

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 provide a just and humane program of services to children in need of protection or services and nonmarital children; to prevent dependency, mental illness, developmental disability, mental infirmity, delinquency, crime and other forms of social maladjustment by a continuous attack on causes; to provide effective aid and services to all persons

in need thereof and to assist such persons to achieve or regain self-dependence at the earliest possible date; to provide a just, humane and efficient program for the rehabilitation of juvenile delinquents and other offenders; 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.

46.011 Definitions. In chs. 46 to 58, unless the context requires otherwise:

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

(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 55.06 (11) (a).

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

(4) "State health planning and development agency" means the department, as designated under s. 140.82 (1).

History: 1975 c. 39, 430; 1977 c. 29; 1979 c. 221.

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 employes 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.

(4) **REPORTS.** At least annually, the secretary shall report to the presiding officer of each house of the legislature concerning activities of community action agencies under s. 46.30 and their effectiveness in promoting social and economic opportunities for poor persons.

History: 1975 c. 39; 1983 a. 27.

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

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 which is subject to chs. 46 to 58 and to regulation under ch. 150 shall, in cases of conflict between chs. 46 to 58 and ch. 150, be governed by ch. 150. The department shall establish rules and procedures for resolving any such controversy.

History: 1977 c. 29; 1979 c. 89.

46.03 Department, powers and duties. The department shall:

(1) **INSTITUTIONS GOVERNED.** Maintain and govern the Mendota and the Winnebago mental health institutes, the central state hospital, the Oakhill correctional institution, the Waupun correctional institution, the correctional institutions authorized under s. 46.05, the Fox Lake correctional institution, the Green Bay correctional institution, the Taycheedah correctional institution, the Wisconsin correctional camp system, the Dodge correctional institution, the Ethan Allen school, the Kettle Moraine correctional institution, the Lincoln Hills school, the Wisconsin workshop for the blind 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.

(2a) **GIFTS.** The department may 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. All moneys so received shall be paid into the

general fund and are appropriated therefrom as provided in s. 20.435 (9) (i).

(3) TRUSTEE DUTY. Take and hold in trust (whenever it deems 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 family court commissioner under s. 767.475 (7).

(4) EDUCATION AND PREVENTION. (a) Develop and maintain such programs of education and prevention as it deems proper.

(b) 1. The department, in order to discharge more effectively its responsibilities under this chapter and ch. 48 and other relevant provisions of the statutes, is authorized to study causes and methods of prevention and treatment of juvenile delinquency, 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 co-operation of other appropriate agencies and state departments; it may enter into agreements with local government subdivisions, departments and agencies for the joint conduct of such projects; and it may purchase services when deemed 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, after-care and community supervision and exercise such powers in relation to prevention as the department deems appropriate.

(c) On or before January 30 of each year, report to the joint committee on finance and to the presiding officer of each house of the legislature for referral to the appropriate standing committees on all of the following:

1. The number of prisoners transferred to a mental health institute under s. 51.20 (13) (a) 4

and their average length of stay and the number of prisoners transferred to a mental health institute on a voluntary basis and their average length of stay.

2. The number of prisoners being treated with psychotropic drugs on both a voluntary and involuntary basis and the types of drugs being used.

3. A description of the mental health services available to prisoners on both a voluntary and involuntary basis.

(6) CORRECTIONS. (a) Execute the laws relating to the detention, reformation and correction of delinquents.

(b) Supervise the custody and discipline of all prisoners and the maintenance of state penal and correctional institutions and the industries therein.

(c) Administer parole and probation matters and establish a parole board, which shall be headed by a chairperson.

(d) If requested by the governor, make recommendations as to pardons or commutations of sentence.

(e) Examine all institutions authorized by law to receive and detain witnesses or prisoners or convicted persons and places of juvenile detention, and inquire into their methods and the management of persons therein, and examine the condition of buildings and grounds and other property connected with any such institution and all matters relating to its management.

(f) Direct the aftercare of and supervise all delinquents under its jurisdiction and exercise such functions as it deems appropriate for the prevention of crime and delinquency.

(g) Direct the penal and correctional psychiatric service in all correctional and penal institutions, making its services available to those committed to the department as delinquent children or as convicted criminals.

(h) Direct the educational programs in all correctional schools and correctional and penal institutions.

(7) CHILDREN AND YOUTH. (a) Promote the enforcement of laws for the protection of developmentally disabled children, delinquent children, children in need of protection or services and nonmarital children; and to this end cooperate with courts assigned to exercise jurisdiction under ch. 48 and licensed child welfare agencies and institutions (public and private) and take the initiative in all matters involving the interests of such children where adequate provision therefor has not already been made, including the establishment and enforcement of standards for services provided under ss. 48.34 and 48.345 (1) and (5).

(b) When notified of the birth or expected birth of a child who is or is likely to be a

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nonmarital child, see to it (through advice and assistance to the mother or independently) that the interests of the child are safeguarded, that steps are taken to establish its paternity and that there is secured for the child (as near as possible) the care, support and education that would be given if he or she were a marital child.

(bm) Maintain a file containing records of artificial inseminations under s. 891.40 and records of declarations of paternity under s. 891.41 (1) (b) 1. The department shall release these records 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 except that records relating to declarations of paternity may be used without a court order upon the written request of the department pursuant to its program responsibilities under s. 46.25.

(c) Administer the laws relating to child care centers, day nurseries and nursery schools.

(cm) Promote the establishment of adequate child care facilities in this state by providing start-up grants to newly operating day care facilities under rules established by the department.

(7m) **FOSTER CARE.** For the federal fiscal years commencing October 1, 1984, and October 1, 1985, respectively, ensure that there are no more than 4,266 and 4,178 children in foster care placements for more than 24 months, consistent with the best interests of each child. Services provided in connection with this requirement shall comply with the requirements under P.L. 96-272.

(8) **PUBLIC ASSISTANCE.** Administer public assistance, as provided in ch. 49.

(9) **BLIND PERSONS.** Administer the Wisconsin workshop for the blind and perform other functions prescribed in ch. 47.

(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.

(12) **VOCATIONAL REHABILITATION.** Execute the laws relating to the vocational rehabilitation of handicapped persons as provided in ch. 47.

(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 employes of the several institutions and members of the employe'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 (3) (a).

(a) When a chaplain employed in any state institution is not furnished a residence by the state, \$1,800 or 20 per cent of his salary, whichever is greater, shall be deemed to constitute the amount to be paid to him in lieu of such residence.

(14) **VENDING STANDS.** Pursuant to rules adopted establish and maintain a revolving fund not exceeding \$10,000 in any of the state institutions administered by the department, for the education, recreation and convenience of the patients, inmates and employes, to be used for the operation of vending stands, reading clubs, musical organizations, religious programs, athletics and similar projects. Such 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 employes in its institutions with laundry, food, housing and necessary furnishings.

(16) **DRIVERS' EDUCATION.** The department shall establish a drivers' education program in the Ethan Allen school to provide drivers' education to inmates of the institution who are about to become eligible to qualify for an operator's license.

(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.

(c) To contract with public, private or voluntary agencies for the purchase of goods, care and services for persons committed or sentenced to a state correctional or penal institution, placed on probation to the department by a court of record, or released from a state correctional or penal institution. Services shall include, but are not limited to, diagnostic services, evaluation, treatment, counseling, referral and information, day care, inpatient hospitalization, transportation, recreation, special education, vocational training, work adjustment, sheltered employment, special living arrangements and legal and protective services.

(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) The department shall establish a uniform system of fees for services provided or purchased by the department, a county department of public welfare or social services or a board under s. 51.42 or 51.437, except for services relating to adoption, or services provided to courts, for provision of child support and paternity establishment services to recipients of aid to families with dependent children or for outreach, information and referral services, or where as determined by the department, a fee is administratively unfeasible or would significantly prevent accomplishing the purpose of the service. Fees collected by a county department of public welfare or social services shall be applied by such department to cover the cost of such services. The department shall report to the joint committee on finance no later than January 31 of each year on the number of children placed for adoption by the department and the costs to the state for services relating to such adoptions.

(am) Paragraph (a) does not prevent the department from charging and collecting the cost of adoptive placement investigations and child care as authorized under s. 48.837 (7).

(b) 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 of public welfare or social services 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 driver safety plan under s. 343.16 (2) (a), 343.30 (1q) or 343.305 (9) shall pay a reasonable fee therefor to the appropriate county department of public welfare, board under s. 51.42 or traffic safety school under s. 345.60. The fee for the 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.

(g) The department shall return to county departments of public welfare 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) 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. 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 agency shall provide the department with information which the department shall use to determine each person's eligibility and amount of payment. The county agency 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. 49.52.

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(21) **DAY CARE STANDARDS.** Promulgate rules establishing standards for the certification of day care providers under s. 48.651.

(22) **COMMUNITY LIVING ARRANGEMENTS.** (a) "Community living arrangement" means any of the following facilities licensed or operated, or permitted under the authority of the department: child welfare agencies under s. 48.60, group homes for children under s. 48.02 (7) and community-based residential facilities under s. 50.01; but does not include day care centers, nursing homes, general hospitals, special hospitals, prisons and jails.

(b) Community living arrangements 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 under ss. 59.97 (15) (f), 60.63 (7) and 62.23 (7) (i) 6. The subunit shall be responsible for receiving all complaints regarding community living arrangements 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.

(d) A community living arrangement 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 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 are void as against public policy.

(e) If a community living arrangement is required to obtain special zoning permission, as defined in s. 59.97 (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 program have been examined and are either approved or disapproved by the department.

(23) **UNIFORM MANUAL.** By July 1, 1976, adopt policies and procedures and a uniform county policy and procedure manual to minimize unnecessary variations between counties

in the administration of the aid to families with dependent children and social services programs. The department shall also require each county to use such manuals in the administration of these programs.

(24) **COMPUTER REPORTING NETWORK.** Periodically report to the joint committee on finance regarding progress made in implementing the computer reporting network.

(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.** Report each December 31 to the joint committee on finance and the appropriate standing committees on health and social services of each house of the legislature, as determined by the presiding officer thereof, 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.

(28) **DISABILITY DETERMINATIONS.** The department shall maintain an agreement with the secretary of the U.S. department of health and human services under 42 USC 421 to make disability determinations. The agreement required by this subsection shall terminate effective March 31, 1981, unless the joint committee on finance approves a later termination date.

(29) **MEDIA PHOTO.** The department may use in the media a picture or description of a child in the guardianship of the department for the purpose of finding adoptive parents for that child.

(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 s. 51.42 boards for providing primary psychiatric care. If excess capacity

exists at state operated mental health institutes, the department shall explore whether such excess facilities may be sold or leased to a s. 51.42 board.

(b) No contract may be approved for a period of time greater than one year, and no contract shall be approved for care to be provided after June 30, 1975, 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.

(31) PRISON INDUSTRIES. Report to the joint committee on finance with a proposal to address negative cash balances associated with closed industries or other corrections programs through the use of moneys appropriated under s. 20.435 (3) as of the date of the proposal.

(32) REIMBURSEMENT TO VISITING FAMILIES. The department may reimburse families visiting girls at Lincoln Hills. If the department decides to provide the reimbursement, it shall establish criteria for the level of reimbursement, which shall include family income and size and other relevant factors.

(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.

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.

Legislative intent underlying (22) (d) cited in support of holding that community living arrangement with capacity of 10 persons was not barred by deed covenant limiting use to single-family residence. *Crowley v. Knapp*, 94 W (2d) 421, 288 NW (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 W (2d) 274, 296 NW (2d) 742 (1980).

See note to Art. I, sec. 7, citing 63 Atty. Gen. 176.

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

46.031 County social service and mental hygiene planning and budgeting. (1) COORDINATED PLANS AND BUDGET. (a) *Submission.* County public welfare or social services departments organized under ss. 46.22 and 49.51, mental hygiene boards organized under s. 51.42, developmental disability boards organized under s. 51.437 and community human service boards organized under s. 46.23 shall submit a coordinated comprehensive program plan and budget for services directly provided or purchased. The coordinated plans and budgets shall be prepared in accordance with sub. (2)

and be submitted to the department by September 30. The department may require submission of multiyear coordinated plans and budgets, not to exceed 3 years, with annual updates.

(b) *Departmental review procedures.* The department, after consulting with representatives of mental hygiene, developmental disability, public welfare or social services and community human services program directors, shall develop a uniform planning, budgeting and review procedure. The department shall designate the most geographically appropriate grouping of public welfare and social services departments and mental hygiene, developmental disability and community human services programs for coordinated planning and budgeting purposes, and may require the submission of one coordinated plan and budget from each geographical grouping with the approval of the affected county boards of supervisors. The department shall make available the planning, budgeting and review procedures to county agencies by May 1 of each year.

(2) COORDINATED PLAN AND BUDGET DEVELOPMENT. (a) *Assessment of need.* Before developing a coordinated plan and budget, the public welfare or social services departments and boards listed in sub. (1) (a) shall assess needs and inventory resources and services, using an open public participation process.

(b) *Required provisions.* 1. The coordinated plan and budget shall 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. The coordinated plan and budget shall describe the public participation process used in its preparation, and the extent of public participation.

3. The coordinated plan and budget shall provide for continuous planning, development and evaluation of programs and services for all population groups.

4. The coordinated plan and budget shall provide for services to persons identified as having long-term or recurrent mental illness, as defined by the department. The coordinated plan and budget shall also provide for a continuum of living arrangements for the mentally ill, developmentally disabled and alcohol and other drug abusers so that these persons may live in the least restrictive environment commensurate with their needs.

(c) *Approval.* 1. A coordinated plan and budget shall be submitted to the county board of supervisors or its designated agent for review and approval for submission to the department. If the county board of supervisors or its designated agent does not approve a coordinated

plan and budget for submission to the department, the board or its designated agent may either amend or reject the coordinated plan and budget. If the board rejects the coordinated plan and budget, it shall state specific reasons for its rejection and need not approve the coordinated plan and budget for submission to the department until objections are satisfied. If a combination of counties is administering a program, the coordinated plan and budget may not be submitted until each county board of supervisors approves it. The county board of supervisors or its designated agent or combination of county boards or their designated agents shall submit the coordinated plan and budget to the department by September 30 for its review and approval, in accordance with the time schedule the department may establish under sub. (1) (a). The department shall approve or reject the coordinated plan and budget within 6 weeks after receiving it. If the department rejects the coordinated plan and budget, it shall state specific reasons for its rejection. If the department fails to act within 6 weeks, the failure to act constitutes approval of the coordinated plan and budget.

2. The department shall annually submit to the county board of supervisors or combination of county boards a proposed written contract incorporating the coordinated plan and budget as approved by the department and such other administrative requirements as necessary. The proposed contract shall contain the approved budget and the allocation of funds as determined by the approved coordinated plans and budgets. The contract as approved may contain conditions of participation consistent with federal and state law. Any changes to the proposed contract shall be mutually agreed upon. The county board of supervisors or combination of county boards shall approve the coordinated plan and budget and the contract before January 1 of the year in which it takes effect unless the department grants an extension. The county board of supervisors or combination of county boards may designate an agent to approve addenda to any contract after the contract has been approved.

3. The department shall review and approve the coordinated plans and budget but may not approve budgets for amounts in excess of available revenues. Departmental approval constitutes the approved budget. The county board of supervisors may appropriate outside the approved budget funds not used to match state funds under ss. 49.52 (1) and 51.42 (8). The projected use and 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.

4. The department shall review each coordinated plan and budget to ensure uniform cost accounting of services. The department shall approve the budget unless it determines, after reasonable notice, that the budget includes proposed expenditures inconsistent with the purposes of s. 46.21, 46.22, 46.23, 46.26, 46.27, 51.42 or 51.437. The joint committee on finance may require the department to submit contracts between boards established under such sections and providers of service to the committee for review and approval.

5. After the budget of a board established under s. 46.21, 46.22, 46.23, 46.26, 46.27, 51.42 or 51.437 has been approved, the department, after reasonable notice, may withhold a portion of the appropriation allocable to any such board if the department determines that such portion of the allocable appropriation:

a. Is for services which duplicate or are inconsistent with services being provided or purchased by the department or other county agencies receiving grants-in-aid or reimbursement from the department;

b. 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;

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

d. Is for inpatient treatment in excess of an average of 21 days, as defined in s. 51.42 (8) (L), excluding care for patients at the centers for the developmentally disabled;

e. Is for services not approved by the department except as provided under subd. 3.

6. If the department withholds a portion of the allocable appropriation pursuant to subd. 5, the board affected by the action of the department may submit to the county board or boards of supervisors or to a designated agent an amendment to its coordinated plans and budget to rectify the deficiency found by the department. The county board of supervisors or its designated agent or combination of county boards of supervisors or their designated agents may approve or amend the amendment and may submit for departmental approval the amendment as adopted. If a combination of counties is administering a program, the amendment may not be submitted unless each

county board of supervisors, or its designated agent, adopts it.

7. Prior to approval of a coordinated plan and budget, the department may direct that a board organized under s. 51.42 include in its coordinated plan and budget provision for crisis intervention services. If the department finds that the board's plan for these services as reflected in the coordinated plan and budget is not adequate, the board shall prepare in consultation with the department and submit a supplemental plan and budget for these services directly to the county board or boards of supervisors. The county board or boards of supervisors may approve or amend the supplemental plan and budget and may submit for departmental approval the supplemental plan and budget as adopted. If a combination of counties is administering a program, the supplemental plan and budget may not be submitted unless each county board of supervisors adopts it. The county board or boards of supervisors may delegate this responsibility to the community mental health board established under s. 51.42. If the department disapproves the supplemental plan and budget, the department may withhold approval of the entire coordinated plan and budget or may withhold a portion of the funds.

