

1999 DRAFTING REQUEST

Bill

Received: **09/8/98**

Received By: **kenneda**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget 7-9546**

By/Representing: **Jablonsky**

This file may be shown to any legislator: **NO**

Drafter: **kenneda**

May Contact: **DHFS--Hadidian**

Alt. Drafters:

Subject: **Mental Health - miscellaneous**

Extra Copies:

Topic:

DOA:.....Jablonsky - Mental health services contracting

Instructions:

See Attached; same as 97-5279

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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Page 2

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14 2/3 jg km 2/3
cmh Km 2/3

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13/31 jlg [Signature] [Signature]
 [Signature] / KM
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DOA:.....Jablonsky - Non-institutional mental health services at mental health institutes

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See Attached; same as 97-5279

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1?	kenneda	1-9-8-98 JCG	8/9/9	9/9			

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DHFS

Department of Health and Family Services
1999-2001 Biennial Budget Statutory Language Request
May 8, 1998

Alternative Service Configurations

Current Language

s. 51.05

Proposed Change

Amend s. 51.05 to allow the Mental Health Institutes (MHIs) to offer services besides the hospital-level services currently provided.

Effect of the Change

The Institutes will have the flexibility to expand their programs to provide a broad array of mental health services.

Rationale for the Change

Increasingly the trend for treating the mentally ill is away from institutional treatment and towards community treatment. There are some clients, however, for whom community treatment options are very limited, such as juvenile sex offenders or forensic patients. The MHIs will continue to be the primary provider of services to these clients, but these patients may not always need hospital-level services. Juveniles, for example, might do better in a group home, coming to the MHIs during the day to receive treatment services. Such an arrangement would be less costly than residence at one of the MHIs. Allowing the MHIs to provide a range of services besides fully accredited hospital services should result in the provision of the most appropriately suited and most cost-effective services.

Desired Effective Date: Upon Passage of Bill
Agency: DHFS
Agency Contact: Ellen Hadidian
Phone: 266-8155

7/17/98: From Ellen Hadidian: also delete approval by co. of day treatment care. Draft is to cover day treatment services. DAK



State of Wisconsin
1997-1998 LEGISLATURE

002271
LRB-52791
DAK:.....
Jlg

D-NOTE

DOA:.....Jablonsky - Non-institutional mental health services at mental health institutes

FOR ¹⁹⁹⁹⁻⁰¹~~1997-98~~ BUDGET — NOT READY FOR INTRODUCTION

1 *do not gen*
AN ACT ...; relating to: provision of day treatment services by a mental health
2 institute. ✓

Analysis by the Legislative Reference Bureau

✓ HEALTH AND HUMAN SERVICES

✓ MENTAL ILLNESS AND DEVELOPMENTAL DISABILITIES

Under current law, the Mendota Mental Health Institute and the Winnebago Mental Health Institute are operated by the department of health and family services (DHFS) to provide specialized inpatient psychiatric services, research and education. The county department of community programs must under contract authorize all care of any patient in one of the mental health institutes.

This bill expands the type of mental health services provided by the mental health institutes to include day treatment services and excepts these services from the requirement for prior authorization by a county department of community programs.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 SECTION 1. 51.01 (12)^X of the statutes is amended to read:

2 51.01 (12) "Mental health institute" means any institution operated by the
3 department for specialized psychiatric services, including day treatment services,
4 and for research,[✓] and education, and which is responsible for consultation with
5 community programs for education and quality of care.

History: History: 1975 c. 430 ss. 11, 81; 1977 c. 26; 1977 c. 203 s. 106; 1977 c. 428; 1981 c. 79 s. 17; 1983 a. 189 s. 329 (19); 1983 a. 441; 1985 a. 29 s. 3202 (23); 1985 a. 265, 307; 1993 a. 445; 1995 a. 27; 1997 a. 47.

6 SECTION 2. 51.05 (2)^X of the statutes is amended to read:

7 51.05 (2) The department may not accept for admission to a mental health
8 institute any resident person, except in an emergency, unless the county department
9 under s. 51.42 in the county where the person has legal residency authorizes the care,
10 as provided in s. 51.42 (3) (as). Patients who are committed to the department under
11 s. 975.01, 1977 stats., or s. 975.02, 1977 stats., or s. 971.14, 971.17, 975.06 or 980.06,
12 admitted by the department under s. 975.17, 1977 stats., ~~or~~[✓] are transferred from a
13 juvenile correctional facility or a secured child caring institution, as defined in s.
14 938.02 (15g), to a state treatment facility under s. 51.35 (3) or from a jail or prison
15 to a state treatment facility under s. 51.37 (5)[✓] or who are receiving only day treatment
16 services from the[✓] mental health institute are not subject to this section.

History: History: 1975 c. 430; 1977 c. 428; 1979 c. 117; 1983 a. 293; 1985 a. 29 s. 3200 (56); 1985 a. 176; 1987 a. 27; 1989 a. 31, 359; 1991 a. 315; 1993 a. 437 ss. 103 and 266; 1993 a. 479; 1995 a. 27 ss. 9126 (19), 9145 (1); 1995 a. 77, 216; 1997 a. 27, 164.

17 SECTION 3. 51.05 (6) of the statutes is amended to read:

18 51.05 (6) HEARING-IMPAIRED INDIVIDUALS. The department shall provide mental
19 health services appropriate for hearing-impaired individuals who are residents of
20 ~~of~~ [✓] are committed, admitted or transferred to or receiving day treatment services
21 from a mental health institute.

History: History: 1975 c. 430; 1977 c. 428; 1979 c. 117; 1983 a. 293; 1985 a. 29 s. 3200 (56); 1985 a. 176; 1987 a. 27; 1989 a. 31, 359; 1991 a. 315; 1993 a. 437 ss. 103 and 266; 1993 a. 479; 1995 a. 27 ss. 9126 (19), 9145 (1); 1995 a. 77, 216; 1997 a. 27, 164.

22 SECTION 4. 51.42 (3) (as) 1. of the statutes is amended to read:

1 51.42 (3) (as) 1. A county department of community programs shall authorize
2 all care of any patient in a state, local or private facility, [✓]other than day treatment
3 services in a mental health institute, under a contractual agreement between the
4 county department of community programs and the facility, unless the county
5 department of community programs governs the facility. The need for inpatient care
6 shall be determined by the program director or designee in consultation with and
7 upon the recommendation of a licensed physician trained in psychiatry and
8 employed by the county department of community programs or its contract agency.
9 In cases of emergency, a facility under contract with any county department of
10 community programs shall charge the county department of community programs
11 having jurisdiction in the county where the patient is found. The county department
12 of community programs shall reimburse the facility for the actual cost of all
13 authorized care and services less applicable collections under s. 46.036, unless the
14 department of health and family services determines that a charge is
15 administratively infeasible, or unless the department of health and family services,
16 after individual review, determines that the charge is not attributable to the cost of
17 basic care and services. A county department of community programs may not
18 reimburse any state institution or receive credit for collections for care received
19 therein by nonresidents of this state, interstate compact clients, transfers under s.
20 51.35 (3), and transfers from Wisconsin state prisons under s. 51.37 (5) (a),
21 commitments under s. 975.01, 1977 stats., or s. 975.02, 1977 stats., or s. 971.14,
22 971.17 or 975.06 or admissions under s. 975.17, 1977 stats., or children placed in the
23 guardianship of the department of health and family services under s. 48.427 or
24 48.43 or under the supervision of the department of corrections under s. 938.183 or

- 1 938.355. The exclusionary provisions of s. 46.03 (18) do not apply to direct and
2 indirect costs which are attributable to care and treatment of the client.

History: History: 1971 c. 125; 1973 c. 90, 198, 333, 336; 1975 c. 39, 198, 199, 224, 422; 1975 c. 428 s. 16; 1975 c. 430 ss. 24 to 31, 80; 1977 c. 26 ss. 37, 38, 75; 1977 c. 29 ss. 612 to 623p, 1656 (18); 1977 c. 193; 1977 c. 203 s. 106; 1977 c. 272; 1977 c. 354 s. 101; 1977 c. 418, 428, 447; 1979 c. 34, 117, 177, 221, 330, 355; 1981 c. 20 ss. 923 to 942, 2202 (20) (d), (n), (q); 1981 c. 93 ss. 105 to 122, 186; 1981 c. 329; 1983 a. 27 ss. 1106 to 1112, 2202 (20); 1983 a. 189 ss. 44, 329 (5); 1983 a. 192, 239, 365, 375, 524; 1985 a. 29, 120, 176; 1987 a. 3, 27, 199, 339, 366; 1989 a. 31, 122; 1991 a. 39, 274, 315; 1993 a. 16, 437, 445; 1995 a. 27 ss. 3260 to 3262, 9126 (19), 9145 (1); 1995 a. 64, 77, 92, 201, 224, 276, 352, 417; 1997 a. 27, 164, 237.

