

Kennedy, Debora

From: Fossum, Gretchen [gretchen.fossum@doa.state.wi.us]
Sent: Tuesday, December 15, 1998 4:09 PM
To: Kennedy, Debora
Subject: FW: Language for LTC Authority



Quaslang.doc

> -----Original Message-----
> From: Barniskis, Lorraine
> Sent: Sunday, December 13, 1998 9:48 PM
> To: Fossum, Gretchen
> Cc: Wilhelm, Charles; Gebhart, Neil; Bove, Fredi-Ellen
> Subject: Language for LTC Authority
>
> Gretchen,
> As requested, here is a cleaned up and much expanded version of language
> to
> create a quasi-governmental authority to operate an Aging or Disability
> Resource
> Center or a CMO. Neil Gephart from our Office of Legal Counsel has agreed
> to
> help with this, including to advise whether some other mechanism might
> meet our
> needs. He has not yet reviewed the attached suggestions.
>
> When we meet with Debora on this, I would like to include Neil if he's
> available. Let me know when you want to set something up. They're moving
> me to
> another office on Wednesday, so the next few days will be difficult.
>
> Thanks
> Lorraine
> <<Quaslang.doc>>

Quasi-Governmental Authority for LTC

Notes:

I am assuming that one or more tribes could create a corporation or authority to operate a CMO (or a Resource Center) without any state statutory authority. Or that they could designate an existing corporation, such as Great Lakes Inter-Tribal Council to do so. If this is not true, please request further instructions in this area. If it is true, we need to make sure to include such a corporation in the "right of first selection" language (i.e., a contract with such a corporation would not "count" in the right of a county to operate without competition for two years).

These suggestions are drawn primarily from existing language for housing authorities (ss. 66.40-404) and transit authorities and commissions (ss. 66.94 - 943).

Since these are created specifically related to operate Aging and Disability Resource Centers or CMOs, can we create them right in Chapter 46, rather than in Chapter 66?

(1) DEFINITIONS. In this section:

- (a) "Authority" means any long-term care authority established pursuant to this section.
- (b) "Board" means the governing and administrative board of the long-term care authority.
- (c) "Contract" means any agreement of the authority whether contained in a resolution, trust indenture, lease, bond or other instrument.

(2) CREATION OF THE AUTHORITY. (a) When the county board of supervisors of a county, or two or more county boards of supervisors of contiguous counties, declares by resolution that there is a need for an authority to function in the county or counties, a public body corporate and politic shall then exist in the county or counties and shall be authorized to transact business and exercise any powers granted to it under this section.

(b) The resolution that establishes the authority shall specify the primary purpose of the authority, which shall be one, but not both of the following:

- 1. To operate, under contract with the department [of health and family services], an aging and disability resource center under s. 46.283; or
- 2. To operate, under contract with the department [of health and family services], a care management organization under s. 46.284.

(c) Any county or group of counties or any federally recognized Indian tribe or band may by contract under s. 66.30 establish a joint long-term care authority with the powers and duties of a county long-term care authority under this section. Appointment of members of the board of such a joint authority shall be made by the county board of supervisors, county administrator or

executive, or governing body of the tribe or band, as provided under the contract under s. 66.30 and consistent with the requirements of this section. [source: s. 66.943]

(3) GOVERNING BOARD. (a) *Appointment.* The county board of supervisors of a county shall appoint the members of the board of a single-county authority or the county boards of supervisors of 2 or more contiguous counties shall appoint the members of the board of the multi-county authority. If the authority is established jointly with a tribe or band under sub. (2) (c), one or more members may be appointed by the governing body of the tribe or band, as provided in the contract under s. 66.30.

(b) *Composition.* The board shall consist of 15 persons who are residents of the area to be served. At least 4 shall of the members shall be older persons or persons with a physical disability. Up to 3 members may be elected or appointed officials of the county or counties that established the authority. The balance of the board shall be persons with a demonstrated knowledge of and interest in services to older persons and persons with a physical disability. Membership of the board shall reflect the ethnic and economic diversity of the geographic area served by the authority. No member of the board shall have any private financial interest or profit directly or indirectly in any contract, work or business of the authority.

(c) *Terms.* Members of the board shall serve 3-year terms. No member may serve more than 2 consecutive terms. Of the members first appointed under par. (a), 5 shall be appointed for 3 years; 5 shall be appointed for 4 years; and 5 shall be appointed for 5 years. A member shall serve until his or her successor is appointed and qualified.

(d) *Resignations and removals.* Any member may resign from office to take effect when a successor has been appointed and is qualified. If the member when appointed was an elected or appointed official when appointed and the member no longer holds the elected or appointed office, the member may be removed. A member may be removed for cause[, after having been given a copy of the reasons for the removal at least 10 days prior to the hearing thereon and had an opportunity to be heard in person or by counsel. To the extent applicable, the provisions of s.17.16 relating to removal for cause shall apply to any such removal.]

(e) *Succession and replacement.* Successors to members of the board shall be appointed in the same manner as their predecessors. In the event of a vacancy, a successor shall be appointed in like manner to serve the balance of the unexpired term.

(f) *Organization of the board.* As soon as possible after the appointment of the initial members, the board shall organize for the transaction of business, select a chairperson and such other officers as it deems necessary, and adopt bylaws, rules and regulations to govern its proceedings. The initial chairperson and each succeeding chairperson shall be elected by the board from time to time for the term of that chairperson's office as a member of the board or for the term of 3 years, whichever is shorter and shall be eligible for reelection. A majority of the board shall constitute a quorum. Bylaws, rules and regulations adopted by the board shall be consistent with this section, ss. 46.28 to 46.28*, and the terms of its contract under sub. (6) (a).

(4) LEGAL STATUS. (a) *Actions, seal.* The authority may sue and be sued in its corporate name. It may adopt a corporate seal and change the same at pleasure.

(b) *Exempt from taxation; payments in lieu of taxes.* The authority, its property (real or personal), franchises and income shall be exempt from all income taxes and taxes based on the value of property by the state, any county, municipality, public corporation or other political subdivision or agency of the state. If the authority owns real property, the municipality in which the real property is located may fix a sum to be paid annually in lieu of property taxes, which amount shall in no event exceed the amount that would be levied as the annual tax of such municipality upon the real property.

(c) *Taxation power denied.* The authority shall have no power whatsoever to levy and tax or assessment.

(d) *Worker's compensation.* The authority and its employees shall be subject to ch. 102.

(e) *Open records.* All resolutions and all proceedings of the authority and all documents and records in its possession shall be public records, and open to public inspection, except:

1. Documents and records as are kept or prepared by the board for use in negotiations, actions or proceedings to which the authority is a party.
2. Documents and records that identify any person who receives services from the authority.

(f) *Open meetings.* Meetings of the board are [add here]

(g) *Contracts and obligations.* The authority may make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority. The obligations and debts of the authority shall not be an obligation or debt of any county, tribe or band that established the authority, other than the long-term care authority itself and its available property, income or other assets in accordance with the terms of the contract or other evidence of indebtedness. No individual liability shall attach for any official act done by any member of the board or employee of the authority. [adapted from s.66.40 (9) (n) and (q)]

(5) DUTIES OF THE BOARD. (a) *Executive director and staff.* The board shall appoint an executive director who shall be a person of recognized ability and experience in the operation of the business for which the authority was established. The executive director shall hold office during the pleasure of the board. The executive director shall have management of the properties and business of the authority and the employees thereof, subject to the general control of the board. The executive director shall direct the enforcement of all resolutions and regulations of the board, and shall perform such other duties as may be prescribed from time to time by the board. The board shall provide for the appointment of such other officers, attorneys, agents, consultants and employees as may be necessary for the business of the authority. [adapted from s. 66.94 (27)]

(b) The board shall assure compliance with the terms of the authority's contract with the department [of health and family services] under sub. (6) (a).

(c) The board shall establish a fiscal operating year, and annually adopt a budget for the authority. *[may want to add here - see s. 66.94 (39)]*

(6) POWERS OF THE AUTHORITY. The authority shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this section and of ss. 46.280 to 46.28*, including the following powers in addition to others herein granted:

(a) Under a contract with the department [of health and family services], to operate either an aging and disability resource center under s. 46.283 or a care management organization under s. 46.284.