(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 boards of 2 or more counties jointly shall establish a citizen advisory committee to the public welfare or social services departments and boards listed in sub. (1) (a). The citizen advisory committee shall advise in the formulation of the coordinated plan and budget under sub. (2) (a). Membership on the committee shall be determined by the county board or boards of supervisors establishing it 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. At least one member of the committee shall be chosen from the governing or administrative board of the community action agency serving the county or counties under s. 46.30, if any. 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 establishing it. In the case of a multicounty committee, the chairperson shall be nominated by the committee and approved by the county boards establishing it. The county board of supervisors or the boards of 2 or more counties acting jointly may designate an agent to determine the mem-

bership 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) (a). 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.

46.032 Income maintenance administration.

County public welfare departments organized under ss. 46.22 and 49.51 shall annually enter into a contract with the department detailing the reasonable cost of administering the income maintenance programs under ss. 46.23, 49.046, 49.19 and 49.45 to 49.47 when so appointed by the department. Contracts created under this section control the distribution of payments under s. 20.435 (4) (de) 1. The department may reduce its payment to any county under s. 20.435 (4) (de) 1 if federal reimbursement is withheld due to audits, quality control samples or program reviews.

History: 1977 c. 29; 1981 c. 20; 1983 a. 27

46.033 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. 48, 51, 140 and 141 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 such 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 boards, committees, organizational structures and procedures as may be needed to implement the pilot programs. Such boards, committees and organizational structures may assume responsibilities currently assigned by

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statute to the boards, committees or organizational structures which are to be 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 or boards of supervisors, effective for the contract period beginning January 1, 1980, the department may approve counties or a combination of counties to administer a single consolidated aid consisting of the state and federal financial aid available to that county or counties from appropriations under s. 20.435 (4) (b) and (o) for services provided and purchased by county social service departments, mental hygiene boards, developmental disabilities boards and human service boards. Under such an agreement, in the interest of improved service coordination and effectiveness the county board or boards of supervisors may reallocate among the several program departments and boards enumerated in s. 46.031 (1) (a) funds that otherwise would be specified for use by a single board or department. The program plan and budget required of each county or group of counties under s. 46.031 (1) (a) shall be the vehicle for expressing the county board or boards of supervisors' proposed use of the single consolidated fund. Approval by the department of this use of the fund shall be in accordance with s. 46.031 (2). 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 or boards of supervisors.

History: 1975 c. 39; 1977 c. 29, 418; 1979 c. 34; 1981 c. 20, 390; 1983 a. 27 s. 2202 (20).

46.034 Combined boards of public welfare and county welfare departments. (1) CREATION. The county boards of supervisors of any combination of counties that have populations less than 500,000 may elect to combine their boards of public welfare and county departments of public welfare.

(2) **BOARDS.** In any combination of counties, the board shall be composed of 11 members plus 3 additional members for each combining county in excess of 2. The county boards of supervisors of the combining counties shall make appointments in a manner acceptable to the combining counties, but each of the combining counties may appoint to the board not more than 3 members from its county board of supervisors. The term of office of any member of the board 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 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.

(3) **POWERS.** The combined boards of public welfare and combined county departments of public welfare shall comply with s. 46.22.

(4) **FUNDING.** State social services funding under s. 20.435 (4) (b) shall not be available to counties combining under this section until the counties have drafted a contractual agreement, approved by the secretary, setting forth the plans for direct sponsorship and have drafted a program plan and budget in accordance with s. 46.22 (4) (j).

History: 1979 c. 34; 1981 c. 20, 329; 1983 a. 27 s. 2202 (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) 1, 2 and 3 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) 1, 2 and 3 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, nonprofit corporation organized under ch. 181 or any law amendatory thereof or supplemental thereto.

(2) The department shall have and may exercise the powers and duties provided in this section.

(a) 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 the following powers and duties:

1. Without limitation by reason of any other provisions of the statutes, 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.

2. 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.

3. 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 subds. 1 and 2, 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 subd. 1, such lease from such nonprofit corporation may be subject or subordinated to one or more mortgages of such property granted by such nonprofit corporation.

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

5. 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 pay-

ment of rentals due and to become due under any lease or sublease of such new buildings under subd. 3.

6. The power to covenant and agree in any lease or sublease of such new buildings made under subd. 3 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.

7. 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 subd. 3.

8. 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 subd. 3.

9. The power to covenant and agree in any lease or sublease made under subd. 3 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.

10. The power and duty, upon receipt of notice of any assignment by any such nonprofit corporation of any lease or sublease made under subd. 3, 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.

(b) The state shall be liable for accrued rentals and for any other default under any lease or sublease made under par. (a) 3, and may be sued therefor on contract as in other contract actions pursuant to ch. 775, except that it shall not be 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.

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

(d) All conveyances, leases and subleases made pursuant to this section shall be made, executed and delivered in the name of the department and shall be signed by the secretary and sealed with the seal of the department.

(e) All laws, except ch. 150, conflicting with any provisions of this section, are, insofar as

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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).

46.036 Purchase of care and services. (1) All care and services purchased by the department, a county social service department, a county department of public welfare, or a board established under s. 46.23, 51.42 or 51.437 shall be authorized and contracted for pursuant to the standards established under this section. For purchases of \$10,000 or less the requirement for a written contract may be waived by the department. No contract is required for care provided by foster homes required to be licensed under s. 48.62. 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 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 established 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.

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

(a) Except as provided in this subdivision, 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. The department shall establish a simplified double entry bookkeeping system for use by family-operated group homes. Each purchaser shall determine whether a family-operated group home from which it purchases services shall use the double entry accounting system or the simplified system and shall include this determination in the purchase of service contract. In this paragraph, "family-operated group home" means a group home licensed under s. 48.66 for which the licensee is one or more individuals who operate not more than one group home.

(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. The audit shall follow standards that the department prescribes. A purchaser may waive the requirements of this paragraph for any family-operated group home, as defined under par. (a), from which it purchases services.

(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) The purchaser shall recover from provider agencies money paid in excess of the

conditions of the contract from subsequent payments made to the provider.

(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.

46.037 Rates for residential child care centers. (1) Each residential child care center shall establish a per client rate for its services and shall charge all purchasers the same rate.

(2) A residential child care center shall notify the department of the rate it charges and of any change in that rate before a charge is made to any purchaser.

(3) The department may require an audit of any residential child care center for the purpose of collecting federal funds.

History: 1981 c. 20.

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 Mendota mental health institute or 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 ch. 48, the institutions and services under the jurisdiction of the department, university of Wisconsin hospital and clinics, county child welfare agencies, private child welfare agencies, schools for the deaf and visually handicapped, and mental health facilities within the state at the discretion of the superintendent.

(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.

(2) When a patient is transferred directly from the children's consultation service to the university of Wisconsin hospital and clinics, s. 46.115 shall apply.

History: 1973 c. 90 s. 560 (3); 1977 c. 418 s. 924 (50); 1977 c. 447 s. 206; 1977 c. 449.

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 Mendota mental health institute and be subject to all federal and state laws, rules and regulations which 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.

46.043 Correctional and related institutions; environmental impact. (1) The department shall perform an environmental assessment to determine if an environmental impact statement is required relating to the construction, expansion or establishment of a correctional institution or resource center under s. 46.056.

(2) If the department prepares an environmental impact statement, it shall hold a hearing, after proper public notice, within 90 days of completion of the statement. For contested case hearings, the department shall apply s. 227.09 (1). For noncontested case hearings, the department may apply s. 227.09 (1) (a), (c), (e), (g) and (i). At a hearing, the hearing examiner shall observe, where necessary and appropriate, the limiting of repetitive testimony and consolidation of testimony. The hearing examiner may require parties to a hearing to specify, in advance and in writing, the issues they wish to have considered at the hearing.

(3) Any person aggrieved by the department's decision relating to the construction, expansion or establishment of a correctional institution or resource center under s. 46.056 because of the department's failure to comply with s. 1.11 may seek judicial review only under s. 227.16.

(4) Any court petitioned to issue an injunction or restraining order relating to the construction, expansion or establishment of a correctional institution or resource center under s. 46.056 because of the department's failure to comply with s. 1.11 shall issue a decision on the petition within 30 days after it is filed.

(5) This section does apply to the construction or establishment of the medium/maximum security institution under s. 46.05 (1).

(6) This section does not apply to the construction or establishment of any new metropolitan correctional institution, as defined under s. 46.0435 (1), or to activities or actions subject to s. 46.0435 or 1983 Wisconsin Act 27, section 2020 (32m).

History: 1981 c. 20; 1983 a. 27.

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46.0435 New metropolitan correctional institution; review; injunctive relief. (1) DEFINITION. In this section, "new metropolitan correctional institution" means any correctional institution in a city having a population of 500,000 or more the site for which is designated by the legislature by statute on or after July 2, 1983, but prior to January 1, 1985.

(2) JUDICIAL REVIEW. Any person aggrieved by a department's decision relating to the construction, expansion or establishment of any new metropolitan correctional institution because of the department's failure to comply with s. 1.11 or 1983 Wisconsin Act 27, section 2020 (32m) may seek judicial review. The review procedure under ch. 227 applies except the review shall be given preference over other cases.

(3) INJUNCTIONS AND OTHER REMEDIES. Any court petitioned to grant an injunction, temporary restraining order, stay or other provisional remedy or any extraordinary remedy with respect to a department's decision under sub. (2) may grant the remedy or other relief only if the petitioner proves by clear and convincing evidence that any defects in a department's compliance with s. 1.11 or 1983 Wisconsin Act 27, section 2020 (32m) cannot be remedied during the construction phase of the project.

History: 1983 a. 27

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

46.045 Community correctional residential centers. The department may establish and operate community correctional residential centers. The secretary may allocate and reallocate existing and future facilities as part of these centers. The community correctional residential centers shall be institutions as defined in s. 46.03 and shall be state prisons as defined in s. 53.01. Inmates from Wisconsin state prisons may be transferred to these institutions and they shall be subject to all laws pertaining to inmates of other penal institutions of the state. Officers and employees of the institutions shall be subject to the same laws as pertain to other penal institutions. Inmates shall not be received on direct commitment from the courts. In addition to the exemptions under s. 13.48 (13), construction or establishment of facilities at centers initially established prior to July 2, 1983, shall not be subject to the ordinances or regula-

tions relating to zoning, including zoning under ch. 91, of the county and municipality in which the construction or establishment takes place.

History: 1977 c. 418; 1983 a. 27.

46.046 Wisconsin correctional camp system. The department may establish and operate a correctional camp program known as the Wisconsin correctional camp system. The secretary may allocate and reallocate existing and future facilities as part of this system. The Wisconsin correctional camp system shall be an institution as defined in s. 46.03 and shall be a state prison as defined in s. 53.01. Inmates from the Wisconsin state prisons may be transferred to this institution and they shall be subject to all laws pertaining to inmates of other penal institutions of this state. Officers and employees of the institution shall be subject to the same laws as pertain to other penal institutions. Inmates shall not be received on direct commitment from the courts.

History: 1975 c. 39

46.047 Medium security prison. The department may construct a medium security prison to be known as the Fox Lake correctional institution on state-owned land known as prison farm 10 in Dodge county. Inmates from the Wisconsin state prisons may be transferred to this institution and they shall be subject to all laws pertaining to inmates of other penal institutions of this state. Officers and employees of the institutions shall be subject to the same laws as pertain to other penal institutions. Inmates shall not be received on direct commitment from the courts.

History: 1977 c. 418 s. 924 (18) (b).

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.

46.049 Training school for delinquent boys. The department, with the approval of the governor, may purchase or accept a gift of land for a suitable site for an additional training school for delinquent boys and erect and equip such

buildings as it deems necessary at such time as funds may be allocated for that purpose by the building commission. Such training school or other additional facilities for delinquent boys financed by the authorized 1965-67 building program shall be located north of a line between La Crosse and Manitowoc. Such institution when constructed shall be maintained and operated by the department for the treatment of delinquent boys committed to the department under s. 48.34. All laws pertaining to the care of children received under s. 48.34 shall apply. Officers and employes of the institution are subject to the same laws as apply to other facilities described in s. 48.52.

46.05 Medium/maximum security prison; medium security prison. (1) The department shall construct or establish an adult medium/maximum security institution or an adult medium security institution or both.

(1m) The medium security institution under sub. (1) shall be the Oshkosh correctional institution and shall be located north of Oshkosh, north of Snell road and south of Sunnyview road at the site which, on July 31, 1981, is the site of the Winnebago correctional farm.

(1n) In addition to the institutions under sub. (1), the department shall establish a medium security institution located at 1776-1818 North Commerce street in Milwaukee. In the selection of classified service employes of this institution the appointing authority shall, whenever possible, use the expanded certification program under rules of the administrator of the division of merit recruitment and selection in the department of employment relations to ensure that employes of the institution reflect the general population of the surrounding community in the 1st class city in which the institution is located. The administrator of the division of merit recruitment and selection in the department of employment relations shall provide guidelines for the administration of this selection procedure.

(1o) (a) In addition to the institutions under sub. (1), the department shall establish a correctional institution located in Milwaukee in the area bounded on the north by highway I 94, on the south and west by the Menominee river and on the east by 35th street on property owned by the Milwaukee road railroad on March 28, 1983. The department may acquire additional land owned by the Milwaukee road railroad on March 28, 1983, on the west and south sides of and contiguous to the Menominee river. The department may proceed to acquire the property specified under this subsection, except that if s. 85.09 applies the department shall proceed

in cooperation with the department of transportation under s. 85.09 (4g) (b). The department shall not acquire any additional property for a correctional institution in the city of Milwaukee prior to January 1, 1985, unless the site is designated by the legislature by statute.

(b) In the selection of classified service employes of the institution specified in par. (a), the appointing authority shall, whenever possible, use the expanded certification program under rules of the administrator of the division of merit recruitment and selection in the department of employment relations to ensure that employes of the institution reflect the general population of the surrounding community in the city in which the institution is located. The administrator of the division of merit recruitment and selection in the department of employment relations shall provide guidelines for the administration of this selection procedure.

(1p) Inmates from the Wisconsin state prisons may be transferred to the institutions under this section and they shall be subject to all laws pertaining to inmates of other penal institutions of this state. Officers and employes of the institutions shall be subject to the same laws as pertain to other penal institutions. Inmates shall not be received on direct commitment from the courts.

(2) Construction or establishment of the institutions shall be in compliance with all state laws except s. 32.035 and ch. 91 and except as provided under s. 46.0435 and 1983 Wisconsin Act 27, section 2020 (32m).

(3) In addition to the exemptions under s. 13.48 (13), construction or establishment of the institutions shall not be subject to the ordinances or regulations relating to zoning, including zoning under ch. 91, of the county and municipality in which the construction or establishment takes place.

History: 1979 c. 221; 1981 c. 20, 317, 387; 1983 a 16; 1983 a 27 ss 953p, 953r, 2200 (15).

46.051 Contracts with Minnesota. (1) The department may enter into one or more contracts with the state of Minnesota for the transfer and confinement in Minnesota of prisoners who have been committed to the custody of the department. Any such contract shall provide for all of the following:

(a) A termination date.

(b) Provisions concerning the costs of prisoner maintenance, extraordinary medical and dental expenses and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment, including those costs not reasonably included as part of normal maintenance.

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(c) Provisions concerning any participation in programs of inmate employment if any, the disposition or crediting of any payments received by inmates on account of employment, and the crediting of proceeds from or disposal of any products resulting from employment.

(d) Delivery and retaking of inmates.

(e) Waiver of extradition by Minnesota and Wisconsin.

(f) Retention of jurisdiction of the prisoners transferred by Wisconsin.

(g) Regular reporting procedures by Minnesota officials on Wisconsin prisoners.

(h) Provisions concerning procedures for probation, parole and discharge.

(i) The same standards of reasonable and humane care as the prisoners would receive in an appropriate Wisconsin institution.

(j) Any other matters as are necessary and appropriate to fix the obligations, responsibilities and rights of Minnesota and Wisconsin.

(2) Inmates from Wisconsin state prisons while in Minnesota institutions are subject to all provisions of law and regulation concerning the confinement of persons committed for violations of the laws of Minnesota, except as otherwise provided for by any contract entered into under sub. (1).

(3) Any hearing to consider parole to which an inmate confined under this contract may be entitled by the laws of Wisconsin will be conducted by the Wisconsin parole board under rules of the department.

(4) Sections 16.75 and 46.036 do not apply to contracts entered into under sub. (1).

(5) The provisions of this section are severable, as provided in s. 990.001 (11). The provisions of any contract entered into under sub. (1) are severable. If any provision of such a contract is invalid, or if the application of a provision of the contract to any person or circumstance is invalid, the invalidity does not affect other provisions or applications which can be given effect without the invalid provision or application.

(6) This section constitutes legislative approval for purposes of s. 53.26.

History: 1981 c. 20; 1983 a. 27

46.052 Correctional and other institutions; expansion and establishment of facilities. (1)

On or after July 31, 1981, the department shall:

(a) Provide the facilities necessary for at least 25 additional beds at Camp Flambeau.

(am) Provide the facilities necessary to operate Hughes hall at the Winnebago mental health institute with 160 beds. The facilities may be used for forensic patients and persons transferred under ch. 51 or 53.

(b) Provide the facilities necessary for at least 45 additional beds for a corrections drug abuse treatment program on the grounds of the Winnebago mental health institute.

(bp) Provide the facilities necessary for not more than 300 beds at the correctional institution under s. 46.05 (1m).

(bq) Provide the facilities necessary for the correctional institution under s. 46.05 (1n). Assessment and evaluation may be performed at the institution.

