

TODAY - In edit 1/31

1999 - 2000 LEGISLATURE

LRB-0023/3

DAK:jlg:lmh

D-NOTE

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

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

Also, DHFS may provide outpatient services at the Winnebago Mental Health Institute to school district pupils.

do not gen

1 AN ACT ...; relating to: the budget.

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 psychiatric services, research and education. In addition, DHFS is authorized to establish a system of outpatient mental health clinic services in any institution that DHFS operates. The county department of community programs must under contract authorize all care of most patients in 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 and outpatient services from the requirement for prior authorization by a county department of community programs. 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 A

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.** 46.10 (2) 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
21 the child into this state for the purpose of adoption, and his or her property and

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

10 **SECTION 2.** 51.01 (12) of the statutes is amended to read:

11 51.01 (12) "Mental health institute" means any institution operated by the
12 department for specialized psychiatric services, including outpatient and day
13 treatment services, and for research, and education, and which is responsible for
14 consultation with community programs for education and quality of care.

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

16 51.05 (6) HEARING-IMPAIRED INDIVIDUALS. The department shall provide mental
17 health services appropriate for hearing-impaired individuals who are residents of
18 or, are committed, admitted or transferred to or receiving outpatient or day
19 treatment services from a mental health institute.

20 **SECTION 4.** 51.07 (title) of the statutes is amended to read:

21 **51.07 (title) Outpatient and day treatment services.**

22 **SECTION 5.** 51.07 (1) of the statutes is renumbered 51.07 (1m) and amended to
23 read:

24 51.07(1m) The department may establish a system of outpatient clinic services
25 in any institution operated by the department and may contract with an entity to

1 ~~provide outpatient services of a mental health institute at the mental health~~
2 ~~institute or at the entity.~~

3 **SECTION 6.** 51.07 (1g) of the statutes is created to read:

4 **51.07 (1g)** In this section:

5 (a) "Day treatment services" means mental health services, other than 24-hour
6 care, that are provided on the grounds of a mental health institute.

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

12 1. Individual and group therapy with physicians or psychologists or other
13 mental health professionals.

14 2. Occupational therapy requiring the skills of a qualified occupational
15 therapist.

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

18 4. Drugs and biologicals furnished for therapeutic purposes.

19 5. Individualized activity therapies that are not primarily recreational or
20 diversionary.

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

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

25 8. Diagnostic services.

persons receiving services under contracts under s. 46.043 ✓

1 SECTION 7. 51.07 (2) (a) of the statutes is amended to read:
2 51.07 (2) (a) Provide outpatient diagnostic and treatment services and day
3 treatment services for patients and their families.

✓
INSERT
5-4

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

restore

WFO-
fix component

16 SECTION 9. 51.07 (4) ~~of the statutes is amended to read~~ repealed.

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

22 SECTION 10. 51.07 (5) of the statutes is created to read:
23 51.07 (5) The department shall, by rule, prescribe the criteria for the contracts
24 specified in sub. (1m).

25 SECTION 11. 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 outpatient or day
3 treatment services in a mental health institute, under a contractual agreement
4 between the county department of community programs and the facility, unless the
5 county department of community programs governs the facility. The need for
6 inpatient care shall be determined by the program director or designee in
7 consultation with and upon the recommendation of a licensed physician trained in
8 psychiatry and employed by the county department of community programs or its
9 contract agency. In cases of emergency, a facility under contract with any county
10 department of community programs shall charge the county department of
11 community programs having jurisdiction in the county where the patient is found.
12 The county department of community programs shall reimburse the facility for the
13 actual cost of all authorized care and services less applicable collections under s.
14 46.036, unless the department of health and family services determines that a
15 charge is administratively infeasible, or unless the department of health and family
16 services, after individual review, determines that the charge is not attributable to the
17 cost of basic care and services. A county department of community programs may
18 not 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.