(b) To provide related services to older persons and persons with disabilities in addition to those funded through payments received from the department [of health and family services] through the contract under par. (a).

(c) To invest any funds held in reserve or sinking funds, or any funds not required for immediate disbursement, in property or securities in which a financial institution may legally invest funds subject to their control. *[source: s.66.40 (9) (m)]*

(d) To establish and create a risk reserve or other special funds as may be found desirable by the board or required by the terms of its contract with the department [of health and family services] under par. (a), and to provide by its regulations for payments into all special funds, and to provide for the custody, disbursement and application of any moneys in any such special funds consistent with the provisions of this section. *[adapted from s. 66.94 (36)]*

(e) To participate in an employe retirement or pension system of the county or counties that established the authority, and to expend funds of the authority for such purpose. *[source: s. 66.40 (9) (t)]*

(f) To accept aid, in any form, for the purpose of accomplishing the objectives of the authority from all governmental agencies whether local, state or federal, if the conditions under which such aid is furnished are not incompatible with the other provisions of this section. The authority may also accept gifts and grants from public or private individuals or agencies if the conditions under which such grants are made are in accordance with the accomplishment of the objectives of the authority and are not incompatible with the other provisions of this section. *[source: s. 66.945 (13)]*

(7) EMPLOYEES. *[I found no applicable model for this, but would like to include a provision that allows individuals who are employed by the establishing county to transfer to the employ of the authority without losing benefits, seniority or collective bargaining rights that they have.]*

(8) ASSISTANCE AND LOANS TO AUTHORITIES. When any long-term care authority becomes authorized to transact business and exercise its powers under this section, the county board of supervisors of the county that established the authority may appropriate funds to the

authority out of any moneys in such county treasury not appropriated to some other purposes. The moneys so appropriated may be paid to the authority as a donation or as a loan. The authority, when it has money available therefor, and according to the terms of the loan, shall make reimbursements for all such loans made to it. *[adapted from s. 66.404 (2)]*

(9) DISSOLUTION. Any long-term care authority may be dissolved upon adoption of a resolution by the county board of supervisors declaring that the need therefor no longer exists, that there are no outstanding obligations or contracts and that no further business remains to be transacted by such authority. *[source: s. 66.40 (26)]*

(a) In the event that the authority fails to contract with the department [of health and family services] under sub. (6) (a), or its contract is cancelled or not renewed, the authority shall transact all remaining business and shall then be dissolved.

(b) If the authority operates a care management organization under s. 46.284, disposition of any remaining funds in its risk reserve shall be disposed of under the terms of its contract with the department [of health and family services]. Any available funds in the risk reserve that were granted or loaned by a county under sub. (8) shall be returned to the county.

(10) CONSTRUCTION OF STATUTE. (a) This section shall be construed liberally to effectuate the purposes hereof, and the enumeration therein of specific powers shall not operate to restrict the meaning of any general grant of power contained in this section or to exclude other powers comprehended in such general grant. *[source: s. 66.422]*

(b) Insofar as this section is inconsistent with any other law, the provisions of this section shall be controlling. *[source: s. 66.404 (6)]*

(c) The powers conferred by this section shall be in addition and supplemental to the powers conferred by any other law. *[source: s. 66.404 (7)]*

Other provisions:

- Amend s. 19.81 to include long-term care authorities in the open meetings law
- Need to amend open records law to include these authorities?

Questions:

- If an authority is established for a multi-county area, what if a county wants to withdraw from its original creation (e.g. because it wants to create a single-county authority)? Do we need provisions governing that eventuality, including reformulating the remaining authority without too much rigmarole?

Kennedy, Debora

From: Fossum, Gretchen [gretchen.fossum@doa.state.wi.us]
Sent: Wednesday, January 13, 1999 8:35 AM
To: Kennedy, Debora
Subject: Family Care Legislation

Debora:

Per our conversation last Friday the following decisions were made regarding the Family Care legislation:

1. The state long-term council will be composed of 15 members. The council will sunset after two years.
2. There will be no long-term councils created at the local level.
3. There will be no client rights detailed in state.
4. There will be no statutory requirement that requires the department to submit a plan to reorganize within six months of the enactment of the Family Care legislation.
5. The Board on Aging and Long-Term Care will continue to provide advocacy and ombudsman services for individuals in the Community Options Program.

From Gretchen Fossum: principles for family care district

Co. bd. creates + appoints gov. bd. members, but
does nothing w/ budget

District is not part of co. govt; is local govt unit

Employees are public (not co.) employees;
employees of co. should be able to be
employed by district + retain benefits

Quasi-Governmental Authority for LTC

Notes:

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These suggestions are drawn primarily from existing language for housing authorities (ss. 66.40-404) and transit authorities and commissions (ss. 66.94 - 943).

Since these are created specifically related to operate Aging and Disability Resource Centers or CMOs, can we create them right in Chapter 46, rather than in Chapter 66?

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✓(b) "Board" means the governing and administrative board of the long-term care authority.

under (c) "Contract" means any agreement of the authority whether contained in a resolution, trust indenture, lease, bond or other instrument.

✓ (2) CREATION OF THE AUTHORITY. (a) When the county board of supervisors of a county, or two or more county boards of supervisors of contiguous counties, declares by resolution that there is a need for an authority to function in the county or counties, a public body corporate and politic shall then exist in the county or counties and shall be authorized to transact business and exercise any powers granted to it under this section.

(b) The resolution that establishes the authority shall specify the primary purpose of the authority, which shall be one, but not both of the following:

1. To operate, under contract with the department [of health and family services], an aging and disability resource center under s. 46.283; or
2. To operate, under contract with the department [of health and family services], a care management organization under s. 46.284.

(c) Any county or group of counties or any federally recognized Indian tribe or band may by contract under s. 66.30 establish a joint long-term care authority with the powers and duties of a county long-term care authority under this section. Appointment of members of the board of such a joint authority shall be made by the county board of supervisors, county administrator or

NO

executive, or governing body of the tribe or band, as provided under the contract under s. 66.30 and consistent with the requirements of this section. [source: s. 66.943]

(3) GOVERNING BOARD. (a) ^{governing} Appointment. The county board of supervisors of a county shall appoint the members of the ~~board of a single county authority~~ or the county boards of supervisors of 2 or more contiguous counties shall appoint the members of the ~~board of the a multi-county authority~~. If the authority is established jointly with a tribe or band under sub. (2) (c), one or more members may be appointed by the governing body of the tribe or band, as provided in the contract under s. 66.30.

(b) ^{of jurisdiction of the fed} Composition. The board shall consist of 15 persons who are residents of the area ~~served~~ ^{No member}. At least 4 ~~shall~~ of the members shall be older persons or persons with a physical disability. ~~Up to 3 members may be elected or appointed officials of the county or counties that established the authority.~~ The balance of the board shall be persons with a demonstrated knowledge of and interest in services to older persons and persons with a physical disability. Membership of the board shall reflect the ethnic and economic diversity of the ~~geographic area served by the authority~~. No member of the board shall have any private financial interest or profit directly or indirectly in any contract, work or business of the authority.

✓ (c) Terms. Members of the board shall serve 3-year terms. No member may serve more than 2 consecutive terms. Of the members first appointed under par. (a), 5 shall be appointed for 3 years; 5 shall be appointed for 4 years; and 5 shall be appointed for 5 years. A member shall serve until his or her successor is appointed and qualified.

^{the membership of a member} (d) Resignations and removals. ^A Any member may resign from office to take effect when a successor has been appointed and is qualified. If the member when appointed was an elected or appointed official when appointed and the member no longer holds the elected or appointed office, the member may be removed. A member may be removed for cause, after having been given a copy of the reasons for the removal at least 10 days prior to the hearing thereon and had an opportunity to be heard in person or by counsel. To the extent applicable, the provisions of s.17.16 relating to removal for cause shall apply to any such removal.] - ^{chosen and qualifies} ^{No; do not serve at pleasure of co. bd.}

(e) Succession and replacement. Successors to members of the board shall be appointed in the same manner as their predecessors. In the event of a vacancy, a successor shall be appointed in like manner to serve the balance of the unexpired term.