(bx) Provide the facilities necessary for the correctional institution under s. 46.05 (1o).

(d) Provide the facilities necessary for at least 40 additional beds at the Green Bay work release center.

(e) Provide the facilities necessary for at least 20 additional beds at Black river camp.

(f) Provide the facilities necessary for at least 20 additional beds at the Oregon camp.

(g) Provide the facilities necessary for housing to alleviate overcrowding.

(2) In addition to the exemptions under s. 13.48 (13), construction or establishment of facilities necessary to comply with sub. (1) shall not be subject to the ordinances or regulations relating to zoning, including zoning under ch. 91, of the county and municipality in which the construction or establishment takes place.

(3) For compliance with this section, the department may expend moneys authorized under chapter 29, laws of 1977, section 1606c (1)

(b) relating to the correctional system which have not been expended or encumbered or moneys available under residual existing general fund supported borrowing, not to exceed \$1,500,000.

(4) Any purchase, lease or construction of additional correctional facilities is subject to prior approval by the building commission and the joint committee on finance.

(5) This section constitutes enumeration in the authorized state building program for purposes of s. 20.924.

(6) The building commission is encouraged and authorized to utilize the most economical and expeditious construction alternatives available to effectuate completion of the construction projects.

History: 1981 c. 20; 1983 a. 27

46.053 State-local shared correctional facilities.

In cooperation with any county or group of counties, the department may contract for the establishment and operation of state-local shared correctional facilities under s. 53.45. Except as provided in s. 53.45 (4), the secretary may allocate and reallocate existing and future facilities as state-local shared correctional facilities.

ties. The shared facilities shall be institutions under s. 46.03 (1) and shall be prisons under s. 53.01. Inmates from Wisconsin state prisons may be transferred to these facilities and, except as to any separate rules established in the contract governing a shared facility, shall be subject to all laws pertaining to inmates of other penal institutions of this state. Officers and employees of the facilities shall be subject to the same laws as pertain to other penal institutions. Inmates may not be received on direct commitment from the courts.

History: 1983 a. 332

NOTE: 1983 Wisconsin Act 332, which created this section, contains a long prefatory note explaining the bill. See 1983 Session Laws.

46.054 Prison population ceilings. (1) On and after January 1, 1982, the prisoner populations at the following institutions shall not exceed any of the following bed capacities:

(a) The Waupun correctional institution shall not exceed a 915-bed capacity.

(b) The Green Bay correctional institution shall not exceed a 648-bed capacity.

(c) The Fox Lake correctional institution shall not exceed a 585-bed capacity.

(d) The Kettle Moraine correctional institution shall not exceed a 387-bed capacity.

(e) The Dodge correctional institution shall not exceed a 359-bed capacity.

(f) The facility specified in s. 46.05 (1n) shall not exceed a 200-bed capacity.

(2) (a) In this section, "regular housing bed" means a single occupancy cell bed, dormitory bed or reception bed. "Regular housing bed" does not include a medical service bed or segregation cell bed.

(b) In determining the prisoner population under sub. (1), any prisoner who is physically located at any of the institutions under sub. (1) (a) to (e) and assigned to a regular housing bed shall be included, regardless of whether he or she has been assigned to another institution and is awaiting transfer.

(3) The bed capacities under sub. (1) may be exceeded if an emergency exists. After the emergency ceases to exist, the department shall again comply with this section. The department shall promulgate a rule defining "emergency" for application under this subsection.

History: 1979 c. 221; 1981 c. 20; 1983 a. 16, 272.

46.056 Wisconsin resource center. The department shall establish the Wisconsin resource center on the grounds of the Winnebago mental health institute near Oshkosh. The subunit of the department responsible for community ser-

vices shall have responsibility for inmates transferred under s. 53.055.

History: 1981 c. 20.

Rights and responsibilities of counties in prisoner transfers to Wisconsin resource center discussed. 71 Atty. Gen. 170

46.057 Training of correctional officers. (1)

In this section, "correctional officer" means any person classified as a correctional officer employed by the state whose principal duty is the supervision of inmates at a prison, as defined in s. 53.01.

(2) (a) Correctional officers serving under permanent appointment prior to July 31, 1981 are not required to meet any requirement under par. (b) as a condition of continued employment. Failure of any such correctional officer to fulfill those requirements does not make that person ineligible for any promotional examination for which he or she is otherwise eligible. Those correctional officers may voluntarily participate in this program.

(b) No person may be permanently appointed as a correctional officer unless the person has satisfactorily completed a preservice training program approved by the department.

History: 1981 c. 20.

46.058 Bonds of employes; police powers; investigation of complaints. (1)

The steward of each institution shall execute and file an official bond in such sum and with such sureties as the secretary prescribes. He 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 same. The secretary may require a position bond whenever it appears to him advisable, such position bond to have the same coverage as the official bond.

(2) The warden and the superintendent of all the state charitable, curative, penal and reformatory institutions and of county hospitals and county homes, and such employes 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 guilty of any offense against the laws or regulations governing the same; and for such purpose they shall possess the powers of constables.

(3) The department shall investigate complaints against any institution under its jurisdiction or against the officers or employes thereof. For that purpose the secretary and such officers and employes 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 initia-

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tive, investigate the affairs of any institution. Any written communication or complaint addressed to the secretary by any inmate, employe 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

46.059 Minimum security corrections institutions. The department may, with the approval of the joint committee on finance, increase staffing levels at minimum security institutions sufficiently to allow temporary placement of medium security inmates at existing minimum security institutions as may be necessary to relieve medium security overcrowding. The temporary placement under this section may constitute a partial use of the institution.

History: 1981 c. 20

46.06 Lands; condemnation, easements, leases, sales, purchases. (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, waterworks, 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.

(3a) LEASE OF LANDS FOR RADIO RANGE STATION. The department may lease state owned lands under its control situated in section 16, town 24 north, range 18 east, Seymour township, Outagamie county, not exceeding 2 acres in extent, to the United States of America, to be used by the civil aeronautics administration for a radio range station. The terms of the lease shall be determined by the department and may grant to the lessee authority to erect navigational aids and other structures on such lands. Such lease shall not be effective unless approved by the governor in writing.

(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 shall be credited to the state building trust fund.

(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)

46.062 Payment for damaged employe clothing, etc. The department in which an employe is employed shall pay the cost of repairing eye glasses, watches or articles of clothing damaged in the line of duty where such damage results from any act of a person committed to or confined in any state facility, or institution of the state under the jurisdiction of the department. If the eye glasses, watches or clothes are damaged beyond repair, the department shall pay the actual value of such eye glasses or clothing as determined by the rules of the department, and the actual value of watches but not to exceed \$50 each. The value of such articles shall be determined as of the time of the damage thereto.

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.

46.065 Wages to prisoners. The department may provide for assistance of prisoners on their discharge; for the support of their families while in confinement; or for the payment, either in full or ratably, of their obligations acknowledged by them in writing or which have been reduced to judgment by the allowance of moderate wages, to be paid from the operation, maintenance, farm and construction appropriations of the institution in which they are confined. Until the prisoner's final discharge, the funds arising from the wages shall be under the control of the officer in charge of the institution and shall be used for the crime victim and witness assistance surcharge under s. 973.045 (4) and the benefit of the prisoner, the prisoner's family and other obligations specified in this section. Earnings by inmates working in the prison industries and

the retention and distribution thereof shall be governed by s. 56.01 (4) and (8).

History: 1975 c. 396, 421; 1977 c. 29; 1983 a 27

46.066 Freedom of worship; religious ministration. (1) Subject to reasonable exercise of the privilege, clergymen of all religious faiths shall be given an opportunity to conduct religious services within the state institutions at least once each week, attendance at such services to be voluntary.

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

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

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.

46.07 Property of inmates and probationers; deposit and distribution. (1) PROPERTY DELIVERED TO STEWARD; CREDIT AND DEBIT. All money including wages under ss. 46.064, 46.065 and 53.12 and other property delivered to an officer or employe of any institution for the benefit of an inmate shall forthwith be delivered to the steward, who shall enter the same upon the steward's books to the credit of the inmate. The property shall be used only under the direction and with the approval of the superintendent or warden and for the crime victim and witness assistance surcharge under s. 973.045 (4) or the benefit of the inmate. If the money remains uncalled for for one year after the inmate's death or departure from the institution, the superintendent shall deposit the same in the general fund. If any inmate 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).

(1m) CENTRAL RECEPTION UNIT; EXCEPTION. Notwithstanding sub. (1) and s. 53.13, an inmate account need not be opened or maintained for an inmate placed at the central reception unit at the Dodge correctional institution.

(2) PROPERTY DELIVERED TO OFFICER OR EMPLOYEE: (a) All money or other property paid or delivered to a probation officer or employe of the department by or for the benefit of any person on probation or parole shall be immediately transmitted to the department and it shall enter the same upon its books to his credit.

Such property shall be used only under the direction of the department.

(b) If he absconds, the money shall be credited to the revolving fund created by s. 57.075; and other property if not called for within one year shall be sold by the department and the proceeds shall be credited to said fund.

(c) If any person, within 5 years after such crediting of funds, satisfies the department that he is entitled thereto, the department shall certify the amount thereof to the department of administration for payment to the claimant from the appropriation made by s. 20.435 (3) (g).

History: 1979 c. 221 s. 2202 (20); 1983 a 27

46.08 Audits and estimates of expenditures of institutions. Each month the superintendent of each institution shall prepare and file in duplicate with the department a detailed estimate of the expenditures which will be necessary for each institution during the next month. No liability shall be incurred without such estimate being first made and approved by the department. The department shall fix a time, as often as once in each month, for auditing all accounts and charges against institutions.

46.09 Purchases, bills, audits, payments. (1) STEWARD AS BUSINESS MANAGER. The steward of each institution shall be the local business manager and requisitioning officer, subject to the direction and the rules and regulations of the department, and within the limits of the approved monthly estimates shall purchase (as provided in ss. 16.70 to 16.82) all necessary materials and supplies. He shall have the immediate charge of all books, accounts, papers and records relating to its 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 shall be used in any of the institutions of the state.

(3) PUBLIC WELFARE INSTITUTIONS PREAUDIT; PAYMENTS. Unless otherwise provided by law, no bills shall be incurred in the management of such institutions nor be paid until they have been audited by the department 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. All claims and accounts before being certified to the department of administration by the aforesaid

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department, shall be verified and approved in the same manner as provided in s. 16.53.

History: 1973 c 335 s 13

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.

(2) Except as provided in sub. (2m), any person, including but not limited to a person admitted or committed under ss. 51.10, 51.13, 51.15, 51.20, 51.35 (3), 51.37 (5), 51.45 (10), (11), (12) and (13), 55.05, 55.06, 971.14 (2) and (5), 971.17 (1), 975.01, 1977 stats., 975.02, 1977 stats., 975.06 and 975.17, 1977 stats., receiving care, maintenance, services and supplies provided by any institution in this state including university of Wisconsin hospital and clinics, in which the state is chargeable with all or part of the person's care, maintenance, services and supplies, and any person receiving care and services under boards or facilities established under ss. 49.175, 51.42 and 51.437, 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). The department may bring action for the enforcement of the liability. 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 relatives liable as soon as possible after the beginning of the maintenance, but the notice or the receipt thereof is not a condition of liability of the relative.

(2m) The liability specified in sub. (2) shall not apply to tuberculosis patients receiving care, maintenance, services and supplies under s. 58.06 and ch. 149, or to care, maintenance,

services and supplies provided to persons 18 and older by prisons named in s. 53.01, or to minors receiving care for alcohol or drug abuse under s. 51.47 without consenting to billing the minor's parent or guardian.

(3) After investigation of the ability to pay of the patient or relative liable for such maintenance, the department shall make collection from the patient or 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) Upon the failure of any relative liable for maintenance to make payment or enter into or comply with an agreement for payment, the department may apply to the circuit court of the county in which the patient resides or has a legal settlement or in which such relative resides for an order to compel payment by such relative. Upon failure to comply with that order, the department may commence an action to recover the amount due.

(5) Upon such application the circuit court shall hear the allegations and proofs of the parties and shall by order require payment of maintenance by the relative liable therefor, if of sufficient ability, having due regard to the present needs of the relative and his or her lawful dependents. The order shall specify an amount for maintenance to be paid periodically during a specified period or until the further order of the court. Notice of hearing on the application shall be served upon such relative at least 10 days prior to the hearing in the manner of service of a summons in that court. Upon application of any interested party, and upon like notice and procedure, the court may modify the order. Any party aggrieved by the order or by the judgment of the court may appeal therefrom in the manner provided by law. If an appeal is taken by the department, an undertaking need not be filed.

(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 such counsel such other powers and duties as it deems advisable. He or any of his 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 patient or the relative liable for his maintenance, 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 such patients and of the relatives liable for their maintenance, their ability to presently maintain themselves, the persons legally dependent upon them for support, the protection of the property and investments of patients and relatives from which they derive their living and their care and protection, for the purpose of ascertaining the ability of any patient or of any such relative to make payment in whole or in part for the maintenance of such patients.

(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 care or maintenance for which the patient or the patient's relatives are liable, but not any claim payable by an insurer under s. 632.89 (2) or (2m) or by any other 3rd party.

(e) Make agreements with relatives liable therefor, 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 pursuant to ss. 46.036 and 51.42 (8).

(i) Pay quarterly from the appropriation under s. 20.435 (2) (gk) and (4) (gg) the collection moneys due boards established under ss. 51.42 and 51.437. Payments shall be made as soon after the close of each quarter as is practicable.

(8m) For boards established under s. 51.42 or 51.437, the department shall:

(a) Deduct 100% of all money collected on or after January 1, 1975, from the chargeable cost of care at the mental health institutes and central state hospital;

(am) 1. Deduct 100% of all money collected prior to January 1, 1982, from the chargeable cost of care at the centers for the developmentally disabled under s. 51.437 (12) (c) 1; and

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 (12) (c) 2. a

(b) Return to boards 70% of all collections made for county hospitals; and

(c) Return to boards 50% of collections made by the department for services other than those specified under par. (a), (am) or (b).

(d) Paragraphs (a) and (am) do 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.

(9) Any person who wilfully testifies falsely as to any material matter in an investigation or proceeding under this section shall be guilty of perjury. Banks, insurers, 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 such patient or any person legally responsible for the maintenance of such patient. Such certified statement shall be admissible in evidence in any action or proceeding to compel payment for the maintenance of such patient, 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) In any action to recover maintenance, the statute of limitations may be pleaded in defense.

(12) The district attorney or his assistants in counties having a population of 500,000 or more shall, in matters pertaining to the recovery of the cost of maintenance of inmates in county

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and state institutions having a legal settlement in such 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) Liability of the patient or relatives 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 center under s. 51.08, the centers for the developmentally disabled, Mendota mental health institute, Winnebago mental health institute and central state hospital or care and maintenance of persons under 18 years of age in residential, nonmedical facilities such as group homes and foster care, child care and juvenile correctional institutions is determined in accordance with the cost-based fee established under s. 46.03 (18). The department shall bill liable parties up to any amount of liability not paid by an insurer under s. 632.89 (2) or (2m) or by other 3rd party benefits, subject to rules governing ability to pay promulgated by the department under s. 46.03 (18). The department may not, by rule, establish a limit on the amount that may be billed under this subsection, but shall charge according to the ability of the responsible party to pay, up to the cost of the patient's care, excluding educational costs. Any liability of the patient not payable by any other party terminates when the patient reaches age 18, unless the patient or patient's relative has prevented payment by any act or omission.

(16) The department shall delegate to boards established 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 if such boards or providers meet the conditions deemed appropriate by the department. The department may delegate to boards established 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 departmental 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) (j), (n); 1981 c. 81; 1983 a. 27 ss. 955m, 2202 (20).

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 W (2d) 194, 216 NW (2d) 889

Liability under (2) for cost of institutionalization is constitutional. In Matter of Guardianship of Nelson, 98 W (2d) 261, 296 NW (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 W (2d) 274, 296 NW (2d) 742 (1980).

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 W (2d) 431, 312 NW (2d) 45 (1981).

46.106 Maintenance; state and county liability; legal settlement. (1) DETERMINATION AND NOTICE. Legal settlement shall be determined pursuant to s. 49.10 for persons receiving care in facilities established under ss. 49.171 and 49.175 or any other charitable or curative facility in this state for which liability to the state and counties for care and maintenance is based on the person's legal settlement. Nothing in this section prevents a recovery of liability under s. 46.10 or any other statute creating liability upon the person receiving the care or any other designated responsible party.

(a) The committing or admitting judge shall make the determination of legal settlement for entries made through the courts. The judge of the county in which the providing facility is located shall make the determination of legal settlement for all other admissions to the facility. In such cases, the officer in charge of the facility shall immediately forward all pertinent information obtainable to the judge for determination. If so designated by the county, legal settlement may be determined by a unit within the county specialized in making such determinations in lieu of the judge.

(b) Certification of the determination shall be made both to the officer in charge of the facility and to the county clerk of the county of legal settlement. A transcript of the testimony taken with respect to legal settlement and data used by a unit described in par. (a) shall be submitted to the department if it is found that the person does not have a legal settlement in the state.

(2) STATEMENT OF COUNTY CLAIMS. This subsection applies only in situations where no other procedure is specified by statute.

(a) On July 1 in each year, the officer in charge of each facility specified in sub. (1) shall prepare a statement of the amount due from the state to the county for the care and maintenance of persons at public charge on forms supplied by the department.

(b) Such statement shall cover the preceding fiscal year and shall give the name of each person whose support is partly or wholly chargeable to the state, the person's legal settlement, the number of weeks for which support is charged, and the amount due the county from the state.