3

(END) ✓

D-NOTE

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-5279/1dn

DAK.....
A

J'g

To Ellen Hadidian:

Section 51.42 (3) (as) 3. ✓ seems to apply to a person who receives day treatment services in a mental health institute because such a person would be "under the supervision of a mental health institute". Do you want to amend this section to make it inapplicable or in some other way?

Debora A. Kennedy
Assistant Chief Counsel
266-0137

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-5279/1dn
DAK:jlg:km

Wednesday, July 22, 1998

To Ellen Hadidian:

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Debora A. Kennedy
Assistant Chief Counsel
266-0137



D-NOTE

State of Wisconsin
1997 - 1998 LEGISLATURE

SOON

0023/1
LRB-5279/T
DAK:jlg:km
↑
Stays

DOA:.....Jablonsky - Non-institutional mental health services at mental health institutes

FOR 1997-99 BUDGET — NOT READY FOR INTRODUCTION

do not gen

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MENTAL ILLNESS AND DEVELOPMENTAL DISABILITIES

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1 **SECTION 1.** 51.01 (12)^x of the statutes is amended to read:

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PROOF W/STATS.

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17 51.35 (3), and transfers from Wisconsin state prisons under s. 51.37 (5) (a),
18 commitments under s. 975.01, 1977 stats., or s. 975.02, 1977 stats., or s. 971.14,
19 971.17 or 975.06 or admissions under s. 975.17, 1977 stats., or children placed in the
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(END) ✓

D-NOTE

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0023/1dn

DAK:↑:...

Jlg

To Ellen Haddidian and Sue Jablonsky:

This draft is identical to 97-5279/1¹↑

Section 51.42 (3) (as) 3. seems to apply to a person who receives day treatment services in a mental health institute because such a person would be "under the supervision of a mental health institute". Do you want to amend this section to make it inapplicable or in some other way?

Debora A. Kennedy
Assistant Chief Counsel
266-0137

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0023/1dn
DAK:jlj:jf

September 9, 1998

To Ellen Haddidian and Sue Jablonsky:

This draft is identical to and replaces 97-5279/1.

Section 51.42 (3) (as) 3. seems to apply to a person who receives day treatment services in a mental health institute because such a person would be "under the supervision of a mental health institute". Do you want to amend this section to make it inapplicable or in some other way?

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Assistant Chief Counsel
266-0137



**Department of Health and Family Services
Office of Strategic Finance**

PO Box 7850
Madison WI 53707-7850
Phone (608) 266-3816
Fax (608) 267-0358

Date: October 26, 1998
To: Debora Kennedy
Legislative Reference Bureau
From: Ellen Hadidian *EH*
Budget Section
Subject: LRB 0023

This draft appears to incorporate two of our requests, "Alternative Service Configurations" and "Mental Health Service Contracting." Our intent, in requesting these changes, was to allow the Mental Health Institutes to provide non-institutional services, under certain conditions, where such services were not available from private providers. In addition, the Mental Health Institutes would like to offer these outpatient services to other agencies besides counties.

Since we talked about this draft earlier this summer, DCTF program staff and staff from the Office of Legal Counsel have reviewed it and have some comments and questions.

1. Since s. 51.07 in existing law already provides for outpatient services, would it be appropriate to add sub. (4) to authorize the provision of day treatment services?
2. Should "day treatment" and "outpatient services" be defined? They are not exactly identical.
3. Will the term "day treatment" accommodate the provision of psychiatric services? *Yes - see 51.01(12)* Could it cover services that we provide at a different site? For example, if we sell services to a private entity, would we be able to provide those services at the site of that entity? *If not, please add language to allow us to provide psychiatric services to individuals who are not residents of the MHIs. No*
4. The language should specify who authorizes care if counties do not. The Department wants to be able to contract with agencies other than counties for services for patients. *See 3.* Can language be added to allow for this?
5. Does patient liability under s.46.10 apply to these new provisions? *No, not to Ke with an entity.*
6. Is receiving day treatment considered to be the same as admission? The draft of 51.05 (2) seems to suggest that it is. *Deleted s. 51.05 (2)*

Would you please review this draft and make the appropriate changes? Please give me a call at 6-8155 if you have any questions or wish to discuss this further.

cc: Cindy Daggett 11/13/98: DAK called Sue Jablonsky and requested
Sue Jablonsky definitions for #2 from DHFS

Kennedy, Debora

From: Jablonsky, Sue [sue.jablonsky@doa.state.wi.us]
Sent: Wednesday, December 23, 1998 8:31 AM
To: Kennedy, Debora
Subject: FW: DCTF Draft Language

just wanted to make sure you get this. ellen sent me a copy but the address was so weird, i didn't know if you would get it or not

> -----Original Message-----

> From: Hadidan, Ellen
> Sent: Wednesday, December 23, 1998 7:25 AM
> To: Jablonsky, Sue
> Subject: RE: DCTF Draft Language

>
> That does look weird - it's not the address I used; I typed in gwia and
> added
> her e-mail address from phone book. I had better check this. Meanwhile,
> can
> you forward the message to her, just to make sure she got it?

>
> >>> Sue Jablonsky 12/22 2:05 PM >>>
> what kind of weird address is that?

>

> -----Original Message-----

> From: Hadidan, Ellen
> Sent: Tuesday, December 22, 1998 1:57 PM
> To: *DHFSMAST.gwia.á
> Cc: Flood, Laura; Jablonsky, Sue
> Subject: DCTF Draft Language

>

> Debora -

>

> Sorry it has taken so long to get back to you on these issues. Attached
> you
> will find draft definitions of "outpatient" and "day treatment," per your
> request for the draft on the mental health institute services. The out
> patient
> definition is derived from a HCFA definition to enable us to receive
> Medicare
> reimbursement.

>

> Regarding your question regarding language for rate setting for the MHIs,
> the
> Department would like language that allows flexibility in setting rates so
> that
> directors have more options in the kind of programs and rates that the
> MHIs
> could offer. One possibility under consideration is selling discounted
> beds to
> counties or HMOs, but the directors think that other options may emerge in
> the
> future and would like language that would allow them to accomodate these
> options. You could include a directive to the effect that in setting
> rates the
> institutes are responsible for establishing a structure that recovers the
> cost
> of operations, so that there would be no question that this might
> exacerbate the
> deficit.

>
> Please call me at 6-8155 if you have any questions.
> << File: lrb - outpatient, day treatmt.doc >>
>
>

Kennedy, Debora

From: Ellen Hadidian [HADIDEC@dhfs.state.wi.us]
Sent: Tuesday, December 22, 1998 1:59 PM
To: Kennedy, Debora
Cc: FLOODLE@dhfs.state.wi.us; InfoTech.EMX.JABLOS@dhfs.state.wi.us
Subject: DCTF Draft Language



lrb - outpatient, day
treatm...

Debora -

Sorry it has taken so long to get back to you on these issues. Attached you will find draft definitions of "outpatient" and "day treatment," per your request for the draft on the mental health institute services. The out patient definition is derived from a HCFA definition to enable us to receive Medicare reimbursement.

Regarding your question regarding language for rate setting for the MHIs, the Department would like language that allows flexibility in setting rates so that directors have more options in the kind of programs and rates that the MHIs could offer. One possibility under consideration is selling discounted beds to counties or HMOs, but the directors think that other options may emerge in the future and would like language that would allow them to accommodate these options. You could include a directive to the effect that in setting rates the institutes are responsible for establishing a structure that recovers the cost of operations, so that there would be no question that this might exacerbate the deficit.

Please call me at 6-8155 if you have any questions.

Outpatient

Outpatient services are partial hospitalization services that are reasonable and necessary for the diagnosis or active treatment of the individual's condition and that are reasonably expected to improve or maintain the individual's condition and functional level and to prevent relapse or hospitalization. Outpatient services may include any of the following:

(1) Individual and group therapy with physicians or psychologists or other mental health professionals to the extent authorized under State law.