3 SECTION 12. 120.13 (26r) of the statutes is amended to read:

4 120.13 (26r) CONTRACTS FOR ~~OUTPATIENT AND DAY TREATMENT~~ MENTAL HEALTH AND
5 DEVELOPMENTAL DISABILITIES SERVICES. Contract with the department of health and
6 family services for ~~outpatient services and day treatment services~~ under s. 51.07 (4).

7 (END)

46.043 ✓

D-NOTE

INSERT A

This bill eliminates the explicit authorization for the Winnebago Mental Health Institute to provide outpatient mental health services for pupils. The bill, instead, authorizes DHFS to authorize a mental health institute to offer, when DHFS determines that community services need to be supplemented, mental health outpatient treatment and services, day programming, consultation and services in residential facilities, including group homes, child^bcare institutions and community-based residential facilities, that are situated on the grounds of a mental health institute. These services may be provided only under a contract between DHFS and a county department of social services, human services or community programs, a school district or another private or public entity, to persons who are referred by the county department, school district or entity. Further, the services are governed by the terms of the contract or by statutes and DHFS rules that regulate facilities, govern certain mental health services and provide mental health patient rights. In the event of a conflict between contract provisions and these statutes or rules, the services must comply with the contractual, statutory or rules provision that is most protective of the health, safety, welfare or rights of the recipient of the services, as determined by the mental health institute. Lastly, certain mental health statutes, including emergency detention and commitment laws, and zoning and other county, city, town or village ordinances do not apply to provision of the services.

INSERT 5-4A (^{move} into "Insert 5-4").

- 1 (B) ↘
- 2 (3) (a) Except as provided in pars. (b) and (c), services under this section are
- 3 governed by all of the following:
- 4 1. The terms of the contract between the department and the referring entity. ✓
- 5 2. ^{Subchapter} ~~Subch~~ XVI of ch. 48 ✓ and ss. 50.03 ✓, 50.032 ✓, 50.033 ✓, 50.034 (1) to (3) ✓, 50.035 ✓,
- 6 50.04 ✓, 50.09 ✓, 51.04 ✓, 51.42 (7) (b) ✓ and 51.61 ✓. In applying these statutes, the services
- 7 shall be considered to be provided by a private entity.
- 8 3. Rules promulgated under the statutes specified in subd. 2. ✓
- 9 (b) In the event of a conflict between par. (a) 1. and 2. or 3., the services shall
- 10 comply with the contractual, statutory or rules provision that is most protective of

1 the service recipient's health, safety, welfare or rights, as determined by the mental
2 health institute.

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

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

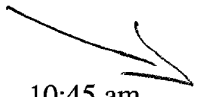
INSERT 5-4

P. 175

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

20.435 (2) (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. 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),

✓ 46.043 ✓



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).

