADVISORY COMMITTEES. Each grantee of moneys to conduct a life−span respite care project under sub. (2) shall create an advisory committee that shall advise the project on how the project may best serve persons with special needs and their caregivers. Consumers of respite care services and caregivers shall comprise at least 51% of the advisory committee membership and shall be representative of the diversity of persons who receive services under the project. Other members shall include providers, representatives of local service agencies and members of the community.

(6) EVALUATION. By June 1, 2004, the department and the organization with which the department contracts under sub. (2) (a) shall together evaluate the life−span respite care projects that are conducted under this section. If, following the evaluation, the department and the organization together determine that it is feasible to integrate the life−span respite care projects with any integrated, organized system of long−term care services that is operated by the department, the department shall, by July 1, 2004, provide to the department of administration statutory language that is proposed for inclusion in the 2005−07 biennial budget bill to effect the integration.

History: 1999 a. 9; 2001 a. 16, 103.

46.99 Medical assistance waiver for Birth to 3 participants. (1) In this section, "medical assistance" means the program under subch. IV of ch. 49.

(2) The department shall request from the secretary of the U.S. department of health and human services a waiver under 42 USC 1396n (c) that authorizes the provision of home or community−based services under medical assistance to children who are eligible for medical assistance and receive early intervention services under s. 51.44.

(3) If the waiver requested under sub. (2) is granted, counties shall provide to the department the nonfederal share of costs for medical assistance services provided under the waiver. Counties may use moneys appropriated under s. 20.435 (7) (bt) and distributed to counties under s. 51.44 (3) (a) to provide the nonfederal share of medical assistance costs.

(3m) If the waiver requested under sub. (2) is granted, counties shall provide to the department the nonfederal share of the cost incurred by an entity to administer the waiver program under this section.

(4) From the appropriation account under s. 20.435 (4) (o), the department may distribute to counties that provide services under this section the amount of federal moneys received by the state as the federal share of medical assistance for those services, minus the amount transferred to the appropriation account under s. 20.435 (7) (im) for the department's costs of administering this section. Counties shall use moneys distributed under this section to provide services under this section or s. 51.44.

History: 2009 a. 28; 2011 a. 32.

46.995 Disabled children's long−term support program; local funding. (1) A county shall provide to the department the nonfederal share of the cost incurred by an entity to administer services provided without state funding under the disabled children's long−term support program for a child enrolled in the program after December 31, 2010.

(2) A county shall provide to the department the nonfederal share of the cost of services provided without state funding under the disabled children's long−term support program.

History: 2011 a. 32.