(c) Such statement shall be verified by the officer making it and certified by the trustees of the facility to the department and a duplicate thereof shall be forwarded to the county clerk no later than September 1 in each year.

(d) The department shall credit the county with the amount due the county for any recovery under s. 46.10 and shall certify such statement to the department of administration, which shall pay the aggregate amount found due each county on the first Monday in November of each year.

(3) STATEMENT OF COUNTY LIABILITY. This subsection applies only in situations where no other procedure is specified by statute.

(a) On October 1 in each year, the department shall prepare a statement of the amounts due from the counties to the state for care and maintenance of persons at public charge in each facility specified in sub. (1).

(b) Such statement shall cover the preceding fiscal year and shall give the name of each person whose support is partly chargeable to a county or wholly chargeable in the first instance to the state and partly chargeable over to a county, the legal settlement of each person, the number of weeks for which support is charged, the amount due a county for maintenance, and the amount due to the state from the county charged.

(c) The department shall file such statement with the department of administration, and mail a duplicate to the clerk of each county charged. Thereupon, the secretary of administration shall certify to the counties the amounts so due, which amounts shall be levied, collected, and paid into the state treasury as a special charge at the same time as the state taxes are apportioned.

(d) The amount so paid into the state treasury on account for care provided in nonstate-operated facilities shall be apportioned and paid to the counties to which it is due. The department of administration shall make the payment on April 1 in each year.

(4) RELIEF FROM ERRONEOUS CHARGES TO COUNTY OR STATE. When the state or a county believes that the cost of the care of a person is improperly charged to it, the matter may be determined by the department after a hearing. The department may on its own motion order a hearing if the charge is against the state. If it is against a county, the district attorney for the county may apply in writing to the department for a hearing. The application shall designate the county to which the person is chargeable, or if it is claimed that he or she is chargeable to the state, it shall so state. The department shall give reasonable notice to the parties interested of the time and place they may be heard. The applica-

tion may be supported by affidavits and other proper evidence. At the hearing and in the determination of the matter, evidence of a court determination of legal settlement (or of no settlement) of the person shall be regarded as an administrative determination, of such legal settlement status, by the judge and not by the court. If upon the hearing the department grants the relief asked for, it shall order a proper charge against the county chargeable, or against the state; and the person's support shall be charged accordingly by the department of administration by a proper charge or credit or both on the next apportionment under s. 70.60.

(5) ADMINISTRATIVE REVIEW. The order of the department is subject to review as provided in ch. 227. Upon entry of final judgment the department shall make the proper charge or credit or both and certify the same to the department of administration.

(6) CORRECTION OF ERRONEOUS CHARGES. Any error in the accounts between the state and a county for the support of any person in any such institution, or in the amount certified to a county as due and to be assessed upon it on account of such support, when certified by the department of health and social services, shall be corrected by the department of administration by a proper charge or credit or both on the next apportionment under s. 70.60.

(7) LIMITATIONS ON ACTIONS. No relief from erroneous charges under sub. (4) may be granted unless the county charged applies to the department for relief from the charges within 10 years from the date the county receives the statement of charges from the department of administration, as specified in sub. (3). The department is bound by the same 10-year limitation in notifying the county to be charged.

History: 1971 c. 158; 1973 c. 90; 1975 c. 413 s. 18; 1975 c. 430; 1979 c. 221.

46.11 Transfer of inmates. **(1)** When an inmate of a state or county institution is lawfully moved from one institution to another by the department, the superintendent of the institution from which he is removed shall notify the committing court of the removal.

(2) The department may designate in the removal order a person to make the transfer. The person designated shall receive no compensation, but shall be paid necessary traveling expenses, including those of the inmate and of any necessary assistant, to be adjusted by the department and charged to the current expense fund of the institution from which the removal is made as part of the inmate's maintenance costs.

History: 1983 a. 36.

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46.115 Sick inmates; transfer to state hospital; treatment. (1) The department shall apply to the board of regents of the university of Wisconsin system for the admission to the university of Wisconsin hospital and clinics of any inmate of any state institution under the department, or of any person committed to or applying for admission to any state institution, or of any other person committed to the department, who is afflicted with any disability or ailment, which can probably be remedied, or which can be advantageously treated at such hospital, if the person cannot receive proper care at the institution to which the person has been committed or to which he or she has applied for admission. The application shall be accompanied by the report of the physician of such institution or of a physician appointed by the department, in the same form as reports of physicians for the admission of patients to the hospital.

(2) The cost of treatment shall be at the rate established under s. 142.07 (1), and shall be chargeable to the institution. The department may pay out of such operation fund to the institution the necessary traveling expenses, including the expenses for an attendant when needed. Payments for the treatment of such patients are to be made by the department to the university of Wisconsin.

History: 1971 c. 100 s. 23; 1977 c. 83; 1977 c. 418 s. 924 (50); 1977 c. 447 s. 206; 1983 a. 27.

The department can be compelled by mandamus to make a determination as to the adequacy of medical treatment of a prisoner. *State ex rel. Thomas v. State*, 55 W (2d) 343, 198 NW (2d) 675.

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 employes, 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, curative, reformatory and penal institutions, including county infirmaries of every county and municipality (except tuberculosis sanatoriums); all detention homes and shelter care facilities for children and all industrial schools, 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.

(2) CHILD WELFARE AGENCIES; FOSTER HOMES; CHILD CARE CENTERS; DAY NURSERIES; NURSERY SCHOOLS. It may license and revoke licenses of and exercise supervision over all child welfare agencies and the placement of children in foster homes, and grant permits to foster homes, child care centers, day nurseries and nursery schools. In the discharge of this duty it may inspect the records of child welfare agencies, child care centers, day nurseries, nursery schools and visit all institutions conducted by them and all foster homes in which children are placed.

(3) COUNTY HOMES, POOR RELIEF. It shall visit the county homes and ascertain the number of each sex and the number of mentally ill, mentally deficient, deaf or blind persons, and children 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) PRISONS. It shall visit all places in which persons convicted or suspected of crime or mentally ill persons are confined, and ascertain their arrangement for the separation of the hardened criminals from juvenile offenders and persons suspected of crime or detained as witnesses; collect statistics concerning the inmates, their treatment, employment and reformation; and collect information of other facts and considerations affecting the increase or decrease of crime and 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 employes; 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.

(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 him 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, or those sections of ch. 48 relating to powers of the department, and shall institute and prosecute all necessary actions or proceedings for the enforcement of such provisions and for the punishment of violations of the same. 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 such 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 he shall forfeit not less than \$10 nor more than \$100.

(9) **TESTIMONIAL POWER; EXPENSES.** The director or any person delegated by him 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.

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 confinement buildings and provides no additional authority to the department under this section. 63 Atty. Gen. 267.

Department is authorized by this section to compel county and local officers to provide jail information. 67 Atty. Gen. 242.

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, mental health facilities, houses of correction, reforestation camps maintained under s. 56.07, jails as defined in s. 53.30, extensions of jails under s. 59.68 (7), rehabilitation facilities under s. 59.07 (76), lockup facilities as defined in s. 53.30 and, on or after January 1, 1985, Huber facilities under s. 56.09, and juvenile detention homes and shelter care 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.

46.175 County institutions: minimum standards. Notwithstanding any other provision of law, any county currently operating an institution established under s. 49.14, 49.16, 49.171, 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.

46.18 Trustees of county institutions. (1) **TRUSTEES.** Every county home, infirmary, hospital, tuberculosis hospital or sanatorium, or similar institution, or house of correction established by any county whose population is less than 500,000 shall, subject to regulations ap-

proved 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 him.

(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 his 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.** The department shall formulate a system of keeping the books, accounts and records, and shall furnish blanks 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, and shall conduct its business in conformity there-

with; and the department 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, a copy to the county clerk, and keep a copy on file at the institution. Such 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 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 the 2% charge authorized by s. 73.10 (9). 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.

(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.

History: 1971 c. 50; 1971 c. 108 s. 6; 1979 c. 34, 110; 1981 c. 329; 1983 a. 192.

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

46.19 Officers and employes of county institutions. (1) The trustees shall appoint a superintendent of each institution and may remove him for cause as defined in s. 17.16 (2) on due notice in writing and hearing of the charges against him.

(2) The trustees shall prescribe the duties of the superintendent. He 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 employes of the institution, and may remove them at his discretion, subject to the county civil service law.

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

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, tuberculosis hospital or sanatorium, or similar institution, house of correction 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 s. 149.01 as to tuberculosis sanatoriums and s. 46.17, as to other institutions the joint committee shall report to the several county boards the estimated cost of said 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 said site and buildings; and if the said report shall be approved by each county board, the joint committee shall purchase said site and cause said 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

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total 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 authorized by s. 73.10 (9). 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.

(8) The trustees shall transmit one copy of their annual report of the tuberculosis sanatorium to the department; and one copy of the report of other county institutions to the department, one copy to the clerk of each joint county, and shall file one copy at the institution. It shall be itemized with respect to the several counties and shall, in addition to the requirements of s. 46.18 (7) to (10), include an itemized statement showing the amounts of the receipts and profits credited and expenditures charged to the several counties for the past fiscal year, and an estimate of such amounts for the ensuing fiscal year; and each county board shall provide for meeting its estimated share of said expenditures.

(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).

(10) Any county or counties maintaining a tuberculosis sanatorium may convey said property or any part thereof or any interest therein to any other county or counties upon such terms and conditions as the respective county boards thereof shall agree by a majority vote of all the members of each of said county boards.

History: 1971 c. 108 s. 6; 1975 c. 413 s. 18.

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 and aid to families with dependent children, including related employment and training programs. The department shall submit to the federal authorities state plans for the administration of social services and aid under s. 49.19 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, aid to families with dependent children and aid under ss. 49.18, 49.20 and 49.61, 1971 stats., as affected by chapter 90, laws of 1973, shall be open to inspection at all reasonable hours by authorized representatives of the federal government. Notwithstanding s. 48.396 (2), all county records relating to the administration of such 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. 49.177, 49.19, 49.46 or 49.47 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. 49.177, 49.19, 49.46 or 49.47 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 such services and public assistance and may at any time conduct administrative reviews of county departments of public welfare or social services created by ss. 46.22 and 49.51 (2) (a). Whenever the department conducts such audit or administrative review in a county it shall furnish a copy of the audit or administrative review report to the chairperson of the county board, to the county clerk, and to the director of the county department of public welfare or to the director of the department that administers the health and human services programs, of such county.

(2) The county administration of all laws relating to social services and aid to families with dependent children shall be vested in the officers and agencies designated in the statutes.

(3) The use of the words "county agency" in any statute relating to social services or aid to families with dependent children means the county department of public welfare or social services as created by s. 46.22 (1) or 49.51 (2) (a). Nothing in this subsection shall deprive the court assigned to exercise jurisdiction under ch. 48 of any authority it otherwise has under the law.

History: 1973 c. 147; 1977 c. 271, 449; 1981 c. 329, 335; 1983 a. 27, 239, 487.

46.21 Institutions and departments in populous counties. (1) APPOINTING A DIRECTOR. (a)

The county executive shall, under ss. 63.01 to 63.17, appoint a director of the department that administers the health and human services programs. Such appointment shall be made on the basis of recognized and demonstrated public interest in and knowledge of the problems of public welfare, 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. Such director shall file an official oath and bond in such sum as shall be fixed by the county board of supervisors. The county board of supervisors may create one or 2 positions of deputy director of the department that administers the health and human services programs. The director shall be appointed by the county executive in the unclassified civil service and is subject to confirmation by the county board, as provided in s. 59.031 (2) (bm).

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

(2) **POWERS AND DUTIES OF THE COUNTY BOARD OF SUPERVISORS.** (a) The county board of supervisors shall determine policy for the oper-

ation, maintenance and improvement in each county by the director of the department that administers the health and human services programs, of the county hospital, dispensary-emergency unit of the hospital, guidance clinic, infirmary, home for children, the detention home, and the probation section of the children's court center, and the provision and maintenance of the physical facilities for that court and its intake section under the supervision and operation of the judges assigned to exercise jurisdiction under ch. 48 and as provided in s. 48.06 (1), mental health center, north division and south division, tuberculosis hospital, department of social services created by s. 49.51 (2) (a), county agent's department, farm, service departments and all buildings and land used in connection with any or all such institutions. A diagnostic and treatment center may be designated as part of the county mental health center, north division, and all personnel fully attached to that facility shall be under the jurisdiction of the superintendent or medical director of the county mental health center, north division. The powers and duties of the county board of supervisors are policy forming only, and not administrative or executive.

(b) The hospitals and sanatoriums of the county shall be devoted to hospital service and the treatment of such persons who would otherwise be unable to secure the same, but other persons may be admitted to the county hospitals upon such terms and conditions as the county board of supervisors establishes. Such hospitals and sanatoriums may be utilized for instruction of medical students, physicians and nurses and for scientific and clinical research as will promote the welfare of the patients and assist the application of science to the alleviation of human suffering. The county board of supervisors may make such arrangements with the medical school of the university of Wisconsin or the medical college of Wisconsin, inc., 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 foregoing hospital aims.

(c) The county 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.

(g) The county board of supervisors shall establish rules as may be necessary for the management and operation of the county institutions and departments mentioned in s. 46.21 (2) (a).

(i) The county board of supervisors may designate an amount as and appropriate funds for a work allowance to inmates at its institu-

tions. 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.

(3) DUTIES AND RESPONSIBILITIES OF THE DIRECTOR. (a) All of the administrative and executive powers and duties of managing, operating, maintaining and improving the several institutions and departments, specified in sub. (2) (a) and such other institutions and departments as may be placed under the jurisdiction of the director by the county board of supervisors, shall be vested in such director, to be administered by him under the rules promulgated, subject to the policies and in accordance with the principles established by the county board of supervisors.

(b) The county board of supervisors 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 personal service contracts. The county board of supervisors also may not exercise approval or disapproval power over contracts and purchases of the director relating to community living arrangements or foster homes and entered into pursuant to a coordinated plan and budget, regardless of whether the coordinated plan and budget mentions the provider, except as provided in sub. (8) (b). This paragraph does not preclude the county board of supervisors from creating a central purchasing department for all county purchases.

(c) The director shall administer the long-term support community options program under s. 46.27, if designated the administering agency under s. 46.27 (3) (b).

(4) DEPARTMENT HEADS, OFFICERS AND EMPLOYEES. (a) The county board of supervisors shall, by ordinance, authorize the director to appoint one or more department heads to operate, maintain and improve the public institutions listed in sub. (2) (a). Appointments of department heads by the director are subject to the confirmation of the county board of supervisors. The ordinance shall specify the powers and duties of and the compensation to be paid to each department head. The county board of supervisors may place more than one public institution under the management of any department head.

(b) Each such department head shall take and file his official oath and execute and file an official bond with the sureties approved and in such sum as shall be fixed by the county board of supervisors.

(c) Each department head may, subject to the approval of the director, appoint, discipline and remove, under the provisions of ss. 63.01 to 63.17 all officers and employes in his department. Each department head may at any time present communications to the county board of supervisors upon any matter through the director who shall present such communications to the board at its next meeting thereafter.

(d) Professional staff responsible for the care of patients under this section may submit bills for professional services under rules approved by the county board of supervisors.

(5) ADMISSION OF INMATES FOR PAY. (a) Any resident of this state, not indigent, may be received into the 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, 52.01 and 52.03 govern the support and maintenance of persons in any of the institutions listed in sub. (2) (a).

(6) REPORTS; APPROPRIATIONS; EXPENDITURES. (a) On the first day of July of each year, or within 30 days thereafter, the director and the department heads shall submit annual reports to the county board of supervisors, including itemized statements of receipts and disbursements for the preceding calendar year. Such director and each department head shall maintain the uniform system of books, accounts, records and reports prescribed by the department, conforming in all respects with s. 46.18 (9) and requirements of the county auditor and county department of administration.

(b) The county board of supervisors shall make sufficient appropriation annually for the support, maintenance, salaries, repairs and improvements to the institutions. The appropriations shall be used subject to the order of the director and as the rules of the county board of supervisors provide. The director 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.

(c) Notwithstanding other statutes, expenditures chargeable to appropriations of the county board of supervisors shall be made upon certified vouchers, certified voucher schedules, and certified public assistance rolls to the

county clerk. The county clerk shall issue county orders upon the county treasurer in payment of these certified instruments, provided that a single county order in favor of the county treasurer may be issued for the total amount authorized on a public assistance roll, in which case the county treasurer shall make individual payments by share drafts, bank checks or other drafts to parties listed on the public assistance rolls, provided further that the county board of supervisors may by ordinance adopt a different method of making disbursements consistent with sound accounting and auditing procedure.

(8) COUNTY BOARD POWERS. The county board of supervisors has the following additional powers:

(a) To 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 such county.

(b) To 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 place of abode, or regularly admitted to said 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 for such period of time until the patient may be regularly admitted as an inpatient or safely removed to another hospital or to his place of abode. In this paragraph, "hospital" includes 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, but not in limitation thereof by enumeration, and central service facilities operated in connection with hospitals, but does not include any hospital furnishing primarily domiciliary care; and "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.

(c) To 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 said institutions or departments or any of them.

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

(9) LAND FOR MEDICAL FACILITIES. The county board of supervisors 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.