✓ (f) Organization of the board. As soon as possible after the appointment of the initial members, the board shall organize for the transaction of business, select a chairperson and such other officers as it deems necessary, and adopt bylaws, rules and regulations to govern its proceedings. The initial chairperson and each succeeding chairperson shall be elected by the board from time to time for the term of that chairperson's office as a member of the board or for the term of 3 years, whichever is shorter and shall be eligible for reelection. A majority of the board shall constitute a quorum. Bylaws, rules and regulations adopted by the board shall be consistent with this section, ss. 46.28 to 46.28*, and the terms of its contract under sub. (6) (a).

(3) Jurisdiction. A family care district's jurisdiction is the geographical area of the county or counties of which the board of supervisors created the district. *or counties of which the board of supervisors*

(4) LEGAL STATUS. (a) ~~Actions~~ *Subj. to A Fed* has all the powers necessary to carry out the purposes of this Section. (a) ~~Actions~~ *at the authority* may sue and be sued in its corporate name. It may adopt a corporate seal and change the same at pleasure.

*Powers of a Fed
to MES - unnecessary*

(b) ~~Exempt from taxation; payments in lieu of taxes.~~ The authority, its property (real or personal), franchises and income shall be exempt from all income taxes and taxes based on the value of property by the state, any county, municipality, public corporation or other political subdivision or agency of the state. If the authority owns real property, the municipality in which the real property is located may fix a sum to be paid annually in lieu of property taxes, which amount shall in no event exceed the amount that would be levied as the annual tax of such municipality upon the real property. *GF - unnecessary*

Limitation

(c) ~~Taxation power denied.~~ The authority shall have no power whatsoever to levy ~~any~~ tax or assessment. *?*

GMM unnecessary

(d) ~~Worker's compensation.~~ The authority and its employees shall be subject to ch. 102.

(e) ~~Open records.~~ All resolutions and all proceedings of the authority and all documents and records in its possession shall be public records, and open to public inspection, except:

GF: OMIT

1. Documents and records as are kept or prepared by the board for use in negotiations, actions or proceedings to which the authority is a party. *C.L. must cover every sit*

2. Documents and records that identify any person who receives services from the authority. *- ma Not with 19 - except except BOALTC pt. with case records*

unnecess

(f) ~~Open meetings.~~ Meetings of the board are [add here]

*overbroad
general 49.45 (4)
46.23 (3)(c)*

(g) ~~Contracts and obligations.~~ The authority may make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority. The obligations and debts of the authority shall not be an obligation or debt of any county, tribe or band that established the authority, other than the long-term care authority itself and its available property, income or other assets in accordance with the terms of the contract or other evidence of indebtedness. No individual liability shall attach for any official act done by any member of the board or employee of the authority. *[adapted from s.66.40 (9) (n) and (q)]*

** GF: NO*

*ask RPN
893.80 +
895.46*

(5) DUTIES OF THE BOARD. (a) ~~Executive director and staff.~~ The board shall appoint an executive director who shall be a person of recognized ability and experience in the operation of the business for which the authority was established. The executive director shall hold office during the pleasure of the board. The executive director shall have management of the properties and business of the authority and the employees thereof, subject to the general control of the board. The executive director shall direct the enforcement of all resolutions and regulations of the board, and shall perform such other duties as may be prescribed from time to time by the board. The board shall provide for the appointment of such other officers, attorneys, agents, consultants and employes as may be necessary for the business of the authority. *[adapted from s. 66.94 (27)]*

(b) The board shall assure compliance with the terms of the authority's contract with the department [of health and family services] under sub. (6) (a).

✓ (c) The board shall establish a fiscal operating year, and annually adopt a budget for the authority. [may want to add here - see s. 66.94 (39)]

(6) POWERS OF THE AUTHORITY. The authority shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this section and of ss. 46.280 to 46.28*, including the following powers in addition to others herein granted:

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✓ (b) To provide related services to older persons and persons with disabilities in addition to those funded through payments received from the department [of health and family services] through the contract under par. (a).

7 (c) To invest any funds held in reserve of sinking funds, or any funds not required for immediate disbursement, in property or securities in which a financial institution may legally invest funds subject to their control. [source: s.66.40 (9) (m)]

No; the Fed doesn't issue bonds

interest-bearing escrow account w/ 6% rate + 66.04 (2)(a) 2

7 (d) To establish and create a risk reserve or other special funds as may be found desirable by the board or required by the terms of its contract with the department [of health and family services] under par. (a), and to provide by its regulations for payments into all special funds, and to provide for the custody, disbursement and application of any moneys in any such special funds consistent with the provisions of this section. [adapted from s. 66.94 (36)]

✓ X (e) To participate in an employee retirement or pension system of the county or counties that established the authority, and to expend funds of the authority for such purpose. [source: s. 66.40 (9) (t)]

(f) To accept aid, in any form, for the purpose of accomplishing the objectives of the authority from all governmental agencies whether local, state or federal, if the conditions under which such aid is furnished are not incompatible with the other provisions of this section. The authority may also accept gifts and grants from public or private individuals or agencies if the conditions under which such grants are made are in accordance with the accomplishment of the objectives of the authority and are not incompatible with the other provisions of this section. [source: s. 66.945 (13)]

Directly clients served May borrow, within limits of KWI DMS.

(7) EMPLOYEES. [I found no applicable model for this, but would like to include a provision that allows individuals who are employed by the establishing county to transfer to the employ of the authority without losing benefits, seniority or collective bargaining rights that they have.]

(8) ASSISTANCE AND LOANS TO AUTHORITIES. When any long-term care authority becomes authorized to transact business and exercise its powers under this section, the county board of supervisors of the county that established the authority may appropriate funds to the

46.23 (3) (d) ? (e) ?

authority out of any moneys in such county treasury not appropriated to some other purposes. The moneys so appropriated may be paid to the authority as a donation or as a loan. The authority, when it has money available therefor, and according to the terms of the loan, shall make reimbursements for all such loans made to it. [adapted from s. 66.404 (2)]

(9) DISSOLUTION. Any long-term care authority may be dissolved upon adoption of a resolution by the county board of supervisors declaring that the need therefor no longer exists, that there are no outstanding obligations or contracts and that no further business remains to be transacted by such authority. [source: s. 66.40 (26)]

if approved by Secy

(a) In the event that the authority fails to contract with the department [of health and family services] under sub. (6) (a), or its contract is cancelled or not renewed, the authority shall transact all remaining business and shall then be dissolved.

(b) If the authority operates a care management organization under s. 46.284, disposition of any remaining funds in its risk reserve shall be disposed of under the terms of its contract with the department [of health and family services]. ~~Any available funds in the risk reserve that were granted or loaned by a county under sub. (8) shall be returned to the county.~~

(10) CONSTRUCTION OF STATUTE. (a) This section shall be construed liberally to effectuate the purposes hereof, and the enumeration therein of specific powers shall not operate to restrict the meaning of any general grant of power contained in this section or to exclude other powers comprehended in such general grant. [source: s. 66.422]

*JTK
necessary?*

2 - If have to have -

(b) Insofar as this section is inconsistent with any other law, the provisions of this section shall be controlling. [source: s. 66.404 (6)]

*G.F.:
exclude*

(c) The powers conferred by this section shall be in addition and supplemental to the powers conferred by any other law. [source: s. 66.404 (7)]

No - redundant

Other provisions:

- ✓ Amend s. 19.81 to include long-term care authorities in the open meetings law
- ✓ Need to amend open records law to include these authorities?

Questions:

- If an authority is established for a multi-county area, what if a county wants to withdraw from its original creation (e.g. because it wants to create a single-county authority)? Do we need provisions governing that eventuality, including reformulating the remaining authority without too much rigmarole?

*G.F.:
not
critical
at this
time*

Questions for B. Fossum re **** agency:

1/15 ① Is s. 46.285(3) void (**** agency to operate both rc + cmo? 2**** agencies to operate rc + cmo?)
NO - 2**** agencies - and delete (4)

② Name for **** agency - family care district

③ Governing entity? - 46.23 language re ce or ca?
Bd. of directors - CBA or CoExec.