(2) Occupational therapy requiring the skills of a qualified occupational therapist.

(3) Services of social workers, trained psychiatric nurses, and other staff trained to work with psychiatric patients.

(4) Drugs and biologicals furnished for therapeutic purposes.

(5) Individualized activity therapies that are not primarily recreational or diversionary.

(6) Family counseling, the primary purpose of which is treatment of the individual's condition.

(7) Patient training and education, to the extent the training and educational activities are closely and clearly related to the individual's care and treatment.

(8) Diagnostic services.

Day treatment

Services provided on the grounds of a mental health institute that do not include 24-hour care.



STATE OF WISCONSIN

Department of Administration
Division of State Executive Budget and Planning
101 S. Webster, 7th Floor
P.O. Box 7864
Madison, WI 53707

DATE: 11/13/98

TO: Steve Miller LRB

FROM: Sue Jablonsky 7-9546

I'd like to create language to give the mental health institutes more flexibility in the types of entities with which they can contract. See attached from DHFS

Title:
Mental Health Contracting

DHFS

Department of Health and Family Services
1999-2001 Biennial Budget Statutory Language Request
November 5, 1998

Mental Health Service Contracting

Current Language

s.51.07

Proposed Change

Amend s.51.07 to allow the Mental Health Institutes (MHIs) general authority to contract with non-profit providers, including other mental health services, specialized group homes and nursing homes.

Provide direction to the Department to develop the criteria for these contracts in administrative rule.

Effect of the Change

The MHIs will be able to contract with agencies besides counties to provide services to individuals in need of them. As a result, they will be able to provide services more efficiently and possibly to a broader range of people.

Rationale for the Change

Currently neither Mendota nor Winnebago has the authority to sell its services on an outpatient basis to anyone but patients contracted for with county departments or nonresidents of the state. The only statutory exception is the School Day Programming at WMHI. For example, if the MHIs need to provide services to individuals who are being treated by other agencies, they must follow a cumbersome legal process by contracting with the patient's county of origin, rather than directly with the treatment agency.

Institutes possess a considerable body of expert knowledge, particularly in dealing with challenging patients. If the MHIs were allowed to contract out their services on an outpatient basis, this expertise would become more widely available. This option will also allow the Institutes to provide service within the context of an extended continuum of care. For example, a patient discharged from an Institute could be seen in an outpatient setting.

The Blue Ribbon Commission on Mental Health and the strategic plan for the future of the MHIs endorse the concept of selling MHI services on an outpatient basis. As the populations at the MHIs decline and more individuals receive community care, the demand for outpatient services has increased. As evidence of this trend, private hospitals, HMOs, and other health agencies are increasingly opening outpatient clinics to provide better service. A wide range of potential users that could benefit from the MHIs' offering of outpatient services, including the counties, DOC and group homes. This change is also consistent with the mission of the Institutes, to serve the underserved mental health needs of the state.

Desired Effective Date: Upon Passage of Bill
Agency: DHFS
Agency Contact: Ellen Hadidian
Phone: 266-8155

slmhcontr



(SOON) In edit 12/28/

State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0023/42

DAK:jlg

D-NOTE

DOA:.....Jablonsky - Non-institutional mental health services at mental health institutes

FOR 1999-01 BUDGET -- NOT READY FOR INTRODUCTION

✓
No ID In addition, DHFS is authorized to establish a system of outpatient mental health clinic services in any institution that DHFS operates.

- do not gen
- ① AN ACT ... relating to: ~~provision of day treatment services by a mental health~~
- ② ~~institute.~~ the budget

Analysis by the Legislative Reference Bureau
HEALTH AND HUMAN SERVICES
MENTAL ILLNESS AND DEVELOPMENTAL DISABILITIES

✓ and outpatient services

Under current law, the Mendota Mental Health Institute and the Winnebago Mental Health Institute are operated by the department of health and family services (DHFS) to provide specialized ~~inpatient~~ psychiatric services, research and education. The county department of community programs must under contract authorize all care of ~~any~~ patient ~~at~~ the mental health institutes.

This bill expands the type of mental health services provided by the mental health institutes to include day treatment services and excepts these services from the requirement for prior authorization by a county department of community programs. INSERT ANALYSIS I ✓

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

✓
INSERT 2-1

✓
outpatient
and

1 SECTION 1. 51.01 (12) of the statutes is amended to read:

2 51.01 (12) "Mental health institute" means any institution operated by the
3 department for specialized psychiatric services, including day treatment services,
4 and for research, and education, and which is responsible for consultation with
5 community programs for education and quality of care.

6 SECTION 2. 51.05 (2) of the statutes is amended to read:

7 51.05 (2) The department may not accept for admission to a mental health
8 institute any resident person, except in an emergency, unless the county department
9 under s. 51.42 in the county where the person has legal residency authorizes the care,
10 as provided in s. 51.42 (3) (as). Patients who are committed to the department under
11 s. 975.01, 1977 stats., or s. 975.02, 1977 stats., or s. 971.14, 971.17, 975.06 or 980.06,
12 admitted by the department under s. 975.17, 1977 stats., ~~or~~ are transferred from a
13 juvenile correctional facility or a secured child caring institution, as defined in s.
14 938.02 (15g), to a state treatment facility under s. 51.35 (3) or from a jail or prison
15 to a state treatment facility under s. 51.37 (5) or who are receiving only day treatment
16 services from the mental health institute are not subject to this section.

17 SECTION 3. 51.05 (6) of the statutes is amended to read:

18 51.05 (6) HEARING-IMPAIRED INDIVIDUALS. The department shall provide mental
19 health services appropriate for hearing-impaired individuals who are residents of
20 ~~or~~, are committed, admitted or transferred to or receiving day treatment services
21 from a mental health institute.

✓
outpatient or

✓
INSERT 2-21

22 SECTION 4. 51.42 (3) (as) 1. of the statutes is amended to read:

23 51.42 (3) (as) 1. A county department of community programs shall authorize
24 all care of any patient in a state, local or private facility, other than day treatment
25 services in a mental health institute, under a contractual agreement between the

✓
outpatient
or

1 county department of community programs and the facility, unless the county
2 department of community programs governs the facility. The need for inpatient care
3 shall be determined by the program director or designee in consultation with and
4 upon the recommendation of a licensed physician trained in psychiatry and
5 employed by the county department of community programs or its contract agency.
6 In cases of emergency, a facility under contract with any county department of
7 community programs shall charge the county department of community programs
8 having jurisdiction in the county where the patient is found. The county department
9 of community programs shall reimburse the facility for the actual cost of all
10 authorized care and services less applicable collections under s. 46.036, unless the
11 department of health and family services determines that a charge is
12 administratively infeasible, or unless the department of health and family services,
13 after individual review, determines that the charge is not attributable to the cost of
14 basic care and services. A county department of community programs may not
15 reimburse any state institution or receive credit for collections for care received
16 therein by nonresidents of this state, interstate compact clients, transfers under s.
17 51.35 (3), and transfers from Wisconsin state prisons under s. 51.37 (5) (a),
18 commitments under s. 975.01, 1977 stats., or s. 975.02, 1977 stats., or s. 971.14,
19 971.17 or 975.06 or admissions under s. 975.17, 1977 stats., or children placed in the
20 guardianship of the department of health and family services under s. 48.427 or
21 48.43 or under the supervision of the department of corrections under s. 938.183 or
22 938.355. The exclusionary provisions of s. 46.03 (18) do not apply to direct and
23 indirect costs which are attributable to care and treatment of the client.

✓
INSERT 3-23

24

(END) ✓

D-NOTE

INSERT ANALYSIS 1

^{NO} ~~PH~~ The bill defines "day treatment services" and "outpatient services". Further, the bill authorizes DHFS to contract with an entity to provide outpatient services of a mental health institute at the mental health institute or at the site of the entity and requires that DHFS prescribe criteria for these contracts by rule.