(10) AUDIT. (a) The county board of supervisors in counties having a population of 500,000 or more shall direct, at least once every 3 years, a total program audit of the county department of social services to be conducted by the state legislative audit bureau. The audit shall include program, fiscal, compliance and management elements and shall be directed toward the following:

1. Examination of procedures for applying for and receiving all grants and services administered by the county department of social services;

2. A general examination of the efficiency and effectiveness with which all programs are administered by the county department of social services;

3. A measurement of how effectively the goals and objectives of these programs are being met by the county department of social services, including a determination of whether the department has considered alternatives which might yield the desired results at a lower cost; and

4. An examination of whether financial operations are properly conducted, whether the financial and accounting reports of the county department of social services are fairly presented, and whether the department has complied with applicable laws, rules and regulations of the state and federal governments governing the programs under its administration.

(b) The cost of the audit shall be paid from the appropriation under s. 20.765 (3) (c).

(c) The state legislative audit bureau shall consult with the county audit department and the state department of health and social ser-

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vices during the performance of the audit in order to incorporate the findings of these agencies into the audit report required under par. (a).

(d) Upon completion of the audit report, the legislative audit bureau shall notify the legislature, the county board of supervisors and the secretary of health and social services that copies of the report are available on request.

(11) APPLICABILITY. This section applies only to counties with populations of 500,000 or more.

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.

46.22 County public welfare department. (1)

CREATION. In every county having a population of less than 500,000 there is created a county department of public welfare. This county department shall consist of a county board of public welfare, a county director of public welfare, and necessary personnel.

(2) BOARD. The county board of public welfare shall consist of a board of 3, 5 or 7 residents of the county, as determined by the county board of supervisors, elected by the county board of supervisors or appointed by the chairperson of the county board under rules of the board. The members of the county board of public welfare 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 and shall hold office for a term fixed by the county board of supervisors. The members of the county board of public welfare shall receive compensation as fixed by the county board of supervisors. The county board of public welfare shall:

(a) At the first meeting of the 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 board. In case of the absence of the chairperson for any meeting the members present shall choose a temporary chairperson.

(b) Appoint a county director of public welfare subject to s. 49.50 (2) to (5) and the rules promulgated thereunder and subject to the approval of the county board of supervisors. The county board or boards of supervisors may delegate this authority to the board established under this section.

(c) Supervise the working of the county department of public welfare and shall be a policy-making body determining the broad outlines

and principles governing the administration of the functions, duties and powers assigned to said department under subs. (4) and (5).

(d) Whenever it determines that there is a need therefor, appoint committees consisting of residents of the county, which committee shall advise with the board on any matters for which they are created, but members of such committees shall serve without compensation.

(e) Consult with the county director of public welfare concerning the preparation of the annual budget, the annual report of the operation of the county department of public welfare and the appointment of necessary personnel.

(3) DIRECTOR. The county director of public welfare shall serve as the executive and administrative officer of the county department of public welfare. In consultation and agreement with the county board of public welfare he shall prepare and submit to the county board of supervisors an annual budget of all funds necessary for the county department, and shall prepare annually a full report of the operations and administration of the department. The county board of supervisors shall review and approve, reject or revise by majority vote the annual budget of the county department of public welfare. The county director shall recommend to the county board of public welfare the appointment of employees necessary to administer the functions of the department, subject to sub. (6) and s. 49.50 (2) to (5) and the rules promulgated thereunder. The county director shall make recommendations to the county board of supervisors who shall fix the salary of such employees.

(4) POWERS AND DUTIES. The county department of public welfare shall have the following functions, duties and powers in accordance with the rules and regulations promulgated by the department and subject to the supervision of said department:

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

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

(c) To make investigations which relate to welfare services upon request by the department.

(d) To administer relief to needy Indians under s. 49.046 when appointed by the department under such section.

(e) To certify eligibility for and issue food coupons to needy households in conformity with the federal food stamp act of 1964 as amended.

(f) To make payments in such manner as the department may determine for training of recipients, former recipients and potential recipients

of aid in programs established under s. 49.50 (7).

(g) Within the limits of available state and federal funds and of county funds appropriated to match state funds, to provide social services for:

1. Persons eligible for or receiving supplemental security aids under Title XVI of the social security act.

2. Persons eligible for or receiving state supplemental payments under s. 49.177.

3. Persons eligible for or receiving aid to families with dependent children under s. 49.19.

(j) To submit a program plan and budget in accordance with s. 46.031 for services authorized in this section, except for the administration of and cost of aid granted under ss. 49.02, 49.03, 49.19 and 49.45 to 49.47. The approved plan and budget shall not exceed the available amount of funds.

(l) To administer the long-term support community options program under s. 46.27, if the county board of supervisors designates the county department of public welfare as the administrative agency.

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

(n) To establish a community work experience program under 42 USC 609 if the county so elects and if the county pays the administrative costs associated with the program that are not reimbursed by the federal government. Any person participating in a community work experience program in a county is an employe of that county for purposes of worker's compensation benefits only.

(o) To establish and administer the child care program under s. 46.98.

(5) POWERS AND DUTIES. The county board of supervisors may provide that the county department of public welfare shall, in addition to exercising the mandatory functions, duties, and powers as provided in sub. (4), have any or all of the following functions, duties and powers and such other welfare functions as may be delegated to it by such county board of supervisors:

(a) Make investigations in co-operation 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 county and state institutions:

1. County institutions. County infirmary, home, hospital (for mental diseases, tuberculosis or otherwise) or asylum.

2. State institutions. Mendota mental health institute, Winnebago mental health institute, university of Wisconsin hospital and clinics,

center for the developmentally disabled, central state hospital and Ethan Allen school.

(am) Paragraph (a) does not authorize the county department of public welfare to make investigations regarding admission to or release from the Waupun correctional institution, the correctional institutions authorized under s. 46.05, the Green Bay correctional institution, the Dodge correctional institution, the Taycheedah correctional institution, county houses of correction, jails, detention homes or reforestation camps.

(b) Administer relief under ss. 49.02 and 49.03 in the event that the county administers relief under those sections.

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

(d) Perform the duties and functions prescribed in s. 48.08 when requested to do so by the judge assigned to exercise jurisdiction under ch. 48.

(e) 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.

(f) 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, and to certify eligibility for and distribute surplus commodities and foodstuffs.

(g) To administer child welfare services including services to children who are mentally retarded, dependent, neglected, delinquent, or nonmarital, and to other children who are in need of such services. In administering child welfare services the county agency shall be governed by the following:

1. The county agency may avail itself of the co-operation of any individual or private agency or organization interested in the social welfare of children in such county.

2. The county agency 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 or donated by individuals or private organizations.

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

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

5. The county agency shall have the powers and duties specified in s. 48.57.

(gm) The authority given to the county department of public welfare under par. (g) to function as an authorized child welfare agency shall not be interpreted as excluding agencies licensed pursuant to s. 48.60 from also exercising such functions.

(5m) **PURCHASE OF CARE AND SERVICES.** (a) In order to insure the availability of a full range of care and services, county agencies may contract, either directly or through the state department, with public or voluntary agencies or others to purchase, in full or in part, care and services which county agencies are authorized by any statute to furnish in any manner. Such services may be purchased from the department where the department has staff to furnish such services. The county agency, if it has adequate staff, may sell such care and services directly to another county or state agency.

(b) A county agency may purchase development and training services from the state department or from other county agencies when such services are available or sell such development and staff training services to another county or state agency when they have adequate staff to provide such service.

(c) County agencies shall submit to the department plans and contracts for care and services to be purchased. Such contracts shall be developed under s. 46.036. The department shall review such 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 to submit such contracts to the committee for review and approval. The department shall not make any payments to a county for programs included in the contract which is under review by the committee. The department shall reimburse each county for such approved contracts from the appropriations under s. 20.435 (4) (o) or under s. 20.435 (4) (cd), according to s. 49.52, or from the appropriation under s. 20.435 (4) (b).

(6) **MERIT SYSTEM STATUS.** Section 49.50 (2) to (5) shall be applicable to the county department of public welfare created by this section.

(7) **RULES, RECORDS.** The county department of public welfare and all county officers and employes performing any duties in connection with the administration of aid to the blind, old-

age assistance, aid to families with dependent children and aid to totally and permanently disabled persons shall observe all rules and regulations promulgated by the department pursuant to s. 49.50 (2) and shall keep such records and furnish such reports as the department requires in relation to their performance of such duties.

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.

The county board of public welfare rather than the board of supervisors has the authority to appoint a county welfare director 62 Atty. Gen. 114

Under 49.26, (1971 Stats.), a county department of social services, by its director, may make valid conveyances of real estate acquired by the department as a result of old-age-assistance lien foreclosures or transfers in lieu thereof, or as the result of assignments to the department made by the county court in probate or administration proceedings in the estates of old-age-assistance recipients; or of out-of-state real property voluntarily transferred to the department 63 Atty. Gen. 488

In counties under 500,000 which have not elected to be under 46.21, county board of public welfare has exclusive power to appoint and terminate county welfare department employes. 65 Atty. Gen. 163

Powers of county board and county board of public welfare as to department discussed 68 Atty. Gen. 262

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

History: 1979 c. 356

46.23 Community human services board. (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 services and facilities organized under this section through the establishment of a unified governing and policy-making board of directors; and to authorize state consultative services, reviews and establishments of standards and grants-in-aid for such programs of services and facilities.

(2) DEFINITIONS. In this section:

(a) "Board" means the community human services governing and policymaking board of directors.

(c) "Director" means the director appointed by the board with the approval of the county board or boards of supervisors. The county board or boards of supervisors may delegate

this authority to the board established under this section.

(d) "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 and parole services, alcohol and drug abuse services, services to children, youth and aging, family counseling, exceptional educational services and manpower services.

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

(3) HUMAN SERVICES BOARD ESTABLISHMENT.

(a) Upon approval by the secretary of a feasibility study and a program implementation plan, the county board of supervisors of any county, or the boards of supervisors of one or more contiguous counties may, by resolution of the county boards of supervisors, establish a board on a county, multicounty or sub-county basis having the composition, powers and duties provided in subs. (4) and (5).

(b) The county boards of supervisors shall review and approve the overall plan, program and budgets proposed by the board.

(c) No funds may be allocated to any combination of counties until the counties have drawn up a detailed contractual agreement, approved by the secretary, setting forth the plan for joint sponsorship.

(4) BOARD ORGANIZATION, APPOINTMENT, COMPOSITION AND TERMS OF MEMBERS. (a) The county board or boards of supervisors of any county or combination of counties establishing or administering a program shall, before qualification under this section, appoint a governing and policy-making board of directors to be known as the community human services board.

(b) In any county or any combination of counties, the 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 board members may be members of the county board of supervisors. The remainder of the board members shall be consumers of services or citizens-at-large. No public or private provider of services may be appointed to the board.

(c) In a combination of counties, the board shall be constituted so that the representation shall be as equal as possible among the participating counties.

(d) Board members 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. Any

board member may be removed from office for cause by a two-thirds vote of each county board participating in the appointment, on due notice in writing and hearing of the charges against the member.

(5) BOARD POWERS, DUTIES AND FUNCTIONS.

(a) The powers and duties of boards that are integrated into a community human services board transfer to the community human services board, including the powers and duties specified in ss. 46.22, 49.51, 51.42 and 51.437. The county board or boards of supervisors creating the community human services board may also transfer to the community human services board the powers and duties of a county unit created under s. 59.025 (3) (a), of a board of health created under s. 140.09 or of a county health commission or committee created under s. 141.01 or may transfer the operation of any other human services programs under county control.

(b) The board 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 board. 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.

(c) Prior to adoption of the plan by the board, it shall hold a public hearing on the plan. As far as practicable, the board 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.

(d) The board:

1. Shall develop a program plan and budget request for submission to the department for review and approval as specified in par. (e).

2. Shall determine administrative and program policies within limits established by the department. Policy decisions not reserved by statute for the department may be delegated by the secretary to the board.

3. Shall establish priorities in addition to those mandated by the department.

4. Shall determine whether state mandated 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.

5. Shall determine what additional services are to be provided directly by the board, purchased from other agencies, or provided on a referral basis only.

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

7. Shall appoint a program 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. Such appointment shall be subject to the personnel policies and procedures established by the county board or boards of supervisors establishing such board.

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

9. Shall determine the number and location of outstations when appropriate to meet service demands.

10. May recommend to the county board or boards of supervisors the removal of the program director for cause. The county board or boards of supervisors may remove the director for cause by a two-thirds vote of each such county, on due notice in writing and hearing of the charges against the director.

11. Shall develop board operating procedures.

12. Shall oversee the operation of one or more service delivery programs.

13. Shall evaluate services delivery.

14. May perform such other general functions necessary to administer the program.

(e) The board shall submit a program plan and budget in accordance with s. 46.031 for authorized services in the form and manner prescribed by the department. The approved plan and budget shall not exceed the available amount of federal and state funds. Notwithstanding the categorization of or limits specified for funds allocated under s. 49.52 (1) (d) or 51.42 (8) (b), with the department's approval the board may expend these funds consistent with any service provided under s. 49.52 (1) (d) or 51.42.

(f) The board 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 board.

(6) DIRECTOR; POWERS AND DUTIES. (a) All of the administrative and executive powers and duties of managing, operating, maintaining and

improving programs shall be vested in the director, subject to the rules promulgated by the department under this section.

(b) In consultation with the board and subject to its approval, the 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 and the county board or boards of supervisors.

(c) The director shall make recommendations to the board for:

1. Personnel and salaries of employees.

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

3. Changes in program services.

(7) SECRETARY; POWERS AND DUTIES. (a) The secretary may, with the approval of the designated board, delegate any duty, authority or responsibility vested in the department relative to any program or service provided by the state on July 31, 1975, to any board which has an approved plan in effect for the affected program or service. The authority granted under this section shall include the authority to transfer to a board that portion of any unexpended appropriation which represents a savings to the department by virtue of the assumption by the board of the duty, authority or responsibility as delegated.

(b) The delegation of any duty, authority or responsibility, and transfer of funds therewith, shall be subject to the maintenance by the board of applicable standards prescribed by the department under par. (a). Upon failure to maintain the prescribed standards, any delegated function and unexpended funds shall revert to the department according to procedures established by it.

(c) The secretary shall report annually to the governor and the legislature on the operations and effectiveness of the boards' programs.

(9) BOARD EMPLOYEE PROTECTIONS. (a) All persons employed by a county or by the state, whose functions are assumed by a board shall continue as employees of the board without loss in seniority, status or benefits, subject to the merit or civil service system.

(10) EXCHANGE OF INFORMATION. Notwithstanding ss. 49.45 (4), 49.53 (1), 51.30, 51.45 (14) (a), 55.06 (17) (c), 143.07 (7), 146.80 (3) (c) and 146.82, any subunit of an agency administering a program under this section may exchange confidential information about a client,

without the informed consent of the client, with any other subunit of the same agency or with any person providing services to the client under a purchase of services contract with the agency, if necessary to enable an employe or service provider to perform his or her duties, or to enable the agency to coordinate the delivery of services to the client.

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).

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

46.25 Child and spousal support; establishment of paternity; medical liability. (1) There is created a child and spousal support and establishment of paternity and medical liability support program in the department. The purpose of this program is to establish paternity when possible, to enforce support obligations owed by parents to their children and maintenance obligations owed to spouses or former spouses with whom the children reside and to locate persons who are alleged to have taken their child in violation of s. 946.71 or 946.715. To accomplish the objectives of the program, county and state agencies will cooperate with one another to implement a child and spousal support and paternity establishment program in accordance with state and federal laws, regulations and rules.

(2) The department shall constitute the state location service which shall assist in locating parents who have deserted their children and other persons liable for support of dependents or persons who are alleged to have taken their child in violation of s. 946.71 or 946.715. The department may request and shall receive any information which is appropriate and necessary for the state location service available from the records of all departments, boards, bureaus or other agencies of this state and the same shall provide such information as is necessary for this purpose within 7 days of such request. The department or county child and spousal support agency may make such information available only to those officials as defined by state or federal law, agencies of this state, other states and political subdivisions of this state and other states seeking to locate parents who have deserted their children or taken them in violation of s. 946.71 or 946.715. This information may be given to them only upon their assurance that it will be used solely in connection with their official duties. Disclosure of information under this subsection shall comply with s. 402 (a) (9) of the social security act, as amended (42 USC 602 (a) (9)).

(3) The department, acting as a state location service, shall furnish all services under sub (2)

to any similarly appointed agency of another state which by its laws is authorized to furnish such services to this state or its agencies

(4) Except as provided in this section, no person may use or disclose information obtained by the state location service. Any person violating this subsection may be fined not less than \$25 nor more than \$500 or imprisoned for not more than one year in the county jail or both.

(6) The department shall establish, pursuant to federal and state laws, rules and regulations, a uniform system of fees for services provided under this section to individuals not receiving aid under s. 49.19 or 49.47. The system of fees may take into account an individual's ability to pay. Any fee paid and collected under this subsection may be retained by the county providing the service except for the fee specified in 42 USC 653 (e) (2) for federal parent locator services.

(7) The department may represent the state or any individual in any action to establish paternity or to establish or enforce a support or maintenance obligation. The department may delegate its authority to represent the state or any individual in any action to establish paternity or to establish or enforce a support or maintenance obligation under this section to the district attorney, or corporation counsel when authorized by county board resolution, pursuant to a contract entered into under s. 59.07 (97). The department shall ensure that any such contract is for an amount reasonable and necessary to assure quality service. The department may, by such a contract, authorize a county to contract with any attorney, collection agency or other person to collect unpaid child support or maintenance. If a county fails to fully implement the programs under s. 59.07 (97), the department may implement them and may contract with any appropriate person to obtain necessary services.

(7m) The department may contract with or employ a collection agency, attorney or other person to enforce a support obligation of a parent residing outside this state, or to appear in an action in federal court to enforce such an obligation, or both. To pay for the department's administrative costs of implementing this subsection, the department may charge a fee to counties, retain up to 50% of any incentive payment made to this state under 42 USC 658 for a collection under this subsection, and retain 30% of this state's share of a collection made under this subsection on behalf of a recipient of aid to families with dependent children.