④ Director? - See 46.23

⑤ Use of aging unit - 46.82(1)(a)2. wd. have to be changed
NO - will not work

Questions of Gretchen Fossum 1/21, 1/22

NO ✓ ① Should fed have power to issue bonds?

(see 18.03(5s), 24.61(2)(a), 25.17(3)(b)10, 66.04(2)(a)3m
66.066(i)(a), (c) and (5), 71.05(i)(c)4, 71.26(lm)(g),
71.36(lm), 71.45(lt)(g), 219.09(i)(c)

NO ✓ ② Should fed have power to tax?

77.705, 77.98, 77.99

YES ✓ ③ Restrict members of governing board - prohibit membership by county officer or employee - do not serve at pleasure of board

YES ✓ ④ Prohibit county from dissolving fed district unless secy of H+FS approves.

Kennedy, Debora

From: Fossum, Gretchen
Sent: Friday, January 22, 1999 4:21 PM
To: Kennedy, Debora
Subject: FW: Additional comments

Here is something more from Lorraine.

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

From: Barniskis, Lorraine
Sent: Friday, January 22, 1999 3:20 PM
To: Fossum, Gretchen
Cc: Wilhelm, Charles; Malofsky, Shelley; Bove, Fredi-Ellen
Subject: Additional comments

Follow up to the comments I sent last night. Thanks



folupcm1.doc

Date: January 22, 1999

To: Gretchen Fossum - DOA/Budget

From: Lorraine Barniskis - DHFS/DSL/BALTCR

Re: Follow-up Comments on Third Draft of Family Care Legislation

Here are some of the follow-up comments I promised. Any additional comments will be provided by Monday at noon. Thanks

Follow up on COP risk reserve

I now understand what the amendment to s. 46.27 (7) (fm) was intended to do. Please change this amendment to read: except that the amount carried forward shall be reduced by the amount of funds that the county has notified the department that it wishes to place in a risk reserve under par. (fr).

In my earlier comments, I missed a couple of amendments that should be made to sub. (7) (fr).

Subd. 1. should start with the phrase "Notwithstanding s. 46.036 (3) and (5m),"

Subd. 2. should read "...county's most recent allocation under ~~this paragraph~~ par. (am) or (b) or sub. (11) (c) 3. or \$750,000, whichever is less..."

Subrogation

Somewhere we should add the following:

"A care management organization shall have rights under s. 49.89 (9) to recover costs of providing services to any enrollee, whether or not the enrollee is eligible for medical assistance under ch. 49."

Recovery of costs of care

Please note that Medicaid estate recovery provisions have been requested to be amended under the Department's budget request and under a Revisor's Bill.

The references under (5) should include s. 49.497 and s. 867.035.

We want estate recovery provisions to be identical for Medicaid and non-Medicaid clients of Family Care. Is there is a way to simply include non-MA clients in the Medicaid provisions?

If separate language remains for non-MA clients, please make the following changes:

In sub. (6) (b) 1., delete the phrase “or against the estate of the surviving spouse of a client”; also clarify that the claim is for the actual cost of services paid for by the Family Care benefit.

As I noted before, the phrase “after the client attained 55 years of age” should not be deleted.

In sub. (6) (b), add a subd. 8. to exempt from recovery the lump sum asset exemption of \$12,000 allowed in calculating cost share. Please see pp. 77-78 of the Department’s July 31, 1998 proposal.

In the first sentence of sub. (6) (c), please add, after “in each county,” the following: “and each care management organization”. Also, please clarify here also that what can be recovered is actual costs of Family Care funded services. Later in this paragraph, the appropriation reference should be to s. 20.435 (5) (im) and (7) (im).

S. 20.435 (5) (im) is the federal counterpart to s. 20.435 (7) (im). It is the appropriation from which we pay the federal government its share of recoveries. Please include (5) (im) wherever (7)(im) is referenced.

In sub. (6) (e), both dates in question should be the effective date of the Act.

S. 49.496 (3) (a) should be amended to list the Family Care benefit as a recoverable service.

Cross-references to the Family Care benefit should be included in the following notice provisions related to estate recovery:

s. 859.07 (2), s. 867.01 (3) (d), s. 867.02 (2), s. 867.03 (1) (c) and (1m) (a) and (b).

A cross-reference to s. 46.286 should also be included in s. 700.24.

Resource Center Standards and Duties:

Please move the Resource Center requirement for access to elder abuse reporting and Chapter 55 services as follows:

- Delete s. 46.283 (3) (k)
- Add, under s. 46.283 (4), a paragraph as follows:
“Provide access to services under s. 46.90 and ch. 55 to a person who is eligible for the services, through close cooperation with the county agency or agencies that provide the services.”

(This change is important. Given the way that the intro to sub. (3) is worded, the draft could be interpreted to make the Department responsible for all services under Chapter 55 for people who are eligible for them.)

Kennedy, Debora

From: Kennedy, Debora
Sent: Friday, January 22, 1999 2:57 PM
To: Fossum, Gretchen
Subject: Family care

There are many statutes, that, by virtue of the definition of "local governmental unit" or "special purpose district" apply to a family care district if no amendment excluding a family care district is made. Many of these statutes appear to be irrelevant to the purpose of a family care district and I have exercised a judgment call in excluding them from consideration. The following, however, are statutes that appear to be more important and that, therefore, need review to ensure that you wish them to affect a family care district:

- ✓ 1. State energy policy under s. 1.12 applies under definition of "local governmental unit" in s. 1.12 (1) (a).
- ✓ 2. Public records requirements apply under s. 16.162 under definition of "local governmental unit" in s. 16.612 (1).
- ✓ 3. Information technology provisions under subch. VII of ch. 16, apply, by virtue of definition of "local governmental unit" in s. 16.97 (7), which includes special purpose districts.
- ✓ 4. Code of ethics for public officials and employes (subch. III, ch. 19) applies, through definition of "local governmental unit" in s. 19.42 (7u); also applies to board of directors through definition of "local public office" in s. 19.42 (7w) (c).
- ✓ 5. Provisions on withdrawal or disbursement from the local treasury under s. 66.042 (7) apply, by virtue of "special purpose district" in that subsection.
6. Interest on late payments provisions (s. 66.285) applies under definition of "local governmental unit" in s. 66.285 (1) (c).
7. Provisions on contractor's failure to comply with municipal wage scale (s. 66.293) apply under definition of "local governmental unit" in s. 66.293 (1) (d).
8. Local governmental purchasing provisions under s. 66.299 apply under definition of "local governmental unit" in s. 66.299 (1) (a).
9. Energy savings performance contracting under s. 66.949 applies under definition of "local governmental unit" in s. 66.949 (1) (b).
10. Municipal administrative procedures concerning constitutionally-protected rights under ch. 68 apply by virtue of definition of "municipality" in s. 68.04, which includes special purpose districts.
11. Restrictions on employe testing for the presence of HIV under s. 103.15, by virtue of definition of "employer" under s. 103.15 (1) (a).
12. Mandates of the governor's council on workforce development do not apply, under s. 106.115 (3), under the definition of "local governmental unit".
13. Exemption from treble damages for operating as a monopoly, under s. 133.18 (1) (b), applies, by virtue of existence as a "local governmental unit".
14. Limits on liabilities to a bank for money borrowed apply, under s. 221.0320 (3), by virtue of being a "local governmental unit" under definition in s. 16.97 (7), which includes special purpose districts.
15. Employe development and training programs may be provided by DER, under certain conditions, under s. 230.046 (10) (b) 1., by virtue of definition of "local governmental unit" in s. 230.046 (10) (a), which includes special purpose districts.
16. Trespass to land prohibitions under s. 943.13 apply under definition of "local governmental unit" in 943.13 (1e) (c).