History: 1971 c. 125 ss. 138 to 155, 522 (1); 1971 c. 211, 215, 302, 307, 322; 1973 c. 90, 198, 243; 1973 c. 284 s. 32; 1973 c. 308, 321, 322, 333, 336; 1975 c. 39 ss. 153 to 173, 732 (1), (2); 1975 c. 41 s. 52; 1975 c. 82, 224, 292; 1975 c. 413 s. 18; 1975 c. 422, 423; 1975 c. 430 ss. 1, 2, 80; 1977 c. 29 ss. 236 to 273, 1657 (18); 1977 c. 112; 1977 c. 203 s. 106; 1977 c. 213, 233, 327; 1977 c. 354 s. 101; 1977 c. 359; 1977 c. 418 ss. 129 to 137, 924 (18) (d), 929 (55); 1977 c. 428 s. 115; 1977 c. 447; 1979 c. 32 s. 92 (11); 1979 c. 34, 48; 1979 c. 102 s. 237; 1979 c. 111, 175, 177; 1979 c. 221 ss. 118g to 133, 2202 (20); 1979 c. 238, 300, 331, 361; 1981 c. 20 ss. 301 to 356b, 2202 (20) (b), (d), (g); 1981 c. 93 ss. 3 to 8, 186; 1981 c. 298, 314, 317, 359, 390; 1983 a. 27 ss. 318 to 410, 2202 (20); 1983 a. 192, 199, 245; 1983 a. 333 s. 6; 1983 a. 363, 398, 410, 427; 1983 a. 435 ss. 2, 3, 7; 1983 a. 538; 1985 a. 24, 29, 56, 73, 120, 154, 176, 255, 281, 285, 332; 1987 a. 27, 339, 368, 398, 399, 402; 1987 a. 403 ss. 25, 256; 1987 a. 413; 1989 a. 31, 53; 1989 a. 56 ss. 13, 259; 1989 a. 102; 1989 a. 107 ss. 11, 13, 17 to 37; 1989 a. 120, 122, 173, 199, 202, 318, 336, 359; 1991 a. 6, 39, 189, 269, 275, 290, 315, 322; 1993 a. 16, 27, 76, 98, 99, 168, 183, 377, 437, 445, 446, 450, 469, 479, 490, 491; 1995 a. 27 ss. 806 to 961r, 9126 (19); 1995 a. 77, 98; 1995 a. 216 ss. 26, 27; 1995 a. 266, 276, 289, 303, 404, 417, 440, 448, 464, 468; 1997 a. 27 ss. 211, 214, 216, 217, 527 to 609; 1997 a. 35, 105, 231, 237, 280, 293.



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).

SEC. # 46.043^X of the statutes is created to read:

46.043 ~~Title 7~~ ^{of} Additional Services ~~Offered by~~ ^{of} Mental Health Institutes. ^(B)

^{NO #} (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 ~~resources~~ ^{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.

^{(B) #} (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. The department shall charge the referring entity all costs associated with providing the services. The department may not offer services under this section ~~directly~~ ^{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 (2)(gk).*

~~(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 ^{contract} provision 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.~~

INSERT 5-4A

Situated

Services in a
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 only in a facility that is

(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)~~

End of MS

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0023/3dn
DAK:jlg:hmh

To Sue Jablonsky:

The latest version of s. 46.043 (3) that I was provided with has several problems with regard to vagueness, overlapping concepts and overbreadth. I have drafted the subsection with these principles:

1. Because it was impossible to determine what "any statutes protecting the health, safety, welfare or rights of service recipients" would be (and, it could be argued, some of the statutory provision that the proposal wants to make *inapplicable* are to protect the health safety or welfare of service recipients), I drafted in s. 46.043 (3) (a) 2. only those provisions that were explicitly requested.

2. It is not our policy to draft provisions that notwithstanding all other statutes; consequently, in s. 46.043 (3) (c) I drafted only those statutory sections that were explicitly requested, together with "zoning or other ordinances or regulations of the county, city, town or village in which the services are provided or the facility is located". However, with respect to zoning or other ordinances or regulations of a city or village, it is possible that such a provision is challengeable as a violation of a city's or village's constitutional and statutory home rule authority. See article XI, section 3, of the Wisconsin Constitution and ss. 61.34 (1) and 62.11 (5) stats. This constitutional provision "makes a direct grant of legislative power to municipalities" by authorizing them to determine their own local affairs, subject to the constitution and legislative enactments of statewide concern. See *State ex rel. Michalek v. LeGrand*, 77 Wis. 2d 520, 526 (1977), citing *State ex rel. Ekern v. City of Milwaukee*, 190 Wis 633, 637 (1926). The provision also stands for the proposition that the state legislature is limited "in its enactments in the field of local affairs of cities and villages" (*Michalek*, 526 citing *Ekern*, 638) and cannot prohibit a city or village from acting in an area that solely involves local affairs and that is not a matter of statewide concern. It could be argued that an issue that relates to the applicability of local zoning ordinances, if not solely a "local affair", is at least an area of predominantly local concern. However, because the mental health institutes serve a statewide population, this argument might be overcome.