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(8) The department may charge counties seeking collection of child and spousal support for any administrative costs it incurs in providing services related to the federal parent locator service under 42 USC 653, the interception of unemployment compensation under 42 USC 654 or the withholding of state and federal income tax refunds under s. 46.255 and 42 USC 664.

History: 1975 c. 82; 1977 c. 26, 29, 203, 418; 1979 c. 196, 221; 1981 c. 93; 1983 a. 27.

46.255 Certification of delinquent support and maintenance payments. (1) If a person obligated to provide child support or maintenance is delinquent in making court-ordered payments the clerk of court, upon application of the county designee under s. 59.07 (97) or the department, shall certify the delinquent payment to the department.

(2) At least annually, the department of health and social services shall provide the certifications to the department of revenue.

(3) Receipt of a certification by the department of revenue shall constitute a lien, equal to the amount certified, on any state tax refunds or credits owed to the obligor. The lien shall be foreclosed by the department of revenue as a setoff under s. 71.105 (3), (7) and (8). When the department of revenue determines that the obligor is otherwise entitled to a state tax refund or credit, it shall notify the obligor that the state intends to reduce any state tax refund or credit due the obligor by the amount the obligor is delinquent under the support or maintenance order and that the department intends to forward that amount to the clerk of the court rendering the order. The notice shall provide that within 20 days the obligor may request a hearing before the circuit court rendering the support or maintenance order. Within 10 days after receiving a request for hearing under this subsection, the court shall set the matter for hearing. Pending further order by the court or family court commissioner, the clerk of court is prohibited from disbursing the obligor's state tax refund or credit. The family court commissioner may conduct the hearing. The sole issues at that hearing shall be whether the obligor owes the amount certified and, if not, whether the money withheld from a tax refund or credit shall be paid to the obligor or held for future support or maintenance. An obligor may, within 20 days of receiving notice that the amount certified shall be withheld from his or her federal tax refund or credit, request a hearing under this subsection.

(4) The department of revenue shall send that portion of any state or federal tax refunds or credits withheld to the department of health and

social services for distribution to the appropriate clerk of court. The department of health and social services shall make a settlement at least annually with the department of revenue and with each county clerk of court who has certified a delinquent obligation. The settlement shall state the amounts certified, the amounts deducted from tax refunds and credits and returned to the county clerk of court and the administrative costs incurred by the department of revenue. The department of health and social services may charge the county whose clerk of court certified the obligation the related administrative costs incurred by the department of health and social services and the department of revenue.

(5) Certification of an obligation to the department of health and social services does not deprive any party of the right to collect the obligation or to prosecute the obligor. The clerk of court shall immediately notify the department of any collection of an obligation that has been certified. The department shall correct the certified obligation according to the amount the county has collected and report the correction to the department of revenue.

(6) If the state implements the child and spousal support and paternity program under s. 59.07 (97), the state may act in place of the county designee under this section.

History: 1981 c. 20, 391; 1983 a. 27.

46.26 Community youth and family aids. (1) PROCEDURES. The department shall develop procedures for the implementation of this section, standards for the development and delivery of social services under ch. 48, and shall provide consultation and technical assistance to aid counties in implementation and service delivery. The department shall establish information systems, monitoring and evaluation procedures to report periodically to the governor and legislature on the state impact of this section.

(2) RECEIPT OF FUNDS. (a) Beginning January 1, 1980, all funds to counties under this section shall be allocated to county social service departments or to county public welfare departments established under ss. 46.034, 46.21, 46.22, 46.23 and 49.51, subject to ss. 46.031 and 49.52 (2), except that monthly advance payments to the counties may be less than one-twelfth of the contracted amounts. No reimbursement may be made to any combination of counties until the counties have drawn up a detailed contractual agreement, approved by the secretary, setting forth the plans for joint sponsorship.

(b) Beginning January 1, 1980, uniform fees collected or received by counties under s. 46.03 (18) for services provided under this section shall be applied to cover the cost of the services.

(c) Funds under this section may not be used to reduce the county fiscal effort indicated in the 1979 coordinated plan and budget, and funds may not be used to replace amounts or services provided or purchased by the county in calendar year 1979. All funds under this section shall be used to purchase or provide juvenile delinquency-related services under ch. 48, except that no funds under this section may be used for purposes of land purchase, building construction or maintenance of buildings under ss. 46.17 and 46.175, for reimbursement of costs under ss. 48.208 and 48.209, for city lockups or for reimbursement of care costs in temporary shelter care under s. 48.22.

(2m) OTHER PROGRAM REQUIREMENTS. The first step in the establishment of a program shall be the preparation of a plan using the time schedule for submitting coordinated plans and budgets under s. 46.031 (1) (a) which includes an inventory of all existing resources and services for the target population and which details the resources to be developed and amounts to be allocated for meeting the needs of the designated target population served by the county or counties making the plan. The plan shall be developed by representatives of county public welfare departments in conjunction with representatives of a county level youth planning organization, by representatives of the judiciary and law enforcement agencies and by representatives of American Indian tribes, as required by the department. In counties without a county level youth planning organization, the county public welfare department shall choose one or more county residents to consult with.

(3) GRANTS-IN-AID. (a) Receipt of funds under this subsection is contingent upon submission and approval of the plan required under sub. (2m).

(b) Beginning July 1, 1983, and ending December 31, 1983, and within the limitations of the appropriations under s. 20.435 (4) (cd) and (oo), each county shall receive an amount equal to 50% of its 1982 base allocation, plus any amount allocated to the county by the department to cover rate increases for juvenile correctional services which became effective on January 1, 1983.

(c) Beginning January 1, 1984, and ending June 30, 1985, and within the limits of the appropriations under s. 20.435 (4) (cd) and (oo), each county shall receive an amount allocated by the department under 1983 Wisconsin Act 27, section 2020 (6m).

(d) In addition to the funds allocated under pars. (b) and (c), the department shall allocate funds to counties under sub. (4) (b) 2 and shall consider each county's proportionate use of

applicable departmental services under s. 48.34 during previous calendar years.

(e) The department may carry forward \$500,000 or 10% of its funds allocated under this subsection and not encumbered by counties by December 31, whichever is greater, to the next fiscal year. The department may transfer moneys from or within s. 20.435 (4) (cd) to accomplish this purpose. The department may allocate these transferred moneys during the next fiscal year to improve community-based juvenile delinquency-related services. The allocation does not affect a county's base allocation.

(4) STATE SERVICES. (a) The department shall bill counties or deduct from the allocations under s. 20.435 (4) (cd) for the costs of care, services and supplies purchased or provided by the department for each person receiving services under ss. 48.34 and 51.35 (3). Payment shall be due within 60 days of the billing date. If any payment has not been received within 60 days, the department shall withhold aid payments in the amount due from the appropriations under s. 20.435 (4) (b) or (cd).

(b) 1. Assessment of costs under par. (a) shall be made periodically on the basis of a per person per day cost estimate adjusted annually by the department. Liability shall apply to county public welfare or social service departments established under s. 46.22, 46.23 or 49.51 in the county of the court exercising jurisdiction under ch. 48 for each person receiving department services under ss. 48.34 and 51.35 (3). In multicounty court jurisdictions, the county of residency within the jurisdiction shall be liable for costs under this subsection. Assessment of costs under par. (a) shall also be made according to the general placement type or level of care provided, as defined by the department, and prorated according to the ratio of the amount designated under sub. (3) (b) to (d) to the total applicable estimated costs of department care, services and supplies under ss. 48.34 and 51.35 (3).

2. If there is an annual increase in the per person daily cost assessment, there shall be an increase in the total funds available to all counties under sub. (3) (d) to cover increases for state charges under par. (a).

(d) 1. Except as provided in pars. (e) to (g), for services under s. 48.34, all payments and deductions made under this subsection and uniform fee collections made under s. 46.03 (18) shall be deposited in the appropriation under s. 20.435 (3) (hm). As adjustments in the assessments under this subsection are made, there shall be a proportionate adjustment in the allocations to counties under sub. (3) (d).

2. Beginning July 1, 1983, and ending December 31, 1983, the per person daily cost assessment to counties shall be \$80.22 for care in a juvenile correctional institution, \$80.22 for care for children transferred from a juvenile correctional institution under s. 51.35 (3), \$82.69 for care in a child caring institution, \$56.40 for care in a group home for children, \$18.21 for care in a foster home and \$3.94 for departmental aftercare services.

3. In calendar year 1984, the per person daily cost assessment to counties shall be \$81.69 for care in a juvenile correctional institution, \$81.69 for care for children transferred from a juvenile correctional institution under s. 51.35 (3), \$86.91 for care in a child caring institution, \$57.88 for care in a group home for children, \$19.12 for care in a foster home and \$4.03 for departmental aftercare services.

4. Beginning January 1, 1985, and ending June 30, 1985, the per person daily cost assessment to counties shall be \$83.92 for care in a juvenile correctional institution, \$83.92 for care for children transferred from a juvenile correctional institution under s. 51.35 (3), \$91.37 for care in a child caring institution, \$59.34 for care in a group home for children, \$20.08 for care in a foster home and \$4.15 for departmental aftercare services.

(e) Beginning January 1, 1983, for foster care and institutional child care to delinquent children under ss. 48.48 (4) and (14), 48.52 and 49.19 (10) (d) all payments and deductions made under this subsection and uniform fee collections under s. 46.03 (18) shall be deposited in the appropriation under s. 20.435 (3) (ho).

(f) Beginning January 1, 1983, for services under s. 51.35 (3), uniform fee collections under s. 46.03 (18) shall be deposited in the appropriation under s. 20.435 (2) (gk) and all other payments made under this subsection shall be deposited in the general fund and treated as a nonappropriated receipt.

(g) Beginning January 1, 1983, for juvenile field and institutional aftercare services under ch. 48 and for the juvenile offender review program, all payments and deductions made under this subsection and uniform fee collections under s. 46.03 (18) shall be deposited in the general fund and shall be treated as a nonappropriated receipt.

(5) The juvenile correctional rate review council shall review any proposed rates for juvenile services provided by the state under sub. (4).

History: 1979 c. 34; 1979 c. 221 s. 2202 (20); 1981 c. 20, 329; 1983 a. 27, 192.

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

(a) "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).

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

(2) **DEPARTMENTAL DUTIES.** The department shall:

(b) Coordinate the program with:

1. Discharge planning from hospitals;

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 agency 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 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 agency finds that a community arrangement is not feasible under sub. (6) (d).

(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 of social services or public welfare;

2. A combined community services board with the powers and duties specified in ss. 51.42 and 51.437;

3. A community human services board created under s. 46.23; or

4. The director of the department that administers the health and human services programs who is appointed under s. 46.21.

(c) Develop procedures and phases for gradual implementation of this section in accord-

ance 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) After implementing the program for 12 months or after January 1, 1984, whichever is later, 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 or state center for the developmentally disabled.

(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 of social services or public welfare;

5. One representative of the community boards created under s. 51.42 or 51.437; and

6. One representative of the county commission on aging.

(b) If practicable, the county board shall select a physically disabled person as one of the members of the planning committee under par. (a).

(c) The planning committee shall develop a community options plan as an addendum to the coordinated plan and budget under s. 46.031 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. 46.80 (5) and 49.52 (1) (d) and to community mental health boards under s. 51.42 (8).

5. A description of the method to be used by the committee 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.

(5) AGENCY DUTIES. The agency selected by the county board of supervisors to administer the program shall:

(am) Organize assessment activities specified in sub. (6). The agency 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 or in a state center for the developmentally disabled. 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 agency shall coordinate the involvement of representatives from the county department of social services or public welfare, community boards created under s. 51.42 or 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.

(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).

(c) Within the limits of state and federal funds allocated under sub. (7), provide for ongoing case management, periodic case plan review and follow-up services for any person receiving long-term community support services under sub. (6) (b).

(d) 1. Apply the uniform fee schedule under s. 46.03 (18) for long-term community support services provided any person under par. (b), if the person is eligible for medical assistance under s. 49.46 or 49.47 or if the agency finds the person likely to become medically indigent

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within 6 months by spending excess income or assets for medical or remedial care

2. Bill other persons not subject to subd. 1 for the full cost of long-term community support services received.

3. Use funds received under this paragraph to pay for long-term community support services.

(e) 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 residing in a nursing home or state center for the developmentally disabled 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.

(6) ASSESSMENTS. (a) 1. Within the limits of state and federal funds allocated under sub. (7), 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 any of the following facilities:

- a. A nursing home in participating counties.
- b. A state center for the developmentally disabled for extended care placement, or to the Wisconsin veterans home at King, if the person's county of residence is participating in this program.

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 or in a state center for the developmentally disabled. The assessment shall include an explanation of the potential community alternatives to the person being assessed and the person's family or guardian.

2. The requirement for an assessment under the program 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 who are informed about the program but waive the assessment, unless the patient will be eligible for medical assistance within 6 months of assessment.

d. Any person who is readmitted to a nursing home or state center for the developmentally disabled from a hospital within 6 months after being assessed.

3. In each participating county, 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. The county may also elect to assess persons who are eligible for medical assistance and who are already admitted to nursing homes or state centers for the developmentally disabled.

(b) Within the limits of state and federal funds allocated under sub. (7), 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) 1. If an assessment determines that nursing home care is not appropriate for a person who is eligible for medical assistance or who will be eligible within 6 months and if state or federal funds are available to support any needed noninstitutional services for the person in the community, then medical assistance reimbursement is not available for nursing home services provided to the person. An assessment determination that nursing home care is not appropriate supersedes a physician's plan of care authorizing nursing home care if the assessment determination includes review by a physician. An aggrieved person may appeal the assessment decision under ss. 49.45 (5) and 49.50 (8).

2. Subdivision 1 applies only if all counties in the state are participating in the program and are assessing all eligible persons under par. (a). After that time, the assessment criteria for determining whether nursing home care is appropriate shall be uniform statewide and shall be the same as the criteria used for the department's inspection of care reviews of nursing home residents.

3. Counties and their employes and agents are immune from liability for determinations made under subd. 1.

(d) If the county, through an assessment, determines that a community arrangement is not feasible, the agency shall explain the reasons to the person and his or her family or guardian. The agency 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.

(7) FUNDING. (a) From the appropriation under s. 20.435 (4) (b), the department shall

allocate funds to pay assessment and case plan costs under sub. (6) not otherwise paid under s. 46.032 or 49.45. The department shall reimburse counties for the cost of assessing persons eligible for medical assistance under s. 49.46 or 49.47 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.

(b) 1. From the appropriation under s. 20.435 (4) (b), the department shall allocate funds to pay the cost of providing long-term community support services under sub. (5) (b) to persons eligible for medical assistance under s. 49.46 or 49.47 or to persons whom the agency 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 reimbursement rate the department expects under s. 49.45 (6m). The agency 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.

2. No county may use funds received under this paragraph to pay for long-term community support services provided any person who resides in a nursing home or state center for the developmentally disabled, unless the department waives this restriction on use of funds and the services are provided in accordance with a discharge plan.

(c) 1. The department shall allocate funds under this subsection to each participating county. If a county elects to participate in the program for only part of a year, the department shall prorate the county's allocation.

2. Receipt of funds under this section is subject to s. 49.52 (2).

3. The department may not release funds under this section before approving the county's community options plan.

(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:

1. Purchase land or construct buildings;
2. Replace federal, state or county matching funds for long-term community support services previously provided, as indicated by the coordinated plan and budget or by actual expenditures for the year prior to the county's participation in the program, except to the

extent that federal or state funding available for these services decreases; or

3. Reduce the federal, state or county matching expenditures for long-term community support services provided to any person under sub. (5) (b) from funds allocated under s. 46.80 (5), 49.52 (1) (d) or 51.42 (8), except to the extent that federal or state funding allocated under these sections decreases.

(8) COUNTY PARTICIPATION. Any county may elect to participate in the program in 1984, subject to the condition that the total number of nursing home residents in all participating counties in 1984 may not exceed 75% of the state's nursing home population, excluding residents of state centers for the developmentally disabled. In 1985, any county may elect to participate in 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 (1) (b) 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 by state-operated nursing homes. 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) and provided under sub. (5) (b). 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 (1) (b) because of increased utilization

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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.

History: 1981 c. 20; 1983 a. 27; 1983 a. 189 s. 329 (5); 1983 a. 192, 239.

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 employes through redeployment of employes into vacant positions.

(1m) **DEFINITIONS.** In this section:

(a) "Medical assistance" means aid provided under ss. 49.43 to 49.47.

(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) Review and approve or disapprove each plan of care developed under sub. (3) (c) 2.

(e) Submit to the governor and to the presiding officer of each house of the legislature, for distribution to appropriate legislative committees, 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 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 agencies to administer the program, subject to departmental review and approval:

2. A combined community services board with the powers and duties specified in ss. 51.42 and 51.437.

3. A community human services board created under s. 46.23.

4. A community developmental disabilities services board created 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 approved by the department.

(d) Any county participating in the program shall provide case management services, includ-

ing 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) 1, 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.

(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) A team composed jointly of departmental representatives and representatives of the agency administering the program for the county in which the medical assistance recipient resides shall review any application for partici-

pation in the program. Reviews of all applications for relocation under sub. (3r) shall be by departmental representatives. 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. If the person is under guardianship and subject to protective placement under s. 55.06 but the guardian does not consent to participation, the determination to participate in the program shall be made under s. 55.06. If the person is under age 18 and is not subject to s. 55.06 but the person's parent or guardian does not consent to participation, the determination to participate in the program shall be made under ss. 48.35 to 48.363.