Statutes to which "local governmental unit" or "special purpose district" do not apply (and, therefore, that would have to be amended if a policy decision is made to have them affect a family care district) and that are significant are the following:

- ✓ 1. 13.94 (4) (a), (b)--Auditing by legislative audit bureau and review of performance by joint legislative audit committee
- ✗ 2. 19.21--Destruction of obsolete records - *unnecessary to amend*
- ✓ 3. 19.32 (1)--Open records laws
- ✓ 4. 19.82 (1)--Open meetings laws
- ✓ 5. 20.927--Prohibition on public funding for abortion
- ✓ 6. 20.9275--Prohibition on public funding for abortion-related activities
- ✗ 7. 23.09 (19) (a) 2.--Aids for acquisition of urban green space - *unnecessary*
- ✓ 8. 25.50 (1) (d)--Local government pooled investment fund
- ✗ 9. Subch. II, Ch. 44--Historic preservation - *unnecessary*
- ✓ 10. 66.04 (1m)--Restrictions on payments for abortions and abortion-related activities
- ~~NO ✗~~ 11. 66.04 (2) (a) Investments in time deposits, bonds, etc.
- ✓ 12. 66.30--Intergovernmental cooperation
- ✓ 13. 70.11 (2)--Exemption from property tax
- ✓ 14. 71.26 (1) (b)--Exemption from income tax
- ~~NO ✗~~ 15. 77.25--Exemption from real estate transfer fee -
- ✗ 16. 77.54 (9a)--Exemption from sales tax - *not necessary to amend bec. of 77.54(9a)(e)?*
- ✓ 17. ch. 101--Public employe occupational safety and health laws
- ✗ 18. 605.01 (1)--Local governmental property insurance fund - *def. includes feds*

I have yet to perform searches on "employer", "governmental body" and "University of Wisconsin Hospitals and Clinics Authority", but at this stage do not expect to find many additional applicable laws.

Rick Champagne is working on the provisions relating to worker's compensation, unemployment compensation, state minimum wage and hour and family and medical leave laws, retirement, health insurance, deferred compensation, income continuation insurance, disability insurance and others.

To 2d list add

- ✓ 1. 111.70 (1) (j) - Definition of "municipal employer" for purposes of Subch. IV of ch. 111 (municipal collective bargaining laws)
- ✓ 2. 101.01 (4) - Regulation of ~~industrial~~ bldgs + safety
~~BO 101.01 (4) Public Employe Occupational Safety~~
- ✓ 3. 102.01(2)(d), 102.04 (1)(a) - "Municipality" + "employer" - *worker's compensation*
- ✓ 4. 103.001 (6) - "Employer" - *family or medical leave, child labor, minimum wage*
- ✓ 5. 40.02 (25), (36) - *retirement, health ins., deferred comp*
- ✓ 6. 632.745 (6) (a) - "Employer" for coverage for group and individual health benefits and 2 for small employer health insurance
- ✓ 7. 985.01 (3) - *publication of legal notices*

Kennedy, Debora

From: Fossum, Gretchen
Sent: Friday, January 22, 1999 4:14 PM
To: Kennedy, Debora
Subject: Family Care Draft

Here is Lorraine's piece.

✓ In addition, delete sections 6,7, 8,9, 10,11, and 12. The decision was made not to change the Boards language except to change the number of Board members and have the Board do the external advocacy for Family Care.



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Date: January 21, 1999

To: Gretchen Fossum - DOA/Budget

From: Lorraine Barniskis - DHFS/DSL/BALTCR

Re: Comments on Third Draft of Family Care Legislation

Thank you for the opportunity to comment on the latest preliminary draft of the Family Care legislation. First, to respond to the questions and comments in your e-mail of January 19: some of these are addressed in our comments in the table below. On the others:

1. Several recommendations below address your concern about confusion between the terms "long-term care" and "family care." Regarding the references to the waivers that you point out (page 18, line 9 and page 31, line 20 of the unedited draft): The first refers only to the responsibility of the LTC Council to advise us about this part of the overall LTC system. The second is a potential problem, and I have suggested moving the restriction on type of primary disabling condition to the intro of the eligibility subsection (see below).
5. Can you tell me where the term "geographically accessible" is used? It's hard for me to respond without seeing it in context.
6. The divestment provisions in this draft were not the same as for Medicaid; we are requesting that they be changed to be the same.
8. Why is the whole rights section being removed? There will be negative reaction to this. People with disabilities are understandably worried about "managed care" and want assurances that they can contest unacceptable care plans, especially when such a dispute involves place of residence. We have suggested some changes to the hearing provisions below, but this needs more work.

There is likely to be considerable negative reaction to removal of the local LTC Councils. We recommend giving at least some of the functions that they were to have had to Long-Term Support Planning Committees under 46.27 (4). In order to limit new responsibilities given to counties, we suggest that some of the more important functions from the earlier draft be given to the Planning Committee:

- Advise the county board of supervisors and, if applicable, the county administrator or county executive, on whether to apply to the department and whether to create a ***** agency to apply to the department for a contract to operate a resource center or a care management organization.
- Review initial plans and existing provider networks of any care management organization in the area to assist the care management organization in developing a network of service providers that includes a sufficient number of accessible, convenient and desirable services.

- Advise care management organizations about whether to offer optional acute and primary health care services and, if so, how these benefits should be offered.

Detailed comments:

Reference	Comments
<p>s. 16.009 (2) (p) - BOALTC advocacy</p>	<p>The following suggestions have been discussed with George Potaracke. In addition to responding to the drafter's concerns and questions, these changes limit the purview of the advocacy to Family Care clients and potential Family Care clients (rather than long-term care more broadly).</p> <p>... Advocacy services <u>for potential or actual recipients of the family care benefit</u> required under this paragraph shall include all of the following:</p> <ol style="list-style-type: none"> 1. Providing information, technical assistance and training for consumers of long-term care services about how to obtain the <u>needed</u> services or support items. 2. Providing advice and assistance in preparing and filing complaints, grievances and appeals of complaints or grievances. 3. Providing negotiation and mediation on behalf of consumers of long-term care services <u>these recipients or potential recipients</u>. 4. Assuring the availability of and consulting with legal backup services for <u>Providing individual case advocacy assistance regarding the</u> appropriate interpretation of statutes, rules or regulations. 5. Providing representation for consumers of long-term care services <u>individual case advocacy services in administrative hearings and legal representation for judicial proceedings regarding family care services or benefits</u>. <p>Note: While attorneys are required to represent people in judicial proceedings, individual advocacy services may be provided by either attorneys or non-attorneys in administrative proceedings. We have tried to make this more generic to as not to suggest that attorneys' services would always be required.</p>
<p>pp. 5-8 -</p>	<p>The wording of the amendment to s. 20.435 (5) (b) should be similar to that</p>

Reference	Comments
appropriations	<p>under the Community Aids and COP appropriations: “to fund services provided by resource centers under s. 46.283 and for services under the family care benefit under s. 46.284 (4).”</p> <p>Section 17 of the Bill should be deleted. The appropriation under s. 20.435 (5) (p) is federal funding for Badger Care and will not be used to fund Family Care.</p> <p>Some MA administration funds (GPR and FED) will be used to fund some Resource Center activities. The appropriations under s. 20.435 (1) (bm) and (p) and (7) (md) should therefore be amended, by inserting at the end of the first sentence: “and for services of resource centers under s. 46.283”.</p> <p>Some COP funds will be used to fund some of the functional screening activities of the Resource Center. The following phrase therefore needs to be added to the amendment of s. 20.435 (7) (bd): “for services of resource centers under s. 46.283”.</p> <p>Please delete the creation of a new appropriation under s. 20.435 (7) (ip). Instead, please amend s. 20.435 (7) (im) to read:</p> <p><i>20.435 (7) (im) Community options program and family care benefit: recovery of costs of care. [current language] <u>In addition, all moneys received from the recovery of costs of care under ss. 46.286 (6) and 867.035 for payments to care management organizations for provision of the family care benefit under s. 46.284 (4).</u></i></p> <p>Explanation: It creates a significant accounting administrative workload when a new alpha appropriation is created. DHFS strongly prefers to use an existing appropriation wherever possible. We will set up separate “project codes” within this alpha appropriation to separate COP and Family Care funds.</p>
Pages 8 and 40; Sections 21, 22 and 51 of the draft	<p>We agree that these changes to the powers and duties of county departments and aging units should also include the authority to operate a CMO. They should also include authority for the county department to create a risk reserve if it operates a CMO. (See also later comments about CMO risk reserve provisions.)</p> <p>Are County Human Service Departments under s. 46.23 not included because they have all the powers of a Social Service Department? Similar changes should be made for 51 agencies, to accommodate the pilots.</p>
Sections 24 and 25 of the bill	Please see Attachment 2.
s. 46.27 (7) (fm)	<p>For clarity, please change the amendment to read:</p> <p>“except that this <u>the</u> amount <u>carried forward</u> shall be...”</p> <p>I have another concern about this section, but need to follow up with others</p>