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0023/3dn
DAK:jlj:jf

February 1, 1999

To Sue Jablonsky:

The latest version of s. 46.043 (3) that I was provided with has several problems with regard to vagueness, overlapping concepts and overbreadth. I have drafted the subsection with these principles:

1. Because it was impossible to determine what "any statutes protecting the health, safety, welfare or rights of service recipients" would be (and, it could be argued, some of the statutory provision that the proposal wants to make *inapplicable* are to protect the health safety or welfare of service recipients), I drafted in s. 46.043 (3) (a) 2. only those provisions that were explicitly requested.

2. It is not our policy to draft provisions that notwithstanding all other statutes; consequently, in s. 46.043 (3) (c) I drafted only those statutory sections that were explicitly requested, together with "zoning or other ordinances or regulations of the county, city, town or village in which the services are provided or the facility is located". However, with respect to zoning or other ordinances or regulations of a city or village, it is possible that such a provision is challengeable as a violation of a city's or village's constitutional and statutory home rule authority. See article XI, section 3, of the Wisconsin Constitution and ss. 61.34 (1) and 62.11 (5), stats. This constitutional provision "makes a direct grant of legislative power to municipalities" by authorizing them to determine their own local affairs, subject to the constitution and legislative enactments of statewide concern. See *State ex rel. Michalek v. LeGrand*, 77 Wis. 2d 520, 526 (1977), citing *State ex rel. Ekern v. City of Milwaukee*, 190 Wis 633, 637 (1926). The provision also stands for the proposition that the state legislature is limited "in its enactments in the field of local affairs of cities and villages" (*Michalek*, 526 citing *Ekern*, 638) and cannot prohibit a city or village from acting in an area that solely involves local affairs and that is not a matter of statewide concern. It could be argued that an issue that relates to the applicability of local zoning ordinances, if not solely a "local affair", is at least an area of predominantly local concern. However, because the mental health institutes serve a statewide population, this argument might be overcome.

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137



TODAY - In edit 2/3
State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0023/4
DAK:jljgf

NOTE

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

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

Do not gen

1 AN ACT ...; relating to: the budget.

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 psychiatric services, research and education. In addition, DHFS is authorized to establish a system of outpatient mental health clinic services in any institution that DHFS operates. The county department of community programs must under contract authorize all care of most patients in the mental health institutes. Also, DHFS may provide outpatient services at the Winnebago Mental Health Institute to school district pupils.

This bill eliminates the explicit authorization for the Winnebago Mental Health Institute to provide outpatient mental health services for pupils. The bill, instead, authorizes DHFS to authorize a mental health institute to offer, when DHFS determines that community services need to be supplemented, mental health outpatient treatment and services, day programming, consultation and services in residential facilities, including group homes, child caring institutions and community-based residential facilities, that are situated on the grounds of a mental health institute. These services may be provided only under a contract between DHFS and a county department of social services, human services or community programs, a school district or another private or public entity, to persons who are

referred by the county department, school district or entity. Further, the services are governed by the terms of the contract or by statutes and DHFS rules that regulate facilities, govern certain mental health services and provide mental health patient rights. In the event of a conflict between contract provisions and these statutes or rules, the services must comply with the contractual, statutory or rules provision that is most protective of the health, safety, welfare or rights of the recipient of the services, as determined by the mental health institute. Lastly, certain mental health statutes, including emergency detention and commitment laws, and zoning and other county, city, town or village ordinances do not apply to provision of the services.