2. The county, or the department under sub. (3r), agrees to provide services to the person.

4. The review team 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 90 days after relocating because the person or the county agency 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 90-day period, the person may only be readmitted into a bed not left vacant because of relocation under this section.

(e) To the extent provided in 42 USC 1396n, funding for any person who is relocated under this program may be used for 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.

(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

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level of care provided in a state center for the developmentally disabled.

(5) **FUNDING.** (a) 1. Medical assistance reimbursement for services a county, or the department under sub. (3r), provides under this program is available from the appropriations under s. 20.435 (1) (b) and (o). 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.

2. Medical assistance reimbursement to a state center for the developmentally disabled for persons relocated in order to receive home or community-based services under the program shall be no more than 85% of the center's daily reimbursement rate for medical assistance recipients and shall continue for 90 days after the person's relocation.

(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. 46.80 (5), 49.52 (1) (d) or 51.42 (8), as indicated in the county's coordinated plan and budget.

3. Provide room and board, except for respite care.

4. Provide services within a skilled nursing facility, intermediate care facility or intermediate care facility for the mentally retarded, including a state center for the developmentally disabled.

5. Provide residential services in any community-based residential facility, as defined in s. 50.01 (1), or group home, as defined in s. 48.02 (7) that has more than 4 beds, unless the department approves the provision of services in a community-based residential facility or group home that has 5 to 8 beds.

6. Provide services to a recipient that are not specified in the recipient's written plan of care.

(c) The total allocation under s. 20.435 (1) (b) and (o) to any county, or the department under sub. (3r), for services provided under this section may not exceed \$55 per person relocated under the program per day of relocation for fiscal year 1983-84 and may not exceed \$56.38 per person relocated under the program per day of relocation for fiscal year 1984-85.

(5m) **REPORT.** By March 1 of each year, the department shall submit a report to the joint committee on finance and to the presiding officer of each house of the legislature 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 the secretary of the U.S. department of health and human services approves the waiver request submitted under sub. (2) or on July 2, 1983, whichever is later. 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 an extension, shall continue an additional 3 years.

History: 1983 a. 27.

46.277 Community integration program for medical assistance certified facilities. (1) LEGISLATIVE INTENT.

The intent of the program under this section is to relocate persons from institutional settings, other than the state centers for the developmentally disabled, into appropriate community settings with the assistance of home and community-based care and with continuity of care. 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 ss. 49.43 to 49.47.

(b) "Program" means the community integration program for facilities certified as medical assistance providers, 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 facilities certified as medical assistance providers into their communities by providing home and 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. The department may request an extension to this waiver as provided in s. 46.275 (2). If the department receives this waiver, it shall perform the duties specified in s. 46.275 (2) (a), (c) and (e) and shall:

(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) Review and approve or disapprove each plan of care developed by the county agency under sub. (3).

(3) **COUNTY PARTICIPATION.** (a) The provisions of s. 46.275 (3) apply to county participa-

tion in this program, except that services provided in the program shall substitute for care provided at a facility certified as a medical assistance provider rather than for care provided at a state center for the developmentally disabled and except that the county board of supervisors may designate a county department of social services or public welfare as the agency that administers the program.

(b) 1. Any facility certified as a medical assistance provider from which a patient is relocated in order to receive home or community-based services under the program shall submit a plan for closing all or part of the facility that is approved by the department.

2. Each county agency participating in the program shall provide services to patients of any facility in the county who are relocated as a result of the facility's closing under subd. 1.

(4) ELIGIBILITY OF RESIDENTS. Any medical assistance recipient living in a facility certified as a medical assistance provider 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. The provisions of s. 46.275 (4) (b) apply to participation in the program.

(5) FUNDING. (a) The provisions of s. 46.275 (5) (a) 1 and (b) apply to funding received by counties under the program.

(b) Prior to relocating any person under the program, the department shall submit to the joint committee on finance a method for determining the medical assistance reimbursement levels to be provided to any county under par. (a) for the committee's approval. Total funding to any county for relocating each person under the program may not exceed the statewide average daily medical assistance reimbursement rate for the class of facility involved per day of relocation.

(5m) REPORT. By March 1 of each year, the department shall submit a report to the joint committee on finance and to the presiding officer of each house of the legislature 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.

(6) EFFECTIVE PERIOD. The effective date provisions of s. 46.275 (6) apply to this section.

History: 1983 a. 27.

46.28 Revenue bonding for residential facilities. (1) In this section:

(a) "Authority" means the Wisconsin health facilities authority created under ch. 231 or the Wisconsin housing and economic development authority created under ch. 234.

(b) "Chronically disabled" means any person who is alcoholic, developmentally disabled, drug dependent or mentally ill, as defined in s. 51.01 (5), (8) and (13) or 51.45 (2) (a), or any person who is physically disabled.

(c) "Elderly" means a person 60 years of age or older.

(d) "Residential facility" means a living unit for the elderly or chronically disabled that is developed by a sponsor and that is not connected to a nursing home or hospital except by common service units for laundry, kitchen or utility purposes.

(e) "Sponsor" means a nonprofit participating health institution, as defined in s. 231.01 (6), a tribal council or housing authority or any nonprofit entity created by a tribal council, a nonprofit or limited profit agency or corporation, the department, any board created under s. 46.21, 46.22 (2), 46.23, 51.42 or 51.437, a county commission on aging created under s. 59.07 (93) or any housing authority created under s. 59.075, 66.395, 66.40 or 66.4325.

(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 the elderly and the chronically disabled, 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. 234.70 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. 234.70.

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).

46.30 Community action agencies. (1) DEFINITIONS. In this section:

(a) "Poor person" means a resident of a community served by a community action agency, whose income is at or below 125% of the poverty line.

(b) "Poverty line" means the nonfarm federal poverty line for the continental United States, as defined by the federal department of labor under 42 USC 9902 (2).

(2) CREATION. (a) 1. A community action agency is any of the entities specified in par. (b) that meets the following conditions:

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a. Is capable of performing the functions specified in sub. (3).

b. Receives the approval of the secretary.

c. Receives the approval of the county board of supervisors, if the community action agency serves an entire county, or, if the agency serves a city, village or town, receives the approval of the city's, village's or town's legislative body.

2. Each private, nonprofit community action agency shall be governed by a board consisting of 15 to 51 members, chosen from the following groups:

a. One-third of the members shall be elected public officials or their representatives. If the number of elected public officials who are reasonably available and willing to serve on a governing board is insufficient to meet this requirement, appointed public officials may be substituted. The chief executive or the legislative body of the county, city, village or town that approved the creation of a community action agency under subd. 1. c shall appoint these members.

b. At least one-third of the members shall represent poor persons in the community to be served by the community action agency, being chosen in accordance with democratic selection procedures adequate to ensure that they are selected by and that they represent poor persons.

c. The remaining members shall represent specific groups or areas within the community to be served by the community action agency. The members selected under subd. 2. a and b shall determine which groups or areas are to be represented and shall delegate to the group, or to residents of the area, the task of selecting the representative. Representatives of an area of the community shall reside within that area.

3. Each community relations-social development commission created under s. 66.433 that acts as a community action agency shall modify the composition of its commission so that the commission is composed of 15 to 51 members, chosen from the groups specified in subd. 2. a to c.

(b) The following entities may organize as community action agencies:

1. Any private, nonprofit community organization, including any migrant or seasonal farm worker organization.

2. Any community relations-social development commission created under s. 66.433.

3. Any entity designated by the community services administration as a community action agency under 42 USC 2790 to 2797, in effect on August 1, 1981, for federal fiscal year 1981, unless the agency lost its designation. Any such entity is deemed to meet the conditions under par. (a) 1.

(c) The approval of a community action agency may be rescinded but only if there is good cause and if the decision to rescind is made by both the legislative body of the county, city, village or town that granted the approval and the secretary. At least 90 days before rescinding approval, the legislative body or secretary shall notify the community action agency of its reasons for the action and hold a public hearing in the community concerning the action.

(3) POWERS AND DUTIES. (a) A community action agency shall do all of the following:

1. Administer funds received from the department under sub. (4) and funds from other sources provided to support a community action program.

2. Set personnel, program and fiscal policies. Each community action agency shall set policies and procedures governing employe compensation and employment qualifications for itself and its agents. These policies and procedures shall ensure that employment practices are impartial and are designed to employ only competent persons, and shall guard against personal or financial conflicts of interest. Each community action agency shall also define the duties of its employes regarding advocacy on behalf of poor persons.

3. Involve, to the greatest extent practicable, poor persons in developing and implementing programs in order to ensure that these programs:

a. Will stimulate the capabilities of these persons for self-advancement.

b. Will be meaningful to and widely utilized by these persons.

4. Allow poor persons to influence the character of programs operated by the community action agency.

5. Involve members of the community in planning, conducting and evaluating its programs.

6. Conduct its program in a manner free of discrimination based on political affiliation and of personal or familial favoritism. Each community action agency shall establish policies and procedures to carry out this requirement and to hold staff members accountable for complying with matters governed by this section and by other state or federal laws, rules or regulations.

7. Release any record of the community action agency for examination or copying upon request, unless disclosure would constitute an unwarranted invasion of an individual's privacy. Each community action agency shall require its agents to make their records similarly available. Each community action agency shall hold public hearings on request to provide

information and to receive comments about its activities.

8. Appoint a representative or representatives to the citizen advisory committee under s. 46.031 (3) (a), in order to participate in developing and implementing programs designed to serve the poor.

(b) A community action agency may:

1. Approve program plans and priorities.
2. Resolve internal personnel or fiscal matters.

3. Create a community action program. If the community action agency creates a program, it shall plan, coordinate, administer and evaluate the program. A community action program may include provisions that will help poor persons:

- a. Secure and retain employment.
- b. Improve their education.
- c. Make better use of available income.
- d. Obtain and maintain adequate housing and a suitable living environment.
- e. Secure needed transportation.
- f. Obtain emergency assistance. Through its program, the community action agency may provide emergency supplies or services to meet basic needs.
- g. Participate in community affairs.
- h. Use more effectively other available programs.

4. Create methods by which poor persons can work with private groups to solve common problems.

5. Research the causes of and problems created by poverty in the community.

6. Determine if programs to reduce poverty are working effectively.

7. Initiate and sponsor projects to aid poor persons that provide otherwise unavailable services.

8. Transmit information between public and private organizations and otherwise coordinate the provision of public and private social services programs to eliminate overlap and ensure effective delivery of the programs.

9. Contract with other persons to perform the community action agency's functions. The community action agency may delegate responsibility for funding or administering its programs or for making policy determinations concerning a particular geographic area of the community it serves only if poor persons represent at least one-third of the members of the governing body of the agent being delegated this responsibility.

(4) FUNDING. (a) The department shall allocate the federal community services block grant funds received under 42 USC 9903 and deposited in the appropriations under s. 20.435 (4) (mc) and (md) as provided in this subsection.

(b) The department shall allocate at least 90% of the funds to community action agencies and organizations.

(c) The department may not allocate more than 5% of the funds for state administrative expenses.

(d) Before January 1 of each year the department shall contract with each agency and organization being funded, specifying the amount of money the organization will receive and the activities to be carried out by the organization.

History: 1983 a 27, 538

46.36 Sewer system at Taycheedah correctional institution. The department of health and social services, with the approval of the governor, may enter into an agreement containing such terms, conditions and covenants as are approved by the building commission, to participate in the construction of a sanitary sewer system in the area adjacent to the Taycheedah correctional institution in the town of Taycheedah, Fond du Lac county; to connect the sewer system of the Taycheedah correctional institution thereto; to pay sewage disposal charges; and to grant easements or convey land to meet construction requirements.

History: 1975 c. 189 s. 99 (1); 1975 c. 224 s. 146m

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 sewage 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 such dwelling or other units as now exist or as may be erected on the railroad and state owned property adjacent to this area.

History: 1973 c. 90 s. 560 (3).

46.50 State mental health authority. In order to promote co-ordination 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 co-operate with the federal government in promoting the extension of such services.

46.60 Controlled substances therapeutic research. (1) DEFINITIONS. In this section:

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(a) "Board" means the controlled substances board.

(b) "Marijuana" means marijuana, tetrahydrocannabinols or a chemical derivative of tetrahydrocannabinols.

(c) "Practitioner" has the meaning specified under s. 450.07 (1) (e).

(2) **DUTIES OF THE BOARD.** Upon the request of any practitioner, the board shall aid the practitioner in applying for and processing an investigational drug permit for marijuana under 21 USC 355 (i). If the federal food and drug administration issues an investigational drug permit, the board shall approve which pharmacies can distribute the marijuana to patients upon written prescription. Only pharmacies located within hospitals are eligible to receive the marijuana for distribution. The board shall also approve which practitioners can write prescriptions for the marijuana.

History: 1981 c. 193; 1983 a. 189 s. 329 (18)

46.70 Delivery of services to American Indians. (1) To facilitate the delivery of accessible, available and culturally appropriate social services and mental hygiene services to American Indians by county departments of social services or public welfare, created under s. 46.22 or 49.51, or by boards created under s. 51.42 or 51.437, the department may fund federally recognized tribal governing bodies.

(2) From the appropriations under s. 20.435 (4) (dL) and (o), the department may make available to any of the 11 federally recognized tribal governing bodies in this state funds for the purposes stated in sub. (1), except that beginning January 1, 1984, the department may make funds under this section available only to federally recognized tribal governing bodies that received funds under this section in calendar year 1983. Beginning January 1, 1983, and ending December 31, 1983, each tribal governing body may apply to the department for up to \$25,000. Beginning January 1, 1984, and ending December 31, 1984, each eligible tribal governing body may apply to the department for up to \$25,500. Beginning January 1, 1985, and ending June 30, 1985, each eligible tribal governing body may apply to the department for up to \$13,000. Receipt of funds is contingent upon department approval of the application. The department may partially approve any application and provide only part of the funds requested. Each application shall contain a plan for expenditure of funds, consistent with the purposes stated in sub. (1).

(3) Reimbursement to each tribal governing body is limited to the lesser of total costs or the contract amount, not to exceed the amount specified in sub. (2). Reimbursement to each

tribal governing body is also limited to expenditures contained in the plan approved under sub.

(2). The department may make advance payments of up to one-twelfth of an annual contract. As a condition of reimbursement, each tribal governing body shall maintain an accounting system and shall submit expenditure reports as the department prescribes in the contract.

History: 1981 c. 20; 1983 a. 27.

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.

(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) The department shall administer a state supplement to the federal congregate nutrition projects under 42 USC 3030e, in effect on April 30, 1980, from the appropriation under s. 20.435 (4) (dh) which will promote expansion of projects throughout the state. The department shall allocate these funds based on the percentage of the state's population of low-income persons over age 60 who reside in each county or who are members of an American Indian tribe, except that all counties receiving federal funds for congregate nutrition projects on or after July 1, 1977, may not receive an amount 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) From the appropriation under s. 20.435 (4) (dh), the department shall provide funds to counties and to federally recognized tribal governing bodies to supplement federal projects providing home delivered meals under 42 USC 3030f and 3030g or to supplement nonfederally funded projects under s. 46.85. The department shall allocate these funds based on the percentage of the state's population of low-income persons over age 60 who reside in each county or who are members of an American Indian tribe. Beginning January 1, 1982, and ending December 31, 1982, the total amount allocated may not exceed \$580,000. Beginning January 1, 1983, and ending June 30, 1983, the total amount allocated may not exceed \$300,100.

(c) The department shall, by rule, define the standard of "low income" that it uses in this subsection.

(6) The department shall make known to communities, county commissions on aging, and area agencies on aging the services provided under s. 49.46 (2) (a) 9 in an effort to stimulate the development and provision of services therein.

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)

46.85 Senior companion and retired senior volunteers programs. (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 volunteers program modeled after the federal retired senior volunteers 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 60 or over 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.

(3) Prior to January 1, 1982, the department shall make renewable state grants-in-aid from the appropriation under s. 20.435 (4) (dh) to qualified public and nonprofit private agencies for the operation of local senior companion and retired senior volunteers program units. The grants shall be for periods of 12 months or less and shall be for no more than 90% of approved nonfederal expenditures and other expenditures specifically authorized by the secretary. The grants may not be used to match other state funds. The department shall apportion funds provided under this subsection to each county that receives funds under this section for the period from January 1, 1981, to June 30, 1981. The department shall allocate the amount apportioned upon application by qualified public and nonprofit private agencies. Any amounts apportioned to a county but not allocated may be apportioned and allocated to other counties. Funds provided under this subsection may not

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be allocated to any project unless that project maintains its calendar year 1979 levels of federal and local funding, except to the extent that available federal funding decreases. Programs funded under this subsection and established after July 29, 1979, shall engage at least 10 companions or volunteers or combination thereof.

(3m) From the appropriation under s. 20.435 (4) (dh), the department shall provide a state supplement to federally funded senior companion and retired senior volunteer program units. Beginning January 1, 1982, and ending December 31, 1982, each unit shall receive an amount equal to its 1981 state allocation. In addition, the department may provide up to \$11,600 to the units. Beginning January 1, 1983, and ending June 30, 1983, each unit shall receive 50% of its 1981 state allocation. In addition, the department may provide up to \$11,800 to the units.

(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).

46.90 Elder abuse reporting system. (1) DEFINITIONS. In this section:

(a) "Abuse" means the wilful infliction on an elder person of physical pain or injury or unreasonable confinement.

(b) "County agency" means the agency in each county designated under sub. (2).

(c) "Elder person" means a person who is age 60 or older or who is subject to the infirmities of aging.

(d) "Infirmities of aging" has the meaning provided under s. 55.01 (3).