Reference	Comments
	before recommending further changes.
s. 46.27 (7) (fr)	<p>Please change the last sentence of subd. 1. and add another sentence to read: “The county shall maintain the risk reserve in an interest-bearing escrow account with a financial institution, as defined in s. 69.30 (1) (b), subject to department approval of the terms of the escrow. All interest from the principle shall be reinvested in the escrow account.”</p> <p>Explanation: The rewording is for the purpose of clarity; one review thought that as drafted, it sounded like if the Department did not approve the terms of the escrow, the county could maintain the reserve in something other than an escrow account. The added sentence is to assure that interest from the account stays there and is not used for other purposes.</p> <p>The rephrasing to “not expended or encumbered” is good.</p> <p>In subd. 2., the \$750,000 amount is okay (would relate to Milwaukee only), but the “whichever is greater” in this subd. should be “whichever is less.” (Sorry.)</p> <p>Referring only to “interest” is fine.</p>
p. 13 definition of PACE	I have just become aware of the fact that there is a definition of PACE already in the statutes in s. 46.27 (3) (bm). I like the one we developed better, but they should probably be consistent. I suggest changing the old one to match the new one.
p. 14 - citation for Partnership	<p>We found the USC cite and suggest changing this to read: A demonstration program known as the Wisconsin partnership program under a federal waiver authorized under 42 USC 1315.</p>
pp. 13-14 - definitions	<p>Attachment 1 recommends a number of changes to the eligibility provisions, including a new par. (c) under s. 46.286 (1) related to non-financial eligibility (e.g., citizenship or certain alien status). I think we also need to add the general qualifiers like being at least age 18. Wouldn't it be simplest to define this term as “a person who meets all eligibility criteria under s. 46.286 (1)”?</p> <p>Defining the term “Long-term care system,” seems to be creating confusion rather than clarifying. I suggest that we delete this definition and replace the term as now used in the draft as follows:</p> <p>s. 46.281 (1) (g) 3. and 4.: replace with “the long-term care system specified in ss. 46.2805 to 46.2895”</p> <p>s. 46.282 (1): Delete the phrase</p> <p>s. 46.282 (2): replace with “long-term care services and systems”</p> <p>s. 46.282 (3): revise to read, “Monitor patterns of long-term care related complaints, grievances and appeals in order to identify issues of statewide</p>

Reference	Comments
	<p>importance.”</p> <p>s. 46.283 (2) (a): replace with “the long-term care system specified in ss. 46.2805 to 46.2895”</p> <p>s. 46.289 (intro): leave as is</p> <p>The definition for “Resource Center” seems to work, except shouldn’t the standards for operation refer to 46.283 (3) and (4)?</p>
p. 15 - lines 16-18	Given our “pilot” approach, paragraph (d) should be deleted.
p. 15, drafter’s note following line 23	Why would we need an exception to ch. 227 to set rates? Under Medicaid, we already operate a number of managed care programs in which we pay capitated rates for a set of services. Would it be different for payments for enrollees who are not MA-eligible?
p. 15, lines 6-8 s. 46.281(1)(g)2.	Resource Centers provide a broad array of services, not all of which are “long-term care services” or to people who need long-term care. I suggest deleting the phrase “long-term care” from this subd.
s.46.281 (3)	See Attachment 2 for suggested changes.
s. 46.282 (7) p. 18	The reference to Local LTC Councils should be deleted. I would just start the first sentence with “Report annually...”
p. 19 s. 46.283 (1) (b)	Please delete the phrase “within the boundaries of a county.” We will not limit the boundaries of a tribal Resource Center, and reservations cross county lines.
pp. 19-20 s. 46.283 (2)	<p>Only if the county declines or can’t meet standards would we contract with a non-profit to operate a Resource Center. Given our pilot approach for this biennium, this can be simplified and clarified to read as:</p> <p>(2) EXCLUSIVE CONTRACT (a) Except as provided in par. (b), the department may contract only with a county, a *****agency, the governing body of a tribe or band or the Great Lakes inter-tribal council, inc., or under a joint application of two or more of any of these entities, to operate a resource center.</p> <p>(b) The department may contract with a private nonprofit organization to operate a resource center if the department determines that the organization has no significant connection to an entity that operates a care management organization and if any of the following applies:</p> <p>1. A county board of supervisors declines in writing to apply for a</p>

Reference	Comments
	<p>contract to operate a resource center.</p> <p>2. A county agency or a ***** agency applies for a contract but fails to meet the standards specified in sub. (3).</p>
s. 46.283 (3) intro	Please add, at the beginning of the intro, "Within the limits of available funding,"
s. 46.283(3)(b)	<p>Par. (b) mixes up two functions from our proposal. I suggest that the part about emergency screening and response be moved from this paragraph into sub. (4), as follows:</p> <p>Revise s. 46.282 (3) (b) to read: "A determination of functional eligibility for the family care benefit, including the availability of functional screening and a determination of eligibility, on an emergency basis, 24 hours per day."</p> <p>Add a paragraph under s. 46.282 (4) to require that the Resource Center "Assure that emergency calls to the resource center are responded to promptly, 24 hours per day."</p>
s. 46.282 (3) (e)	Please change to read: "(e) A determination of <u>financial eligibility</u> and the maximum amount of cost sharing required for a person who is seeking long-term care services <u>the family care benefit</u> , under standards prescribed by the department." (Sorry, I should have caught this before.)
Drafter's note under s. 46.283 (3) (h)	This language is a good translation of our shorthand term of "managing" waiting lists and accurately reflects our intent.
s. 46.283 (3) (k)	The reference to ch. 55 is much too broad. (I will follow up with a more limited reference.)
s. 46.284 (4) (a)	Please delete the word "minimum."
Drafter's note under s. 46.282 (4) (e)	<p>You are correct that the assessment and care plan are not services of the Resource Center, but we would still like to require that Resource Centers provide information about these CMO services. This could be accomplished by reference to the assessment under s. 46.284 (3) (b) and the care plan under s. 46.284 (3) (c).</p> <p>Please see Attachment 2 for additional recommended changes to this paragraph.</p>
s. 46.283 (5)	<p>Consistent with recommended changes to appropriation language, please change the appropriation references to the following: s. 20.435 (1) (bm) and (p) and (7) (b), (bd) and (md).</p> <p>Also add, after "under sub. (3)", "and perform duties under sub. (4).</p>

Reference	Comments
<p>s. 46.284 (1) pp. 23-24</p>	<p>We want to allow a longer period of exclusive rights to be a CMO to our pilot counties. They are the real pioneers in this effort and will work with us to develop this new way of delivering services. Consequently, it will take them longer than CMOs that start in future years to develop full capacity to be competitive. In addition, we need to give guarantees to these counties that during this developmental phase we will not find them out of compliance with standards and give the contract to another organization. (Instead, we would simply go back to the current system, using funds supporting current enrollees to provide COP/Waiver services. To accomplish this, we request the following:</p> <p>Amend s. 46.284 (1) (b) by:</p> <ul style="list-style-type: none"> - adding at the beginning, "Except as provided in par. (c)," - deleting the sentence: "The initial contracts shall be for 2 years." <p>Renumber the current par. (c) to (d).</p> <p>Add a new par. (c):</p> <p>(c) During the first 4 years in which a pilot county under ...[see Attachment 2] has a contract under which it accepts a per person per month payment for each enrollee in its care management organization, the department may not contract with another organization to operate a care management organization in the pilot county unless either of the conditions under par. (b) 1. or 3. applies.</p>
<p>s. 46.283 (6)</p>	<p>A small thing that will probably be caught by the editor... This title could be shortened to simply "Governing Board," as was done for CMOs.</p>
<p>Drafter's note under s. 46.284 (1) (c)</p>	<p>I agree that addition of a provision similar to s. 46.283 (1) would be appropriate. And that language related to operation of a CMO should be added to the amendments to current statutes related to county department duties (along with authority to create a risk reserve for this purpose). Again, is there a reason why HSDs under s. 46.23 were not included? Also, a couple of our CMO demonstration sites involve 51 agencies. Should we not include them too?</p>
<p>s. 46.284 (2) (b)3</p>	<p>Since applicants can't know prior to operation all of the tasks that will be identified, please change this to read:</p> <p>3. Adequate availability of providers that are able and willing to perform all of the tasks that are <u>likely to be</u> identified in proposed enrollees' service and care plans.</p>
<p>s. 46.284 (3) (a)</p>	<p>Please change the first sentence of this paragraph to read:</p>