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

2 20.435 (2) (gk) *Institutional operations and charges.* The amounts in the
3 schedule for care provided by the centers for the developmentally disabled to
4 reimburse the cost of providing the services and to remit any credit balances to
5 county departments that occur on and after July 1, 1978, in accordance with s. 51.437
6 (4rm) (c); for care provided by the mental health institutes, to reimburse the cost of
7 providing the services and to remit any credit balances to county departments that
8 occur on and after January 1, 1979, in accordance with s. 51.42 (3) (as) 2.; for
9 maintenance of state-owned housing at centers for the developmentally disabled
10 and mental health institutes; for repair or replacement of property damaged at the
11 mental health institutes or at centers for the developmentally disabled; and for
12 reimbursing the total cost of using, producing and providing services, products and
13 care. All moneys received as payments from medical assistance on and after August
14 1, 1978; as payments from all other sources including other payments under s. 46.10
15 and payments under s. 51.437 (4rm) (c) received on and after July 1, 1978; as medical
16 assistance payments, other payments under s. 46.10 and payments under s. 51.42

1 (3) (as) 2. received on and after January 1, 1979; as payments under s. 51.07 (4)
2 46.043; as payments for the rental of state-owned housing and other institutional
3 facilities at centers for the developmentally disabled and mental health institutes;
4 for the sale of electricity, steam or chilled water; as payments in restitution of
5 property damaged at the mental health institutes or at centers for the
6 developmentally disabled; for the sale of surplus property, including vehicles, at the
7 mental health institutes or at centers for the developmentally disabled; and for other
8 services, products and care shall be credited to this appropriation, except that any
9 payment under s. 46.10 received for the care or treatment of patients admitted under
10 s. 51.10, 51.15 or 51.20 for which the state is liable under s. 51.05 (3), of patients
11 admitted under s. 55.06 (9) (d) or (e) for which the state is liable under s. 55.05 (1),
12 of forensic patients committed under ch. 971 or 975, admitted under ch. 975 or
13 transferred under s. 51.35 (3) or of patients transferred from a state prison under s.
14 51.37 (5), to Mendota mental health institute or Winnebago mental health institute
15 shall be treated as general purpose revenue — earned, as defined under s. 20.001 (4).

16 **SECTION 2.** 46.043 of the statutes is created to read:

17 **46.043 Additional services of mental health institutes.** (1) In addition
18 to inpatient and outpatient services provided at mental health institutes under ss.
19 51.05 and 51.07, the department may authorize mental health institutes to offer
20 services other than inpatient mental health services when the department
21 determines that community services need to be supplemented. Services that may be
22 offered under this section include mental health outpatient treatment and services,
23 day programming, consultation and services in residential facilities, including group
24 homes, child caring institutions and community-based residential facilities.

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

11 (3) (a) Except as provided in pars. (b) and (c), services under this section are
12 governed by all of the following:

- 13 1. The terms of the contract between the department and the referring entity.
- 14 2. Subchapter XVI of ch. 48 and ss. 50.03, 50.032, 50.033, 50.034 (1) to (3),
15 50.035, 50.04, 50.09, 51.04, 51.42 (7) (b) and 51.61. In applying these statutes, the
16 services shall be considered to be provided by a private entity.
- 17 3. Rules promulgated under the statutes specified in subd. 2.

18 (b) In the event of a conflict between par. (a) 1. and 2. or 3., the services shall
19 comply with the contractual, statutory or rules provision that is most protective of
20 the service recipient's health, safety, welfare or rights, as determined by the mental
21 health institute.

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

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

3 (4) Services in a residential facility that are authorized by the department
4 under this section shall be provided only in a facility that is situated on the grounds
5 of a mental health institute. The facility may not be considered to be a hospital, as
6 defined in s. 50.33 (2), an inpatient facility, as defined in s. 51.01 (10), a state
7 treatment facility, as defined in s. 51.01 (15), or a treatment facility, as defined in s.
8 51.01 (19).

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

10 51.07 (3) The department may provide outpatient services only to patients
11 contracted for with county departments under ss. 51.42 and 51.437 in accordance
12 with s. 46.03 (18), except for those patients whom the department finds to be
13 nonresidents of this state and ~~those patients specified in sub. (4)(a)~~ persons receiving
14 services under contracts under s. 46.043. The full and actual cost less applicable
15 collections of services contracted for with county departments under s. 51.42 or
16 51.437 shall be charged to the respective county department under s. 51.42 or 51.437.
17 The state shall provide the services required for patient care only if no outpatient
18 services are funded by the department in the county or group of counties served by
19 the respective county department under s. 51.42 or 51.437.