(e) "Material abuse" means the misuse of an elder person's property or financial resources.

(f) "Neglect" means a significant danger to an elder person's physical or mental health because the person who takes care of the elder person is unable or fails to provide adequate food, shelter, clothing or medical or dental care.

(g) "Self-neglect" means a significant danger to an elder person's physical or mental health because the elder person is responsible for his or

her own care but is unable to provide adequate food, shelter, clothing or medical or dental care.

(2) COUNTY AGENCY DESIGNATION. Each county board shall designate an agency in the county as the county agency for the purposes of this section.

(3) COUNTY AGENCY DUTIES. (a) Each county agency shall develop a policy for notifying law enforcement officials in appropriate cases and shall establish an elder abuse reporting system to carry out the purposes of this section. Each county agency shall enter into a memorandum of understanding regarding the operation of the system with the county department of public welfare or social services and with any private or public agency, including a board created 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, material abuse, neglect or self-neglect and for the provision of specific services.

(b) Each county agency shall receive reports of abuse, material abuse, neglect or self-neglect of elder persons.

(c) Each county agency shall publicize the existence of an elder abuse reporting system in the county and shall provide a publicized telephone number which can be used by persons wishing to report suspected cases of abuse, material abuse, neglect or self-neglect.

(4) REPORTING. (a) 1. Any person may report to the county agency that he or she believes that abuse, material abuse or neglect has occurred if the person is aware of facts or circumstances that would lead a reasonable person to believe or suspect that abuse, material abuse or neglect has occurred. The person shall indicate the facts and circumstances of the situation as part of the report.

2. Any person who believes that self-neglect has occurred may report that belief and the facts and circumstances contributing to the belief to the county agency.

(b) 1. No employer may discharge or otherwise discriminate against any person for reporting in good faith under this subsection.

2. a. Any employe of a state agency who is discharged or otherwise discriminated against may file a complaint with the personnel commission under s. 230.45 (1) (j). In this subparagraph, "agency" has the meaning provided under s. 111.32 (6) (a).

b. Any employe of an employer not described in subd. 2. a who is discharged or otherwise discriminated against may file a complaint with the department of industry, labor and human relations under s. 101.222 (5).

(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.

(5) INVESTIGATIONS AND PROVISION OF SERVICES. (a) Except as otherwise provided, upon receiving a report of abuse, material abuse, neglect or self-neglect, the county agency shall either investigate the report or refer the report to another agency for investigation. Upon receiving a report of abuse, material abuse, neglect or self-neglect of an elder person who resides in a community-based residential facility or a nursing home licensed under s. 50.03 or of an elder person who receives services from a home health agency licensed under s. 141.15 and the person suspected of abusing or neglecting the person is an employe of the home health agency, the county agency may not investigate the report but it shall refer the report within 24 hours after the report is received, excluding Saturdays, Sundays and legal holidays, to the department for investigation. An investigation of a report of abuse, neglect or self-neglect shall be commenced within 24 hours after a report is received, excluding Saturdays, Sundays and legal holidays. An investigation of a report of material abuse shall be commenced within 5 days after a report is received, excluding Saturdays, Sundays and legal holidays. If a report is referred to the department, pars. (b) to (g) and sub. (6) do not apply to the department.

(b) The scope of the investigation is at the discretion of the investigating agency and may include the following:

1. A visit to the elder person's residence.
2. Observation of the elder person.
3. An interview with the elder person. To the extent practicable, this interview shall be private.
4. An interview with any person who takes care of the elder person.
5. A review of treatment and health care records.

(c) If an investigator so requests, a sheriff or police officer shall accompany the investigator during visits to the elder person's residence and shall provide other assistance as needed.

(d) 1. If any person except the elder person in question interferes with the investigation, the investigator may apply for an order under ch. 813 prohibiting the interference.

2. The court shall grant the order upon a showing that there is reasonable cause to believe that abuse, material abuse, neglect or self-neglect has occurred and that the interference complained of, if continued, would make it difficult to determine whether abuse, material abuse, neglect or self-neglect has occurred, is occurring or may recur.

(e) After the investigation is completed, the county agency or the investigating agency shall determine if the elder person or any other person involved in the alleged abuse, material abuse, neglect or self-neglect is in need of services under this chapter or ch. 47, 49, 51 or 55. Within the limits of available state and federal funds and of county funds appropriated to match the state and federal funds, the county agency shall provide the necessary services or arrange for the provision of the services with other agencies or individuals. Those services provided shall be rendered under the least restrictive conditions necessary to achieve their objective.

(f) If the investigator has reason to believe that substantial physical harm, irreparable injury or death may occur to an elder person, the investigator shall immediately notify the protective services agency designated under s. 55.02.

(g) An elder person may refuse to allow an investigation under this subsection or may refuse to accept services unless a guardian authorizes the investigation or services. The investigator shall notify the elder person of this right to refuse before or at the point of commencing an investigation and the county agency or other provider agency shall notify the elder person of this right before providing services.

(6) RECORDS; CONFIDENTIALITY. (a) The county agency or other investigating agency shall prepare a report on each investigation it conducts unless the agency finds, at the conclusion of the investigation, that the report of alleged abuse, material abuse, neglect or self-neglect is without foundation. If an agency other than the county agency conducts the investigation, it shall submit a copy of the investigation report to the county agency.

(b) Reports of suspected abuse, material abuse, neglect or self-neglect and investigation reports under this section are confidential and may not be released by the county agency or other investigating agency, except under the following circumstances they may be released:

1. To the elder person and any person named in a report who is suspected of abusing or neglecting an elder person. These persons may inspect the report on the investigation, except that information identifying the person who initially reported the suspected abuse, material abuse, neglect or self-neglect may not be released.

2. To the protective services agency notified 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

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program monitoring and evaluation. Information obtained under this subdivision shall remain confidential and shall not be used in any way that discloses the names 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 county 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. Such information shall remain confidential. In approving research projects under this subdivision, the department shall impose any additional safeguards needed to prevent unwarranted disclosure of information.

5. Pursuant to lawful order of a court of record.

6. To any agency or individual that provides services under sub. (5) (e). Information obtained under this subdivision shall remain confidential.

7. To the guardian of the elder person or the guardian of any person named in a report who is suspected of abusing or neglecting an elder person. These persons may inspect the report on the investigation, except that information identifying the person who initially reported the suspected abuse, material abuse, neglect or self-neglect may not be released.

8. To law enforcement officials in accordance with the policy developed under sub. (3) (a).

(c) 1. Any person, including the state or any political subdivision of the state, violating this subsection shall be 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 such costs and reasonable actual attorney fees as may be incurred by the person damaged. A custodian of records incurs no liability under this subdivision for the release of records in accordance with this subsection while acting in good faith.

2. In any action brought under subd. 1 in which the court determines that the violator acted in a manner that was knowing and wilful, 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 this paragraph that the plaintiff suffer or be threatened with actual damages.

3. An individual may bring an action to enjoin any violation of this subsection or to compel compliance with this subsection, and may in the same action seek damages as provided in this paragraph. The individual may recover costs and reasonable actual attorney fees as may be incurred in the action, if he or she prevails.

(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 employe who violates this subsection may be subject to discharge or suspension without pay.

(7) EXCEPTION. Nothing in this section shall be construed to mean that a person is abused, neglected or in need of emergency or protective services solely because he or she consistently relies upon treatment by spiritual means through prayer for healing in accordance with his or her religious tradition.

(8) DEPARTMENT DUTIES. (a) The department shall develop a plan to assist county agencies in determining appropriate responses to reports of abuse, material abuse, neglect or self-neglect.

(b) The department shall prepare and distribute sample report forms for use by county agencies.

(c) The department shall collect statistical information from each county pertaining to each reported case of abuse, material abuse, neglect or self-neglect. The department may require investigators to submit statements to the department that summarize the information being reported. These summary statements may not name or otherwise identify individual persons. 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 abuse and the elder abuse reporting system under this section. The department shall also develop informational materials to be used by county agencies regarding elder abuse and 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.

History: 1983 a. 398

NOTE: Sub. (8) (d) is shown as affected by 1983 Wis. Act 398, section 3m, eff. 6-30-85, which substitutes "The" for "From the funds appropriated under s. 20.435 (4) (d), the".

46.92. Telecommunication aid for the hearing impaired. (1) ASSISTANCE. From the appropriation under s. 20.435 (4) (cm), beginning on November 1, 1984, the department shall, sub-

ject to the availability of funds, provide assistance to deaf and severely 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 licensed physician, an audiologist certified by the American speech and hearing association 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; 1983 a. 538 s. 51.

46.94 Notice of utility disconnection required. Any public utility, as defined in s. 196.01 (5), or any fuel distributor furnishing heat, light or power to a residential customer shall provide written notice of intent to disconnect or discontinue service during the months of November to April and shall include information concerning any federal, state or local program that provides assistance for fuel or home heating bills. The department shall provide printed information at no cost upon request to any fuel distributor serving residential customers except public utilities. The information shall describe the nature and availability of any federal, state or local program that provides assistance for fuel or home heating bills.

History: 1979 c. 48; 1979 c. 361 ss. 61, 108; 1981 c. 20 s. 1738; 1983 a. 53 s. 114.

46.95 Domestic abuse grants. (1) DEFINITIONS. In this section:

(a) "Domestic abuse" means physical abuse, including a violation of s. 940.225 (1), (2) or (3), or any threat of physical abuse between adult family or household members or by a minor family or household member against an adult family or household member. "Domestic abuse" does not mean physical abuse, including a violation of s. 940.225 (1), (2) or (3), or any threat of physical abuse against a minor family

or household member by an adult family or household member.

(b) "Family member" means a spouse, a parent, a child or a person related by consanguinity to another person.

(c) "Household member" means a person currently or formerly residing in a place of abode with another person.

(d) "Organization" means a nonprofit corporation or a public agency which provides or proposes to provide any of the following domestic abuse services:

1. Shelter facilities or private home shelter care.
2. Advocacy and counseling for victims.
3. A 24-hour telephone service.
4. Community education.

(2) **DISTRIBUTION OF FUNDS.** (a) The secretary shall make grants from the appropriations under s. 20.435 (4) (cb) and (hh) to organizations for the provision of any of the services specified in sub. (1) (d). Grants may be made to organizations which have provided those domestic abuse services in the past or to organizations which propose to provide those services in the future. No grant may be made to fund services for child abuse or abuse of elderly persons.

(b) In reviewing applications for grants, the department shall consider:

1. The need for domestic abuse services in the specific community in which the applicant provides services or proposes to provide services.
2. Coordination of the organization's services with other resources in the community and the state.
3. The need for domestic abuse services in the areas of the state served by each health systems agency designated under 42 USC 300L.
4. The needs of both urban and rural communities.
5. Maintenance of effort, by a city or county.

(c) No grant may be made to an organization which provides or will provide shelter facilities unless the department of industry, labor and human relations determines that the physical plant of the facility will not be dangerous to the health or safety of the residents when the facility is in operation. No grant may be given to an organization which provides or will provide shelter facilities or private home shelter care unless the organization ensures that the following services will be provided either by that organization or by another organization, person or agency:

1. A 24-hour telephone service.
2. Temporary housing and food.
3. Advocacy and counseling for victims.
4. Referral and follow-up services.

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5. Arrangements for education of school-age children.

6. Emergency transportation to the shelter.

7. Community education.

(d) 1. No organization may receive more than 70% of its operating budget or \$100,000 annually, whichever is less, under this section.

2. Not more than 33 1/3% of the 30% of an organization's operating budget not funded by a grant under subd. 1 may consist of the value of in-kind contributions. The department shall establish guidelines regarding which contributions qualify as in-kind contributions.

(e) Of the funds distributed under this section for fiscal year 1983-84, not less than 90% shall be used to continue funding domestic abuse services that currently receive state funds under this section. Of the funds distributed under this section for fiscal year 1984-85, not less than 95% shall be used to continue funding domestic abuse services that received state funds under this section during the previous fiscal year. For new domestic abuse services, the department shall give preference to services in areas of the state where these services are not otherwise available. Any funds that are not spent under one category of this formula may be reallocated by the department to the other category.

(3) COUNCIL ON DOMESTIC ABUSE. The council on domestic abuse shall:

(a) Review applications for grants under this section and advise the secretary as to whether the applications should be approved or denied. The council shall consider the criteria under sub. (2) (b) when reviewing the applications.

(b) Advise the secretary and the legislature on matters of domestic abuse policy.

(c) Develop with the judicial conference and provide without cost simplified forms for filing petitions for domestic abuse restraining orders and injunctions under s. 813.12.

History: 1979 c. 111; 1979 c. 355 s. 241; 1981 c. 20 ss 792c, 792m, 2202 (20) (s); 1983 a. 27 ss 997m, 998, 2202 (20); 1983 a. 204.

46.96 Independent living center grants. (1)

In this section:

(a) "Independent living center" means a community-based public or private nonprofit, nonresidential program that substantially involves the severely disabled individuals it serves in its policy direction and management and that provides directly or indirectly through referral, those services which assist severely disabled individuals to increase personal self-determination and to minimize unnecessary dependence upon others.

(b) "Severely disabled individual" means any individual whose ability to function independently in his or her family or community or

whose ability to engage or continue in employment is so limited by the severity of his or her disability that comprehensive or vocational rehabilitation services are required to improve significantly 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 (4) (kc) or s. 20.435 (5) (bm) and (na) to independent living centers for nonresidential services to severely disabled persons.

(3) From the amounts distributed under this section the department shall make grants to independent living centers that received state or federal funds designated for independent living centers in fiscal year 1982-83 in an amount up to \$607,900 in fiscal year 1983-84 and \$607,900 in fiscal year 1984-85.

History: 1983 a. 27.

46.98 Child care program. (1) DEFINITIONS.

In this section:

(a) "Child care provider" means a provider licensed under s. 48.65, certified under s. 48.651 or established or contracted for under s. 120.13 (14).

(b) "Gainfully employed" means working, seeking employment or participating in a training or educational program designed to lead directly to paid employment.

(c) "Parent" means a parent, guardian, foster parent, legal custodian or a person acting in the place of a parent.

(2) DISTRIBUTION OF DAY CARE FUNDS. The department shall, for the purposes specified in sub. (3), distribute the funds allocated for day care services under s. 49.52 (1) (d) to county departments of public welfare and social services created under s. 46.22 or 49.51 or boards created under s. 46.23 in accordance with a formula. The department shall promulgate by rule a procedure to be used annually to develop a formula for the distribution of the funds. The department may not make payments under this section before January 1, 1985.

(3) USE OF DAY CARE FUNDS. (a) Funds distributed under sub. (2) may only be used for the purposes specified in this section. The funds shall be used to provide care for children under age 12 for all or part of a day during which a child's parent is gainfully employed and to provide care for children under age 12 as a service to prevent or remedy child abuse or neglect, to assist families in stress or to preserve a family unit.

(b) Counties may spend moneys distributed under sub. (2) for child care purposes other than those in par. (a) only with the approval of the

department. Child care purposes include start-up, maintenance and expansion of child care services and facilities, education and training for persons providing child care and the payment of wages for recipients of aid under s. 49.19 who work for a child care provider.

(c) From the funds distributed under sub. (2), a county may provide day care services itself or it may purchase day care services from a child care provider. In addition, from the funds distributed under sub. (2), each county shall, subject to the availability of funds, provide day care by offering to each eligible parent a voucher for the payment of day care services provided by a child care provider. Each county shall allocate all or a portion of its day care funding for payment of vouchers. Except for parents who are eligible under sub. (4) (a) 4, an eligible parent has the right to choose whether the care will be provided in a day care center, in the home of another person or, subject to the county's approval, in the parent's home. Notwithstanding s. 46.03 (18) (a), a parent who uses vouchers for the payment of day care services may supplement the uniform fee for day care services set under s. 46.03 (18) (a).

(4) ELIGIBILITY FOR DAY CARE FUNDS. (a) The following persons are eligible to receive aid from the funds distributed under sub. (2):

1. A parent who is gainfully employed and who receives aid under s. 49.19, if the dependent child care income disregard under 42 USC 602 is less than the actual amount the parent spends for child care.

2. A parent who is gainfully employed, who is in need of child care services and whose family income is equal to or less than 70% of the state median income. The department shall annually determine the state median income.

3. A parent who is gainfully employed, who is in need of child care services and whose family income is greater than 70% of the state median income to the extent determined annually by the department. The department shall annually determine the state median income.

4. A parent in need of child care services to prevent or remedy child abuse or neglect, to alleviate stress in the family or to preserve the family unit.

(b) Parents receiving aid under this section whose family income is equal to or greater than 50% of the state median income are liable for the cost of child care received in accordance with a fee schedule developed by the department based on ability to pay. Fees may be waived for persons receiving aid under par. (a) 4.

(c) If funds distributed under this section are insufficient to meet the needs of all eligible parents, a county may give priority to parents who are eligible to receive aid under par. (a) 4.

(d) Each county shall annually set a maximum rate that it will pay for day care services provided to eligible parents. The department shall annually review each county's rate and shall approve it if the department finds that the rate is set at a reasonable and customary level which does not preclude an eligible parent from having a reasonable selection of child care providers. The department shall promulgate by rule a procedure and criteria for approving county rates.

(5) DEPARTMENTAL DUTIES. (a) The department shall monitor the administration of the programs in this section.

(b) The department shall provide technical assistance to counties relating to the administration of the programs under this section.

(c) The department shall assess the extent and location of unmet child care needs in the state.

(d) The department shall provide information to the public, counties and child care providers relating to child care services.

(e) The department may promulgate rules for the administration of this section.

History: 1983 a 193