Reference	Comments
	<p>“Accept requested enrollment of any person who is <u>entitled to the family care benefit and of any person who is eligible for the family care benefit and for whom funding is available.</u>”</p>
s. 46.284 (3) (e)	<p>Please change lines 20-21 to read: “and safety of the enrollee and provide supportive services uniquely tailored to meet needs of these enrollees <u>assistance in management of the enrollee’s budget and services at a level tailored to the enrollee’s need and desire for such assistance.</u>”</p>
s. 46.284 (3) (g)	<p>For clarity, please change the “and” to “or.” As drafted, this could be read to mean that standards had to be covered by both state and federal requirements.</p>
s. 46.284 (3) (h)	<p>Our attorneys feel that this paragraph should be deleted. Reporting requirements should be handled by contract, not by statute and rule.</p>
<p>Drafter’s note under s. 46.284 (3) (L)</p>	<p>To avoid the citation problem, we recommend changing this provision to read: (L) Annually submit to the department a <u>an independent financial audit that meets the federal requirements of 42 CFR ****.</u></p>
s. 46.284 (3)	<p>Please add a par. (m) to read: (m) Meet all other requirements imposed by the department by contract. Our attorneys are concerned that we could get pressure to restrict our contract provisions to those following from statutory provisions, especially when we are being fairly specific in statute about these requirements.</p>
s. 46.284 (4) (a)	<p>Please delete the reference to (6) (p); otherwise these appropriation references are correct and consistent with recommendations above. Yes, we can and should limit the exemption from s. 46.036 to subs. (3) and (5m).</p>
s. 46.284 (4) (b) and (c)	<p>Please add, in each of these paragraphs, after the second reference to par. (a), the phrase “as determined by the department by contract”.</p>
s. 46.284 (4) (d) and (e)	<p>Please add, at the end of the intro to (d): “without limitation” Please add to (d) a subd. 3: 3. Limitations on the distribution of funds from the risk reserve. Please renumber (e) to (3) 4. and change the opening phrase to read: 4. A county may <u>The requirement that a care management organization place funds...</u> We probably do need to authorize counties to create risk reserves, but that authorization is better placed in the sections of the statutes that describe the powers of county departments; see recommendations above. All of this</p>

Reference	Comments
	provision should be stated as a solvency protection for all CMOs, whether counties or not.
s. 46.284 (4) (g)	This is redundant with (3) (L) and should be deleted.
s. 46.284 (5) CMO governing board	Please add, at the end of s. 46.284 (5) (a), “representative of the care management’s enrollees”. My intent is to cover situations where the CMO serves only one or two of these target groups; consumer members on the governing board should reflect the target group(s) served.
p. 29; drafter’s note	The exemption from home health agency licensing is better placed under chapter 50; good change.
p. 30, s. 46.285	<p>This section needs to be revised; a county can’t authorize “a county agency” to apply to be both the Resource Center and the CMO. In addition, further information from HCFA indicates that the last option in the draft is not acceptable due to the requirement that eligibility be done only by public employees. It also occurs to me that we need to make it clear that the requirement for separation applies to any kind of entity, not just counties. Does this work?</p> <p style="text-align: center;">46.285 Operation of resource center and care management organization.</p> <p>In order to meet federal requirements and assure federal financial participation in funding of the family care benefit, an entity may not directly operate both a resource center and a care management organization.</p> <p>(1) COUNTY OPERATION. (a) If a county board of supervisors, and, if applicable, a county executive or a county administrator, elect to apply to the department for a contract to operate a resource center, the county board of supervisors may create a ***** agency to apply to the department for a contract to operate a care management organization.</p> <p>(b) If a county board of supervisors, and, if applicable, a county executive or a county administrator, elect to apply to the department for a contract to operate a care management organization, the county board of supervisors may create a ***** agency to apply to the department to operate a resource center.</p> <p>(2) TRIBAL OPERATION. (a) If the governing body of a tribe or band elects to apply to the department for a contract to operate a resource</p>

Reference	Comments
	<p>center, it may create a separate corporation to apply to the department for a contract to operate a care management organization. Not more than 25% of the members of the governing board of the corporation may be members of the tribal governing board.</p> <p>(b) If the governing body of a tribe or band elects to apply to the department for a contract to operate a care management organization, it may create a separate corporation to apply to the department for a contract to operate a resource center. Not more than 25% of the members of the governing board of the corporation may be members of the tribal governing board.</p>
pp. 30-36; eligibility, entitlement, etc.	Several experts in the Department have reviewed the draft language and suggested a number of revisions. Please see Attachment 1.
s. 46.286 (6) (d)	Consistent with above recommendations, the appropriation reference here should be changed to s. 46.435 (7) (im).
pp. 36-38 - client rights	<p>The definition of “client” now leaves out someone who requests an eligibility determination and either fails to get the determination in a timely way or wants to dispute the findings. This is a critical omission. Please add back something like “a person applying for eligibility.”</p> <p>Of the deletions from the enumeration of rights, I am particularly concerned about two. First, either here or in the hearing provisions, we need to guarantee prompt and accurate determination of eligibility (including crucial “sorting” between the comprehensive and intermediate levels). Second, I think the protection against reprisal language is important to have someplace; these are vulnerable people who are very fearful that they will lose services if they complain.</p> <p>Hearing provisions under s. 46.287 (4):</p> <p>The intro in sub. (4) (a) ties the time period for contesting a decision to the receipt of a notice, but not everything in the list is something one would receive a notice about (e.g., subd. 2., which describes the CMO’s slowness in delivering what it promised).</p> <p>Medicaid provisions already give hearing rights to MA applicants and recipients who will be eligible for this benefit. We want non-MA applicants and recipients of Family Care to have the same rights. And to extend, for</p>

Reference	Comments
	<p>both groups, contestable actions to include certain decisions about care plans. Would something like this work?</p> <p>“A client may contest any action that is contestable under medical assistance. In addition, a client may contest [add provisions related to care plans].”</p> <p>Yes, the contract monitoring unit should be required to issue a written response to the client’s complaint.</p> <p>As to who explains to the client about their rights and about procedures for filing a complaint, grievance or appeal, all of the following does not belong in the statutes, but here is how it will work:</p> <p>The Department will require that each eligible person who is interested in enrolling in a CMO will be provided with this information by the Resource Center as part of the eligibility determination and enrollment processes. The wording and format of the information will be provided (or at least approved) by the Department. Part of this information will be about the advocacy services available through the new BOALTC contracts and how to contact the appropriate advocate. All of this information will also be required as part of the member handbook required to be given to each enrollee by a CMO. The CMO will also be required to include information about grievance and appeal mechanisms when it gives notice of any adverse action.</p> <p>I need to talk more about this with our legal staff and will follow up as soon as possible with additional thoughts.</p>
s. 46.288 (3) Rule-making on eligibility and entitlement	<p>The changes to our instructions are fine. Thanks to the drafter for catching the discrepancies.</p> <p>Given the revised instructions attached, we should change the term “available assets” in par. (j) to “countable assets.”</p>
s. 46.289	Please see Attachment 2 for suggested changes.
Drafter’s note under s. 46.82 (3) (a) 19.	I asked this question also, and was told that we did not need to specify family care as a Medicaid benefit. As with other managed care programs, our capitation will include funding for a number of already existing services and, under federal law, we can allow CMOs to provide other services so long as they do not provide less of the specified services than would otherwise be provided under fee-for-service. I’ve asked again and will follow up if further discussion indicates we should add it.
pp. 40-48 - information and	It’s fine to include penalties in statute; I just ran out of time to figure out what they should be. Administratively imposed forfeitures are fine.