INSERT 2-1

1 SECTION 1. 46.10 (2) ^X of the statutes is amended to read:

2 46.10 (2) Except as provided in subs. (2m) and (14) (b) and (c), any person,
3 including but not limited to a person admitted, committed or placed under s. 975.01,
4 1977 stats., s. 975.02, 1977 stats., and s. 975.17, 1977 stats., and ss. 51.10, 51.13,
5 51.15, 51.20, 51.35 (3), 51.37 (5), 51.45 (10), (11), (12) and (13), 55.05, 55.06, 971.14
6 (2) and (5), 971.17 (1), 975.06 and 980.06, receiving care, maintenance, services and
7 supplies provided by any institution in this state including University of Wisconsin
8 Hospitals and Clinics, in which the state is chargeable with all or part of the person's
9 care, maintenance, services and supplies, any person receiving care and services
10 from a county department established under s. 51.42 or 51.437 or from a facility
11 established under s. 49.73, any person receiving care and services provided under s.
12 51.07 [✓] by a mental health institute under contract with an entity, and any person
13 receiving treatment and services from a public or private agency under s. 971.17 (3)
14 (d) or (4) (e), 980.06 (2) (c) or 980.08 (5) and the person's property and estate,
15 including the homestead, and the spouse of the person, and the spouse's property and
16 estate, including the homestead, and, in the case of a minor child, the parents of the
17 person, and their property and estates, including their homestead, and, in the case
18 of a foreign child described in s. 48.839 (1) who became dependent on public funds
19 for his or her primary support before an order granting his or her adoption, the
20 resident of this state appointed guardian of the child by a foreign court who brought

1 the child into this state for the purpose of adoption, and his or her property and
 2 estate, including his or her homestead, shall be liable for the cost of the care,
 3 maintenance, services and supplies in accordance with the fee schedule established
 4 by the department under s. 46.03 (18). If a spouse, widow or minor, or an
 5 incapacitated person may be lawfully dependent upon the property for their support,
 6 the court shall release all or such part of the property and estate from the charges
 7 that may be necessary to provide for those persons. The department shall make
 8 every reasonable effort to notify the liable persons as soon as possible after the
 9 beginning of the maintenance, but the notice or the receipt thereof is not a condition
 10 of liability.

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) (l), (n); 1981 c. 81; 1983 a. 27 ss. 955m, 2202 (20); 1985 a. 29, 176, 281, 332; 1987 a. 307; 1989 a. 31, 56, 96, 212; 1991 a. 39, 221, 315, 316; 1993 a. 16, 27, 385, 437, 446, 479, 481; 1995 a. 27 ss. 2054, 2055, 9130 (4); 1995 a. 77, 224, 404; 1997 a. 3, 27, 35, 237, 308.

INSERT 2-21

11 **SECTION 2.** 51.07 (title) of the statutes is amended to read:

12 **51.07 (title) Outpatient and day treatment services.**

History: 1973 c. 90, 333; 1975 c. 430 s. 19; 1985 a. 176; 1997 a. 27.

13 **SECTION 3.** 51.07 (1) of the statutes is renumbered 51.07 (1m) and amended to
 14 read:

15 **51.07 (1m)** The department may establish a system of outpatient clinic services
 16 in any institution operated by the department and may contract with an entity to
 17 provide outpatient services of a mental health institute at the mental health
 18 institute or at the entity.

History: 1973 c. 90, 333; 1975 c. 430 s. 19; 1985 a. 176; 1997 a. 27.

19 **SECTION 4.** 51.07 (1g) of the statutes is created to read:

20 **51.07 (1g) In this section:** ← plain

1 (a) "Day treatment services" means mental health services, other than [✓]24-hour
2 care, that are provided on the grounds of a mental health institute.

3 (b) "Outpatient services" means partial hospitalization services that are
4 reasonable and necessary for the diagnosis or active treatment of a patient's mental
5 illness and that are reasonably expected to improve or maintain the patient's
6 condition and functional level and to prevent relapse or hospitalization. Outpatient
7 services may include any of the following:

8 1. Individual and group therapy with physicians or psychologists or other
9 mental health professionals.

10 2. Occupational therapy requiring the skills of a qualified occupational
11 therapist.

12 3. Services of social workers, trained psychiatric nurses and other staff trained
13 to work with psychiatric patients.

14 4. Drugs and biologicals furnished for therapeutic purposes.

15 5. Individualized activity therapies that are not primarily recreational or
16 diversionary.

17 6. Family counseling, the primary purpose of which is treatment of the patient's
18 condition.

19 7. Patient training and education, to the extent the training and educational
20 activities are closely and clearly related to the patient's care and treatment.

21 8. Diagnostic services.

22 **SECTION 5.** 51.07 (2) (a) [✓]of the statutes is amended to read:

23 51.07 (2) (a) Provide outpatient ~~diagnostic and treatment services~~ and day
24 treatment services [✓]for patients and their families.

1 **SECTION 6.** 51.07 (3)^x of the statutes is amended to read:

2 51.07 (3) The department may provide outpatient services ~~only~~ and day
3 treatment services to patients contracted for with county departments under ss.
4 51.42 and 51.437 in accordance with s. 46.03 (18), ~~except for those patients whom the~~
5 department finds to be nonresidents of this state ~~and~~^{ed} those patients specified in sub.
6 (4) (a) and patients of an entity with which a mental health institute has contracted
7 under sub. (1)^m. The full and actual cost less applicable collections of services
8 contracted for with county departments under s. 51.42 or 51.437 shall be charged to
9 the respective county department under s. 51.42 or 51.437. The state shall provide
10 the services required for patient care only if no outpatient services are funded by the
11 department in the county or group of counties served by the respective county
12 department under s. 51.42 or 51.437.

History: 1973 c. 90, 333; 1975 c. 430 s. 19; 1985 a. 176; 1997 a. 2^x

13 **SECTION 7.** 51.07 (4) (a)^x of the statutes is amended to read:

14 51.07 (4) (a) The department may provide outpatient services and day
15 treatment services at the Winnebago Mental Health Institute to a patient who is a
16 pupil of a school district that contracts with the department for the provision of those
17 services. The department shall charge the full and actual cost of those services
18 contracted for to the school district in which the patient is enrolled.

History: 1973 c. 90, 333; 1975 c. 430 s. 19; 1985 a. 176; 1997 a. 27.

19 **SECTION 8.** 51.07 (5)^x of the statutes is created to read:

20 51.07 (5) The department shall, by rule, prescribe the criteria for the contracts
21 specified in sub. (1)^m.

^x **INSERT 3-23**

22 **SECTION 9.** 120.13 (26r) of the statutes is amended to read:

- 1 120.13 (26r) CONTRACTS FOR OUTPATIENT [✓] AND DAY TREATMENT MENTAL HEALTH AND
2 DEVELOPMENTAL DISABILITIES SERVICES. Contract with the department of health and
3 family services for outpatient services [✓] and day treatment services under s. 51.07 (4).

History: 1973 c. 94, 290; 1975 c. 115, 321; 1977 c. 206, 211, 418, 429; 1979 c. 20, 202, 221, 301, 355; 1981 c. 96, 314, 335; 1983 a. 27, 193, 207, 339, 370, 518, 538; 1985 a. 29 ss. 1725e to 1726m, 1731; 1985 a. 101, 135, 211; 1985 a. 218 ss. 12, 13, 22; 1985 a. 332; 1987 a. 88, 187; 1989 a. 31, 201, 336, 359; 1991 a. 39, 226, 269; 1993 a. 16, 27, 284, 334, 399, 450, 481, 491; 1995 a. 27 ss. 4024, 9126 (19), 9145 (1); 1995 a. 29, 32, 33, 65, 75, 225, 235, 289, 439; 1997 a. 27, 155, 164, 191, 237, 335.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0023/2dn
DAK:jlg:jf

To Sue Jablonsky:

Change components to text treats

This redraft is in response to Ellen Hadidian's memos to me of October 26 and December 22. The latter memo contained definitions of "outpatient" and "day treatment" services. In addition, Ellen's memo of October 26 referred to another request, entitled "Mental Health Service Contracting", which you supplied Steve Miller with in November. This redraft incorporates that request as well. The following are issues that arose in the course of drafting:

1. I have amended s. 51.07, stats., throughout, to incorporate day treatment services into it. I do not, however, understand the first question in the October 26 memo; there is already a sub. (4) for that section. In addition, I don't know if I've amended the section as a whole as you want. Note that I also amended s. 120.13 (26r), stats.; does this meet your intent?
2. I am confused by the apparent conflict between the third item in the October 26 memo and the definition of "day treatment" that has been provided. The memo asks for language to provide services at the site of a private entity to which DHFS is selling the services, but the definition restricts the day treatment services to those provided on the grounds of a mental health institute. Please review the changes to s. 51.07, stats., carefully. I'm unsure if I've captured the intent. Also, in that item the memo asks if the term "day treatment" accommodates the provision of psychiatric services. I believe the answer is yes, under the amendment to s. 51.01 (12), stats.
3. The fourth item of the October 26 memo states "The language should specify who authorizes care if counties do not." I'm unable to respond to this because I don't know what it means; who should authorize? Does she want me to amend any particular provision?
4. The fifth item of the October 26 memo asks if s. 46.10, stats., applies to the changes in the bill. With respect to merely adding day treatment services to s. 51.07, stats., I think that s. 46.10, stats., does apply, because of the words "... any person ... receiving care, maintenance, services and supplies provided by any institution in this state ... in which the state is chargeable with all or part of the person's care, maintenance, services or supplies" However, with respect to services that a mental health institute would provide under contract to a private entity, I think that s. 46.10, stats., does not apply. The memo does not indicate what DHFS wants here. I have assumed that DHFS wants s. 46.10, stats., to apply. Please see my amendment of s. 46.10 (2), stats.