20 SECTION 4. 51.07 (4) of the statutes is ~~amended~~ repealed.

21 SECTION 5. 120.13 (26r) of the statutes is amended to read:

22 120.13 (26r) CONTRACTS FOR OUTPATIENT MENTAL HEALTH AND DEVELOPMENTAL
23 DISABILITIES SERVICES. Contract with the department of health and family services for
24 outpatient services under s. 51.07 (4) 46.043.

25

(END) ✓

D-NOTE

D-NOTE

To Suo Jablousky:

¶ This redraft corrects a typographical error with respect to s. ⁵5-1.07(4). No substantive change is effected.

DAK

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

LRB-0023/4dn
DAK:jl:km

February 3, 1999

To Sue Jablonsky:

This redraft corrects a typographical error with respect to s. 51.07 (4). No substantive change is effected.

Debra A. Kennedy
Managing Attorney
Phone: (608) 266-0137



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0023/4
DAK:jlg:km

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

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

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 psychiatric services, research and education. In addition, DHFS is authorized to establish a system of outpatient mental health clinic services in any institution that DHFS operates. The county department of community programs must under contract authorize all care of most patients in the mental health institutes. Also, DHFS may provide outpatient services at the Winnebago Mental Health Institute to school district pupils.

This bill eliminates the explicit authorization for the Winnebago Mental Health Institute to provide outpatient mental health services for pupils. The bill, instead, authorizes DHFS to authorize a mental health institute to offer, when DHFS determines that community services need to be supplemented, mental health outpatient treatment and services, day programming, consultation and services in residential facilities, including group homes, child caring institutions and community-based residential facilities, that are situated on the grounds of a mental health institute. These services may be provided only under a contract between DHFS and a county department of social services, human services or community programs, a school district or another private or public entity, to persons who are

referred by the county department, school district or entity. Further, the services are governed by the terms of the contract or by statutes and DHFS rules that regulate facilities, govern certain mental health services and provide mental health patient rights. In the event of a conflict between contract provisions and these statutes or rules, the services must comply with the contractual, statutory or rules provision that is most protective of the health, safety, welfare or rights of the recipient of the services, as determined by the mental health institute. Lastly, certain mental health statutes, including emergency detention and commitment laws, and zoning and other county, city, town or village ordinances do not apply to provision of the services.

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.** 20.435 (2) (gk) of the statutes is amended to read:
2 20.435 (2) (gk) *Institutional operations and charges.* The amounts in the
3 schedule for care provided by the centers for the developmentally disabled to
4 reimburse the cost of providing the services and to remit any credit balances to
5 county departments that occur on and after July 1, 1978, in accordance with s. 51.437
6 (4rm) (c); for care provided by the mental health institutes, to reimburse the cost of
7 providing the services and to remit any credit balances to county departments that
8 occur on and after January 1, 1979, in accordance with s. 51.42 (3) (as) 2.; for
9 maintenance of state-owned housing at centers for the developmentally disabled
10 and mental health institutes; for repair or replacement of property damaged at the
11 mental health institutes or at centers for the developmentally disabled; and for
12 reimbursing the total cost of using, producing and providing services, products and
13 care. All moneys received as payments from medical assistance on and after August
14 1, 1978; as payments from all other sources including other payments under s. 46.10
15 and payments under s. 51.437 (4rm) (c) received on and after July 1, 1978; as medical
16 assistance payments, other payments under s. 46.10 and payments under s. 51.42