5. I have deleted the draft's treatment of s. 51.05 (2),[✓] stats., since evidently it is the DHFS position that day treatment is not considered to be the same as admission. Have I interpreted the sixth item of the October 26 memo correctly?

6. Do you want a specific date for submittal by DHFS of proposed rules, as specified in s. 51.07 (5)? Emergency rule-making authority?

I would appreciate it if, instead of asking questions, the reviewer of this draft would clearly indicate to me whether the draft meets the intent or needs to be changed and, if change is necessary, what the goals of the change are. As it is, I have had to guess at the intent for most of the items.

Debora A. Kennedy
Assistant Chief Counsel
266-0137

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0023/2dn
DAK:jlg:hmh

Monday, December 28, 1998

To Sue Jablonsky:

This redraft is in response to Ellen Hadidian's memos to me of October 26 and December 22. The latter memo contained definitions of "outpatient" and "day treatment" services. In addition, Ellen's memo of October 26 referred to another request, entitled "Mental Health Service Contracting", which you supplied Steve Miller with in November. This redraft incorporates that request as well. The following are issues that arose in the course of drafting:

1. I have amended s. 51.07, stats., throughout, to incorporate day treatment services into it. I do not, however, understand the first question in the October 26 memo; there is already a sub. (4) for that section. In addition, I don't know if I've amended the section as a whole as you want. Note that I also amended s. 120.13 (26r), stats.; does this meet your intent?

2. I am confused by the apparent conflict between the third item in the October 26 memo and the definition of "day treatment" that has been provided. The memo asks for language to provide services at the site of a private entity to which DHFS is selling the services, but the definition restricts the day treatment services to those provided on the grounds of a mental health institute. Please review the changes to s. 51.07, stats., carefully. I'm unsure if I've captured the intent. Also, in that item the memo asks if the term "day treatment" accommodates the provision of psychiatric services. I believe the answer is yes, under the amendment to s. 51.01 (12), stats.

3. The fourth item of the October 26 memo states "The language should specify who authorizes care if counties do not." I'm unable to respond to this because I don't know what it means; who should authorize? Does she want me to amend any particular provision?

4. The fifth item of the October 26 memo asks if s. 46.10, stats., applies to the changes in the bill. With respect to merely adding day treatment services to s. 51.07, stats., I think that s. 46.10, stats., does apply, because of the words "... any person ... receiving care, maintenance, services and supplies provided by any institution in this state ... in which the state is chargeable with all or part of the person's care, maintenance, services or supplies" However, with respect to services that a mental health institute would provide under contract to a private entity, I think that s. 46.10, stats. does not apply. The memo does not indicate what DHFS wants here. I have assumed that DHFS wants s. 46.10, stats., to apply. Please see my amendment of s. 46.10 (2), stats.

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6. Do you want a specific date for submittal by DHFS of proposed rules, as specified in s. 51.07 (5)? Emergency rule-making authority?

I would appreciate it if, instead of asking questions, the reviewer of this draft would clearly indicate to me whether the draft meets the intent or needs to be changed and, if change is necessary, what the goals of the change are. As it is, I have had to guess at the intent for most of the items.

Debora A. Kennedy
Assistant Chief Counsel
266-0137

Kennedy, Debora

From: Jablonsky, Sue [sue.jablonsky@doa.state.wi.us]
Sent: Wednesday, January 20, 1999 5:15 PM
To: Kennedy, Debora
Subject: FW: LRB 0023



MHIs-other-services.doc

c

> -----Original Message-----
> From: Hadidan, Ellen
> Sent: Tuesday, January 19, 1999 10:45 AM
> To: Jablonsky, Sue
> Subject: LRB 0023
>
> Department staff have reviewed this draft and had some changes and
> clarifications to make to it. Our original instructions were not very
> clear and
> the draft did not appear to give us the authority we wanted. The best way
> to
> achieve our aim of providing authorization to the Institutions to provide
> services other than hospital services and to give the Institutes the
> flexibility
> they need to respond to the frequent changes in the health care world
> seemed to
> be to add a new section to the statutes that covers these areas.
>
> Attached you will find draft language that would give us more flexibility
> in the
> provision of services, while staying within the current framework of
> service
> provision through an entity such as a county or school board, rather than
> directly to the person who is to receive services. We apologize to the
> drafter
> for the confusion in our drafting instructions and the work involved in
> re-drafting this section. Hopefully, the drafter will find the
> Department's
> draft useful for this purpose. The attachment shows the changes to
> current
> language and then a clean version of how the language will work.
>
> Thanks to you and the drafter for your patience with this draft. Please
> call me
> if you have any questions.
> <<MHIs-other-services.doc>>

COMPARATIVE VERSION

20.435(2)(gk) of the statutes is amended to read:

(gk) Institutional operations and charges. The amounts in the schedule for care provided by the centers for the developmentally disabled to reimburse the cost of providing the services and to remit any credit balances to county departments that occur on and after July 1, 1978, in accordance with s. 51.437 (4rm) (c); for care provided by the mental health institutes, to reimburse the cost of providing the services and to remit any credit balances to county departments that occur on and after January 1, 1979, in accordance with s. 51.42 (3) (as) 2.; for maintenance of state-owned housing at centers for the developmentally disabled and mental health institutes; for repair or replacement of property damaged at the mental health institutes or at centers for the developmentally disabled; and for reimbursing the total cost of using, producing and providing services, products and care. All moneys received as payments from medical assistance on and after August 1, 1978; as payments from all other sources including other payments under s. 46.10 and payments under s. 51.437 (4rm) (c) received on and after July 1, 1978; as medical assistance payments, other payments under s. 46.10 and payments under s. 51.42 (3) (as) 2. received on and after January 1, 1979; as payments under s. 46.043 ~~51.07(4)~~; as payments for the rental of state-owned housing and other institutional facilities at centers for the developmentally disabled and mental health institutes; for the sale of electricity, steam or chilled water; as payments in restitution of property damaged at the mental health institutes or at centers for the developmentally

disabled; for the sale of surplus property, including vehicles, at the mental health institutes or at centers for the developmentally disabled; and for other services, products and care shall be credited to this appropriation, except that any payment under s. 46.10 received for the care or treatment of patients admitted under s. 51.10, 51.15 or 51.20 for which the state is liable under s. 51.05 (3), of patients admitted under s. 55.06 (9) (d) or (e) for which the state is liable under s. 55.05 (1), of forensic patients committed under ch. 971 or 975, admitted under ch. 975 or transferred under s. 51.35 (3) or of patients transferred from a state prison under s. 51.37 (5), to Mendota mental health institute or Winnebago mental health institute shall be treated as general purpose revenue earned, as defined under s. 20.001 (4).

46.043 of the statutes is created to read:

[title] Additional Services Offered by Mental Health Institutes.

(1) In addition to inpatient and outpatient services provided at mental health institutes under ss. 51.05 and 51.07, the department may authorize mental health institutes to offer ***[noninstitutional]*** mental health services ***other than inpatient services*** when community resources need to be supplemented. Services that may be offered under this section include but are not limited to ***outpatient treatment and services, day programming [treatment], consultation and residential facilities, including but not limited to group homes, child caring institutions and community-based residential facilities [facility services]***. The department may designate staff of the mental health institutes to be responsible for administering and providing services offered under this section.

(2) Services offered under this section may be provided only under contract between the department and a county department under s. 46.215, 46.22 or 46.23, ***a school district or another public or private program, agency, facility or payor [private child welfare agency, mental health treatment program or mental health facility]*** within the state to persons referred from those entities, at the discretion of the department. Any contract under this section between the department and a county department under s. 46.215, 46.22 or 46.23 is subject to s. 46.036. ***The department shall charge the referring entity all costs associated with providing the services. [The department may charge the referring entity not more than the actual cost of providing the services.] The department shall regularly bill the referring entity for the services provided and, subject to the provisions of the contract, the referring entity shall pay the amount due within 60 days after the billing date.*** The department may not offer services under this section directly to the person who is to receive the services or his or her family, and may not impose a charge for services under this section upon the person receiving the services or his or her family.

(3) Services offered under this section are subject to applicable licensing laws and other federal and state laws, rules and regulations applicable to the type of services in question that are designed to protect the health, safety, welfare or rights of the persons receiving the services. Services offered under this section are governed in all other respects, including but not limited to payment, exclusively by the terms of the contract between the department and the referring entity, and are not subject in these respects to otherwise applicable statutes, including but not limited to ss. 46.03(18),

46.10, 51.15(2), 51.20(13)(c)1. and 51.42(3)(as). The department may not be required, by court order or otherwise, to offer services under this section.

(4) Any residential facility authorized by the department under this section shall be established on the grounds of a mental health institute. The facility shall not be considered a hospital, as defined in s. 50.33 (2), an inpatient facility, as defined in s. 51.01 (10), a state treatment facility, as defined in s. 51.01 (15), or a treatment facility, as defined in s. 51.01 (19).

(5) The department shall credit any revenues received under this section to the appropriation account under s. 20.435 (2) (gk). [Payments for services provided under this section shall be deposited in the appropriation account under s. 20.435 (2) (kx).]

51.07(3) of the statutes is amended to read:

(3) The department may provide outpatient services only to patients contracted for with county departments under ss. 51.42 and 51.437 in accordance with s. 46.03 (18), except for those patients whom the department finds to be nonresidents of this state and persons receiving services pursuant to contracts entered into under s. 46.043 ~~those patients specified in sub. (4) (a)~~. The full and actual cost less applicable collections of services contracted for with county departments under s. 51.42 or 51.437 shall be charged to the respective county department under s. 51.42 or 51.437. The state shall provide the services required for patient care only if no outpatient services are funded by the department in the county or group of counties served by the respective county department under s. 51.42 or

51.437.

51.07(4) of the statutes is repealed.

~~**[(a) The department may provide outpatient services at the Winnebago Mental Health Institute to a patient who is a pupil of a school district that contracts with the department for the provision of those services. The department shall charge the full and actual cost of those services contracted for to the school district in which the patient is enrolled.**~~

~~**(b) If the Winnebago Mental Health Institute has provided a pupil of a school district with the services contracted for under par. (a), the department shall regularly bill the school district for the services provided and, subject to the provisions of the contract, the school district shall pay the amount due within 60 days after the billing date.**~~

~~**(c) The department shall credit any revenues received under this subsection to the appropriation account under s. 20.435 (2) (gk).]**~~

120.13(26r) of the statutes is amended to read:

(26r) Contracts for outpatient mental health and developmental disabilities services. Contract with the department of health and family services for outpatient services under s. 46.043 ~~51.07(4)~~.

CLEAN VERSION

20.435(2)(gk) of the statutes is amended to read:

(gk) Institutional operations and charges. The amounts in the schedule for care provided by the centers for the developmentally disabled to reimburse the cost of providing the services and to remit any credit balances to county departments that occur on and after July 1, 1978, in accordance with s. 51.437 (4rm) (c); for care provided by the mental health institutes, to reimburse the cost of providing the services and to remit any credit balances to county departments that occur on and after January 1, 1979, in accordance with s. 51.42 (3) (as) 2.; for maintenance of state-owned housing at centers for the developmentally disabled and mental health institutes; for repair or replacement of property damaged at the mental health institutes or at centers for the developmentally disabled; and for reimbursing the total cost of using, producing and providing services, products and care. All moneys received as payments from medical assistance on and after August 1, 1978; as payments from all other sources including other payments under s. 46.10 and payments under s. 51.437 (4rm) (c) received on and after July 1, 1978; as medical assistance payments, other payments under s. 46.10 and payments under s. 51.42 (3) (as) 2. received on and after January 1, 1979; as payments under s. 46.043 ~~51.07~~ (4); as payments for the rental of state-owned housing and other institutional facilities at centers for the developmentally disabled and mental health institutes; for the sale of electricity, steam or chilled water; as payments in restitution of property damaged at the mental health institutes or at centers for the developmentally disabled; for the sale of surplus property, including vehicles, at the mental health institutes or at centers for the developmentally disabled; and for other services, products and care shall be credited to this appropriation, except that any payment under s. 46.10

received for the care or treatment of patients admitted under s. 51.10, 51.15 or 51.20 for which the state is liable under s. 51.05 (3), of patients admitted under s. 55.06 (9) (d) or (e) for which the state is liable under s. 55.05 (1), of forensic patients committed under ch. 971 or 975, admitted under ch. 975 or transferred under s. 51.35 (3) or of patients transferred from a state prison under s. 51.37 (5), to Mendota mental health institute or Winnebago mental health institute shall be treated as general purpose revenue earned, as defined under s. 20.001 (4).

46.043 of the statutes is created to read:

[title] Additional Services Offered by Mental Health Institutes.

(1) In addition to inpatient and outpatient services provided at mental health institutes under ss. 51.05 and 51.07, the department may authorize mental health institutes to offer mental health services other than inpatient services when community resources need to be supplemented. Services that may be offered under this section include but are not limited to outpatient treatment and services, day programming, consultation and residential facilities, including but not limited to group homes, child caring institutions and community-based residential facilities. The department may designate staff of the mental health institutes to be responsible for administering and providing services offered under this section.

(2) Services offered under this section may be provided only under contract between the department and a county department under s. 46.215, 46.22 or 46.23, a school district or another public or private program, agency, facility or payor within the state to persons referred from those entities, at the discretion of the department. Any contract under this section between the department and a county department under s.

46.215, 46.22 or 46.23 is subject to s. 46.036. The department shall charge the referring entity all costs associated with providing the services. The department shall regularly bill the referring entity for the services provided and, subject to the provisions of the contract, the referring entity shall pay the amount due within 60 days after the billing date. The department may not offer services under this section directly to the person who is to receive the services or his or her family, and may not impose a charge for services under this section upon the person receiving the services or his or her family.

(3) Services offered under this section are subject to applicable licensing laws and other federal and state laws, rules and regulations applicable to the type of services in question that are designed to protect the health, safety, welfare or rights of the persons receiving the services. Services offered under this section are governed in all other respects, including but not limited to payment, exclusively by the terms of the contract between the department and the referring entity, and are not subject in these respects to otherwise applicable statutes, including but not limited to ss. 46.03(18), 46.10, 51.15(2), 51.20(13)(c)1. and 51.42(3)(as). The department may not be required, by court order or otherwise, to offer services under this section.

(4) Any residential facility authorized by the department under this section shall be established on the grounds of a mental health institute. The facility shall not be considered a hospital, as defined in s. 50.33 (2), an inpatient facility, as defined in s. 51.01 (10), a state treatment facility, as defined in s. 51.01 (15), or a treatment facility, as defined in s. 51.01 (19).

(5) The department shall credit any revenues received under this section to the appropriation account under s. 20.435 (2) (gk).

51.07(3) of the statutes is amended to read:

(3) The department may provide outpatient services only to patients contracted for with county departments under ss. 51.42 and 51.437 in accordance with s. 46.03 (18), except for those patients whom the department finds to be nonresidents of this state and persons receiving services pursuant to contracts entered into under s. 46.043 ~~those patients specified in sub. (4) (a)~~. The full and actual cost less applicable collections of services contracted for with county departments under s. 51.42 or 51.437 shall be charged to the respective county department under s. 51.42 or 51.437. The state shall provide the services required for patient care only if no outpatient services are funded by the department in the county or group of counties served by the respective county department under s. 51.42 or 51.437.

51.07(4) of the statutes is repealed.