1 (3) (as) 2. received on and after January 1, 1979; as payments under s. ~~51.07 (4)~~
2 46.043; as payments for the rental of state-owned housing and other institutional
3 facilities at centers for the developmentally disabled and mental health institutes;
4 for the sale of electricity, steam or chilled water; as payments in restitution of
5 property damaged at the mental health institutes or at centers for the
6 developmentally disabled; for the sale of surplus property, including vehicles, at the
7 mental health institutes or at centers for the developmentally disabled; and for other
8 services, products and care shall be credited to this appropriation, except that any
9 payment under s. 46.10 received for the care or treatment of patients admitted under
10 s. 51.10, 51.15 or 51.20 for which the state is liable under s. 51.05 (3), of patients
11 admitted under s. 55.06 (9) (d) or (e) for which the state is liable under s. 55.05 (1),
12 of forensic patients committed under ch. 971 or 975, admitted under ch. 975 or
13 transferred under s. 51.35 (3) or of patients transferred from a state prison under s.
14 51.37 (5), to Mendota mental health institute or Winnebago mental health institute
15 shall be treated as general purpose revenue — earned, as defined under s. 20.001 (4).

16 **SECTION 2.** 46.043 of the statutes is created to read:

17 **46.043 Additional services of mental health institutes.** (1) In addition
18 to inpatient and outpatient services provided at mental health institutes under ss.
19 51.05 and 51.07, the department may authorize mental health institutes to offer
20 services other than inpatient mental health services when the department
21 determines that community services need to be supplemented. Services that may be
22 offered under this section include mental health outpatient treatment and services,
23 day programming, consultation and services in residential facilities, including group
24 homes, child caring institutions and community-based residential facilities.

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

11 (3) (a) Except as provided in pars. (b) and (c), services under this section are
12 governed by all of the following:

- 13 1. The terms of the contract between the department and the referring entity.
- 14 2. Subchapter XVI of ch. 48 and ss. 50.03, 50.032, 50.033, 50.034 (1) to (3),
15 50.035, 50.04, 50.09, 51.04, 51.42 (7) (b) and 51.61. In applying these statutes, the
16 services shall be considered to be provided by a private entity.
- 17 3. Rules promulgated under the statutes specified in subd. 2.

18 (b) In the event of a conflict between par. (a) 1. and 2. or 3., the services shall
19 comply with the contractual, statutory or rules provision that is most protective of
20 the service recipient's health, safety, welfare or rights, as determined by the mental
21 health institute.

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

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

3 (4) Services in a residential facility that are authorized by the department
4 under this section shall be provided only in a facility that is situated on the grounds
5 of a mental health institute. The facility may not be considered to be a hospital, as
6 defined in s. 50.33 (2), an inpatient facility, as defined in s. 51.01 (10), a state
7 treatment facility, as defined in s. 51.01 (15), or a treatment facility, as defined in s.
8 51.01 (19).

9 **SECTION 3.** 51.07 (3) of the statutes is amended to read:

10 51.07 (3) The department may provide outpatient services only to patients
11 contracted for with county departments under ss. 51.42 and 51.437 in accordance
12 with s. 46.03 (18), except for those patients whom the department finds to be
13 nonresidents of this state and ~~those patients specified in sub. (4)(a)~~ persons receiving
14 services under contracts under s. 46.043. The full and actual cost less applicable
15 collections of services contracted for with county departments under s. 51.42 or
16 51.437 shall be charged to the respective county department under s. 51.42 or 51.437.
17 The state shall provide the services required for patient care only if no outpatient
18 services are funded by the department in the county or group of counties served by
19 the respective county department under s. 51.42 or 51.437.

20 **SECTION 4.** 51.07 (4) of the statutes is repealed.

21 **SECTION 5.** 120.13 (26r) of the statutes is amended to read:

22 120.13 (26r) ~~CONTRACTS FOR OUTPATIENT MENTAL HEALTH AND DEVELOPMENTAL~~
23 ~~DISABILITIES SERVICES.~~ Contract with the department of health and family services for
24 ~~outpatient services under s. 51.07 (4)~~ 46.043.

25 (END)