120.13(26r) of the statutes is amended to read:

(26r) Contracts for outpatient mental health and developmental disabilities services. Contract with the department of health and family services for outpatient services under s. 46.043 ~~51.07 (4)~~.

received for the care or treatment of patients admitted under s. 51.10, 51.15 or 51.20 for which the state is liable under s. 51.05 (3), of patients admitted under s. 55.06 (9) (d) or (e) for which the state is liable under s. 55.05 (1), of forensic patients committed under ch. 971 or 975, admitted under ch. 975 or transferred under s. 51.35 (3) or of patients transferred from a state prison under s. 51.37 (5), to Mendota mental health institute or Winnebago mental health institute shall be treated as general purpose revenue earned, as defined under s. 20.001 (4)

SECTION . CR; 46.043

~~46.043 of the statutes is created to read:~~

~~46.043~~ Additional Services Offered by Mental Health Institutes.

(1) In addition to inpatient and outpatient services provided at mental health institutes under ss. 51.05 and 51.07, the department may authorize mental health institutes to ~~offer~~ ^{provide} mental health services other than inpatient ^{mh} services when community resources need to be supplemented. Services that may be offered under this section include ~~but are not limited to~~ ^{term?} outpatient treatment and services, day programming, consultation and ^{services in} residential facilities, including ~~but are not limited to~~ group homes, child caring institutions and community-based residential facilities. The department may designate staff of the mental health institutes to be responsible for administering and providing services ~~offered~~ under this section.

(2) Services ~~offered~~ under this section may be provided only under contract between the department and a county department under s. 46.215, 46.22 or 46.23, a school district or another public or private ~~program, agency, facility or person~~ ^{entity} within the state to persons referred from those entities, at the discretion of the department. Any contract under this section between the department and a county department under s.

46.215, 46.22 or 46.23 is subject to s. 46.036. The department shall charge the referring entity all costs associated with providing the services. The department shall regularly bill the referring entity for the services provided and, subject to the provisions of the contract, the referring entity shall pay the amount due within 60 days after the billing date. The department may not offer services under this section directly to the person who is to receive the services or his or her family, and may not impose a charge for services under this section upon the person receiving the services or his or her family.

(3) ~~Services offered under this section are subject to applicable licensing laws and other federal and state laws, rules and regulations applicable to the type of services in question that are designed to protect the health, safety, welfare or rights of the persons receiving the services.~~ Services offered under this section are governed in all other respects, including ~~but not limited to~~ payment, exclusively by the terms of the contract between the department and the referring entity, and are not subject in these respects to otherwise applicable statutes, including but not limited to ss. 46.03(18), 46.10, 51.15(2), 51.20(13)(c)1. and 51.42(3)(as). The department may not be required ^{by any other action or proceeding} ~~by a court order or otherwise~~, to offer services under this section.

(4) ~~Any~~ residential facility authorized by the department under this section shall be established on the grounds of a mental health institute. The ^{residential} facility ~~shall~~ not be considered a hospital, as defined in s. 50.33 (2), an inpatient facility, as defined in s. 51.01 (10), a state treatment facility, as defined in s. 51.01 (15), or a treatment facility, as defined in s. 51.01 (19).

(5) The department shall credit any revenues received under this section to the appropriation account under s. 20.435 (2) (gk).

provided in a residential facility that is

subs. (1)

may

0023/2 Redraft

Questions for Sue Jablonsky:

✓ ① Does new material replace or supplement material in 0023/2? (See 1st sent of sub. (1)) - (~~4~~ ^{s. 42(3)(a)} seems out, under sub. (3))

✓ ② Why is material positioned in ch. 46, rather than ch. 51? → So that commitment process doesn't apply

③ In s. 46.043(1) proposed, terms "outpatient treatment and services" and "day programming" are used — are they the same as "outpt. services" (defined in s. 51.07(1g)(b) of draft) and "day treatment services" (defined in s. 51.07(1g)(a) of draft)?

Standard "when community resources need to be supplemented" is necessary? meaning? — Department determines ^{services in the community}

④ In s. 46.043(2) proposed, say Ke w/ co. depts subject to 46.036 — but s. 46.036(1) say all care + services purchased by the dept. is subj. to s. 46.036 — this reference needn't be included at all, but it needs to be clarified to requester that all are covered.

Delete

⑤ Other language in s. 46.043(2) necessary? desirable? Keep sent. about charging entity all costs

⑥ s. 46.043(3) — 1st sent. is unnecessary; automatically apply unless notwithstanding

⑦ s. 46.043(3) 2d sentence notwithstanding specific statutes but has the phrase "including but not limited to"; the notwithstanding must be specific

Also - unnecessary to notwithstanding s. 51.15(2) bec. of sub. (4); best to amend s. 51.20(13)(c)1. to exclude the services Cri: Services not subject to commitments or detentions

⑧ In s. 120.13 (26r) - lang. as proposed permits only outpt. services to be provided. Are they eliminating day treatment services? No - include

Delete outpatient

Kennedy, Debora

From: Jablonsky, Sue
Sent: Friday, January 22, 1999 11:59 AM
To: Kennedy, Debora
Subject: FW: MHI Other Services Draft

-----Original Message-----

From: Hadidan, Ellen
Sent: Friday, January 22, 1999 11:41 AM
To: Jablonsky, Sue
Subject: Fwd: MHI Other Services Draft

Just left you a voice mail about this - could you e-mail this to Debora K?
Hopefully it answers some of the questions she raised this morning. Thanks.



ENCLOSURE



MHI's-other-services-cl
ean.doc

20.435(2)(gk) of the statutes is amended to read:

(gk) Institutional operations and charges. The amounts in the schedule for care provided by the centers for the developmentally disabled to reimburse the cost of providing the services and to remit any credit balances to county departments that occur on and after July 1, 1978, in accordance with s. 51.437 (4rm) (c); for care provided by the mental health institutes, to reimburse the cost of providing the services and to remit any credit balances to county departments that occur on and after January 1, 1979, in accordance with s. 51.42 (3) (as) 2.; for maintenance of state-owned housing at centers for the developmentally disabled and mental health institutes; for repair or replacement of property damaged at the mental health institutes or at centers for the developmentally disabled; and for reimbursing the total cost of using, producing and providing services, products and care. All moneys received as payments from medical assistance on and after August 1, 1978; as payments from all other sources including other payments under s. 46.10 and payments under s. 51.437 (4rm) (c) received on and after July 1, 1978; as medical assistance payments, other payments under s. 46.10 and payments under s. 51.42 (3) (as) 2. received on and after January 1, 1979; as payments under s. 46.043 ~~51.07~~(4); as payments for the rental of state-owned housing and other institutional facilities at centers for the developmentally disabled and mental health institutes; for the sale of electricity, steam or chilled water; as payments in restitution of property damaged at the mental health institutes or at centers for the developmentally disabled; for the sale of surplus property, including vehicles, at the mental health institutes or at centers for the developmentally disabled; and for other services, products and care shall be credited to this appropriation, except that any payment under s. 46.10 received for the care or treatment of patients admitted under s. 51.10, 51.15 or 51.20

for which the state is liable under s. 51.05 (3), of patients admitted under s. 55.06 (9) (d) or (e) for which the state is liable under s. 55.05 (1), of forensic patients committed under ch. 971 or 975, admitted under ch. 975 or transferred under s. 51.35 (3) or of patients transferred from a state prison under s. 51.37 (5), to Mendota mental health institute or Winnebago mental health institute shall be treated as general purpose revenue earned, as defined under s. 20.001 (4).

46.043 of the statutes is created to read:

[title] Additional Services Offered by Mental Health Institutes.

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(2) Services offered under this section may be provided only under contract between the department and a county department under s. 46.215, 46.22 or 46.23, a school district or another public or private program, agency, facility or payor within the state to persons referred from those entities, at the discretion of the department. The department shall charge the referring entity all costs associated with providing the services. The department may not offer services under this section directly to the

person who is to receive the services or his or her family, and may not impose a charge for services under this section upon the person receiving the services or his or her family.

(3) Services offered under this section are governed by the terms of the contract between the department and the referring entity and any otherwise applicable regulatory laws designed to protect the health, safety, welfare or rights of service recipients. In case of any conflict between provisions of the contract and applicable regulatory law, the services shall comply with the provision that better protects the service recipient. Services offered under this section are not subject to any other statutes, including but not limited to ss. 46.03(18), 46.10, 51.15(2), 51.20(13)(c)1. and 51.42(3)(as). The department may not be required, by court order or otherwise, to offer services under this section.

(4) Any residential facility authorized by the department under this section shall be established on the grounds of a mental health institute. The facility shall not be considered a hospital, as defined in s. 50.33 (2), an inpatient facility, as defined in s. 51.01 (10), a state treatment facility, as defined in s. 51.01 (15), or a treatment facility, as defined in s. 51.01 (19).

(5) The department shall credit any revenues received under this section to the appropriation account under s. 20.435 (2) (gk).

51.07(3) of the statutes is amended to read:

(3) The department may provide outpatient services only to patients contracted for with county departments under ss. 51.42 and 51.437 in accordance with s. 46.03 (18), except for those patients whom the department finds to be nonresidents of this state

and persons receiving services pursuant to contracts entered into under s. 46.043 ~~these patients specified in sub. (4) (a)~~. The full and actual cost less applicable collections of services contracted for with county departments under s. 51.42 or 51.437 shall be charged to the respective county department under s. 51.42 or 51.437. The state shall provide the services required for patient care only if no outpatient services are funded by the department in the county or group of counties served by the respective county department under s. 51.42 or 51.437.

51.07(4) of the statutes is repealed.

120.13(26r) of the statutes is amended to read:

(26r) Contracts for ~~outpatient~~ mental health and developmental disabilities services.

Contract with the department of health and family services for ~~outpatient~~ services under s. 46.043 ~~51.07 (4)~~.

For Sue Jablonsky: Problems with proposed language for 0023/3

① I was unable to receive the Enclosure in Ellen Hadidian's e-mail to S.J. of 1/22.

② Of the proposed language, sub. (3) has these problems:

① The 1st and 3rd sentences are so vague can't determine what is proposed:
(1st sent. says services are governed by "any otherwise applicable laws designed to protect the health, safety, welfare or rights of service recipients"; 3rd sentence says services are not subject to "any other statutes, including . . ."

Clearly, DHFS doesn't want the services to be subject to the enumerated statutes. What others? And what statutes do apply?

↓ (It could be argued that the enumerated statutes are designed to protect the health, safety, welfare or rights of service recipients.)

Kennedy, Debora

From: Jablonsky, Sue
Sent: Friday, January 22, 1999 11:59 AM
To: Kennedy, Debora
Subject: FW: MHI Other Services Draft

-----Original Message-----

From: Hadidan, Ellen
Sent: Friday, January 22, 1999 11:41 AM
To: Jablonsky, Sue
Subject: Fwd: MHI Other Services Draft

Just left you a voice mail about this - could you e-mail this to Debora K?
Hopefully it answers some of the questions she raised this morning. Thanks.



ENCLOSURE



MHI's-other-services-d
ean.doc

for which the state is liable under s. 51.05 (3), of patients admitted under s. 55.06 (9) (d) or (e) for which the state is liable under s. 55.05 (1), of forensic patients committed under ch. 971 or 975, admitted under ch. 975 or transferred under s. 51.35 (3) or of patients transferred from a state prison under s. 51.37 (5), to Mendota mental health institute or Winnebago mental health institute shall be treated as general purpose revenue earned, as defined under s. 20.001 (4).

46.043 of the statutes is created to read:

46.043 ~~46.043~~ ~~Additional Services Offered by~~ ^{of} Mental Health Institutes.

(1) In addition to inpatient and outpatient services provided at mental health institutes under ss. 51.05 and 51.07, the department may authorize mental health institutes to offer services other than inpatient mental health services when the department determines that community ~~services~~ ^{services} need to be supplemented. Services that may be offered under this section include ~~but are not limited to~~ ^{services in} outpatient treatment and services, day programming, consultation and residential facilities, including ~~but not limited to~~ group homes, child caring institutions and community-based residential facilities. ~~The department may designate staff of the mental health institutes to be responsible for administering and providing services offered under this section.~~

(2) Services ~~offered~~ under this section may be provided only under contract between the department and a county department under s. 46.215, 46.22 or 46.23, a school district or another public or private ~~program, agency, facility or provider~~ ^{entity} within the state to persons referred from those entities, at the discretion of the department. The department shall charge the referring entity all costs associated with providing the services. ~~The department may not offer services under this section directly to the~~

unless a referral is made,



1. The department

person who is to receive the services or his or her family, ~~and~~ may not impose a charge for services under this section upon the person receiving the services or his or her

family. *The department shall credit any revenues received under this section to the appropriation account under s. 20.435*

~~(3) Services offered under this section are governed by the terms of the contract between the department and the referring entity and any otherwise applicable regulatory laws designed to protect the health, safety, welfare or rights of service recipients. In case of any conflict between provisions of the contract and applicable regulatory law, the services shall comply with the provision ^{contract} that better protects the service recipient. Services offered under this section are are not subject to any other statutes, including but not limited to ss. 46.03(18), 46.10, 51.15(2), 51.20(13)(c)1. and 51.42(3)(as). The department may not be required, by court order or otherwise, to offer services under this section.~~

(2)(gk).

INSERT 5-4A

Services in a

(4) ~~Any~~ residential facility authorized by the department under this section shall ^{that are} be established on the grounds of a mental health institute. The facility ~~shall~~ ^{may} not be considered a hospital, as defined in s. 50.33 (2), an inpatient facility, as defined in s. 51.01 (10), a state treatment facility, as defined in s. 51.01 (15), or a treatment facility, as defined in s. 51.01 (19).

be provided in a facility that is

Situated

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(3) The department may provide outpatient services only to patients contracted for with county departments under ss. 51.42 and 51.437 in accordance with s. 46.03 (18), except for those patients whom the department finds to be nonresidents of this state



and persons receiving services pursuant to contracts entered into under s. 46.043 these patients specified in sub. (4) (a). The full and actual cost less applicable collections of services contracted for with county departments under s. 51.42 or 51.437 shall be charged to the respective county department under s. 51.42 or 51.437. The state shall provide the services required for patient care only if no outpatient services are funded by the department in the county or group of counties served by the respective county department under s. 51.42 or 51.437.

51.07(4) of the statutes is repealed.

120.13(26r) of the statutes is amended to read:

(26r) Contracts for outpatient mental health and developmental disabilities services. Contract with the department of health and family services for outpatient services under s. 46.043 ~~51.07(4)~~.

End of WS

Kennedy, Debora

From: Jablonsky, Sue
Sent: Thursday, January 28, 1999 3:14 PM
To: Kennedy, Debora
Subject: FW: LRB 0023

hope this helps-hang in there

-----Original Message-----

From: Hadidan, Ellen
Sent: Thursday, January 28, 1999 2:45 PM
To: Jablonsky, Sue
Subject: LRB 0023

The drafter asked what "applicable regulatory laws" are referred to in our most recent draft of this language (sub 3). Such laws may include patients' rights (s.51.61), group home regs (s.48.625), services purchases by county human services departments (s.51.42(7)(b) and regs, etc. On thinking over this question, our legal counsel decided the wording we had provided was not overly clear and he redrafted this section to make it clearer. I have attached the redraft.

According to program staff, they are planning on meeting applicable regulations that a private provider would have to meet. The one exception would be any case where the law provides the community with site location approval (through zoning or other mechanism). Since the MHIs have been in their current locations for a hundred years and they are considering alternative use of their grounds, they do not want to see themselves subject to local site approval processes. The drafter has provided for this in the draft.

The second question, about conflicts between contracts and statutes or rules, would apply in a case where a county might have more stringent rules governing the health and safety of patients than the state does. For example, the state may require an agency to check on a patient in restraints every half hour, but a county may require a check every 15 minutes. In this case, the county's regulation would supercede the state's.

Would you forward these comments to the drafter? Thanks.



MHIs-other-services-46
.043-alt...

(3) ~~Services offered~~ under this section are governed by the terms of the contract between the department and the referring entity, by any statutes protecting the health, safety, welfare or rights of service recipients ~~which~~ ^{that} would apply if the services were offered by a private entity, including but not limited to patients rights under s. 51.61, facility licensing under ch. 48 and 50 and certification for funding under ss. 51.04 and 51.42(7)(b), and by rules ~~implementing or interpreting~~ ^{those} statutes. In case of any conflict between provisions of the contract and ~~such~~ ^{those} statutes or rules, the services shall comply with the provision that better protects the service recipient. Services ~~offered~~ under this section, including the facilities in which ~~such~~ ^{the} services are provided, are not subject to any other statutes, including but not limited to ss. 46.03(18), 46.10, 51.15(2), 51.20(13)(c)1. and 51.42(3)(as) or to zoning or any other ordinances or regulations of the county or municipality in which the services are provided or the facility is located. The department may not be required, by court order or otherwise, to offer services under this section.

Promulgated under