Reference	Comments
pre-admission screening requirements	Please see Attachment 2 for suggested revisions to these provisions.
s. 600.01 (1) (b) 10.	<p>The requested language regarding “long-term care services” was meant to exclude from this exemption a CMO that decided to include primary and acute services in its benefit package and whose capitation included funding for those services. OCI does want to review any such case, probably as part of an OCI exemption process.</p> <p>I will have asked OCI staff to review the draft and follow up with any concerns they may have.</p>
p. 50 - non-statutory language on Pilots	There are no tribes among our original CMO demos or alternates; on the other hand, it does no harm to leave them in. Please see Attachment 2.

Requested amendments to s. 46.286

(1) ELIGIBILITY. ~~A~~ Except as provided in par. (d), a person is eligible for, but not necessarily entitled to, the family care benefit if the person is at least 18 years of age, does not have a primary disabling condition of mental illness, substance abuse or developmental disability, and meets all of the following criteria:

(a) Functional eligibility. A person is functionally eligible if, ~~due to a primary disabling condition other than mental illness, substance abuse or developmental disability,~~ any of the following applies, as determined by the department or its designee:

[Response to drafter's note: Adding the word "primary" was a change we were going to suggest. I would leave the term "condition" unmodified in par. (a) 1. a. and b.; it's not exactly the same.]

1. The person's functional capacity is at either of the following levels:

a. The Comprehensive level. A person's functional capacity is at the comprehensive level if the person has a long-term or irreversible condition, expected to last at least 90 days or result in death within one year of the date of application, and requires ongoing care, assistance or supervision. Rules promulgated by the department under s. 46.287 (4) shall ensure that criteria for functional eligibility at the comprehensive level shall be substantially similar to eligibility criteria for receipt of medical assistance for nursing facility care and for the long term support community options program under s. 46.27.

b. The Intermediate level. A person's functional capacity is at the intermediate level if the person has a condition that is expected to last at least 90 days or result in death within one year of the date of application, and is at risk of losing his or her independence or functional capacity unless he or she receives assistance from others.

2. *(Wording revised for clarity; several people read original version to mean that the date limitation applied only to nursing home residency. Also to exclude people in nursing homes for recuperative care or rehab who do not have LTC needs.)* The person has a condition that is expected to last at least 90 days or result in death within one year of the date of application and, on the date that the family care benefit became available in the person's county of residence, the person was a resident in a

nursing home or was receiving long-term care services, as specified by the department, funded under any of the following:

- a. Long-term support community options program under s. 46.27-(7) or (11).
- b. A community integration program under s. 46.275, 46.277 or 46.278: Home and community-based waiver programs under 42 USC 1396n (c).
- c. The Alzheimer's family caregiver support program under s. 46.87.
- d. Community aids under s. 46.40 if documented by the county through a method prescribed by the department.
- e. County funding if documented by the county through a method prescribed by the department.

[Response to drafter's note: No, it is not appropriate to include personal care or other MA fee-for-services here.]

(b) *Financial eligibility.* A person is financially eligible if either all of the following, as determined by the department or its designee, ~~applies~~ apply:

1. As determined by the department or its designee, either of the following applies:

a. The projected cost of the person's care plan, as calculated by the department or its designee, exceeds his or her gross monthly income, ~~deductions and allowances permitted by rule by the department~~ plus one-twelfth of his or her available countable assets, ~~less deductions and allowances permitted by rule by the department.~~

b. He or she is eligible for medical assistance under ch. 49.

2. The person accepts medical assistance if eligible under ch. 49 unless exempted by the department by rule.

(c) Non-financial eligibility criteria. The person meets non-financial eligibility requirements for medical assistance under ch. 49. The department or its designee may grant an exception to this requirement for persons functionally eligible under subd. (a) 2.

(d) A person whose primary disabling condition is developmental disability is eligible if the person is a resident of a county or is a member of a tribe operating a care management organization under s. 46.281 (1) (e).

[Note: Please see Attachment 2. We are recommending that the troublesome non-statutory provision authorizing pilots be renumbered into the statutes as s. 46.281 (1) (e). We also recommend that people with developmental

disabilities be included in the pilots right here in the statutory provisions on eligibility. This will be a cleaner and clearer approach.]

(2) COST SHARING. (a) Persons who are determined to be financially eligible under sub. (1) (b) shall contribute to the cost of their care an amount calculated by the department or its designee, after subtracting from the person's gross income the deductions and allowances permitted by the department by rule from the person's gross monthly income plus one-twelfth of countable assets.

(b) Funds received under par. (a) shall be used by a care management organization to pay for long-term care services.

(c) A person who is required to contribute toward the cost of his or her care but who does not make required contributions is no longer eligible for the family care benefit unless exempted in accordance with rules promulgated by the department.

[Response to drafter's notes: Yes, cost sharing applies to all of sub. (1) (b). The "sliding scale" will be set so that very low-income people will not have a cost-share, but some MA recipients will contribute to the cost of their care. The CMO will collect and use the money; capitation payments will reflect the average client contribution anticipated.]

(3) DIVESTMENT. (a) The department or its designee shall require all persons applying for or receiving the family care benefit to report all resource transfers to the department or its designee.

Note: Please delete everything after the above sentence. Instead, we want the applicable provisions of s. 49.453 to apply to the family care benefit. Can we simply cross-reference it? If not, please repeat necessary language in the family care sections.

(4) ENTITLEMENT. (a) Except as provided in par. (b), an eligible person is entitled to and may receive the family care benefit through enrollment in a care management organization if he or she is financially eligible, ~~participates in cost sharing, if applicable,~~ fulfills any required cost-sharing obligations, and meets any of the following criteria:

1. Is functionally eligible at the comprehensive level.
2. Is functionally eligible at the intermediate level and is eligible for medical assistance under sub. (1) (b) 2 1.b. [or just refer to ch. 49 again, which would be clearer.]

3. Is functionally eligible at the intermediate level and determined by an agency under s. 46.90 (2) or ~~s. 55.05(1)~~ s. 55.01 (1t) to be in need of protective services under s. 55.05 or protective placement under s. 55.06. *[This change is a better reference to the county protective services agency.]*

4. Is functionally eligible under sub. (1) (a) 2.

(b) Under a phase-in plan approved by the department, enrollment in a care management organization of persons who are otherwise entitled to the family care benefit may be delayed for not longer than 1 year following the start date of the care management organization's initial contract under which the care management organization receives a per person per month payment. In counties with a population over 500,000, this period shall not be longer than 2 years.

Note: The Department needs time to develop the system capacity to provide the Family Care benefit as an entitlement to people who are not Medicaid-eligible. Please allow for a delayed effective date for this group. We suggest something like the following:

“The department shall determine the date, which shall not be later than July 1, 2000, on which s. 46.285 (4) shall apply to persons who are not eligible for medical assistance under ch. 49.”

Please also amend s. 49.47 (4) to add persons who are eligible for medical assistance coverage of the family care benefit under a waiver granted under s. 46.281 (1) (c).

Explanation:

This will add the new federal waiver for Family Care to our state's Medicaid program. People will access Medicaid card coverage, along with Family Care, if they meet the same income and asset tests as for our current HCB waivers.

Regarding the drafter's notes on spousal impoverishment:

The term “institutionalized spouse,” oddly enough, includes a spouse who receives services under the home and community based waivers such as COP-W and CIP. (Federal drafters seem not as sensible as state drafters, and we use the federal term.) Our sensible state drafter is correct that current Medicaid provisions would cover a Medicaid-eligible person receiving Family Care. However, we also want to apply the same protections in figuring financial eligibility and cost-sharing for Family Care for non-MA people, as we do now in COP. And we would like it clear in the Family Care legislation that spousal impoverishment protections will apply. Please let me know if you need more information or help with this.

Regarding estate recovery provisions:

It is clear that we cannot delete the phrase "after the client attained 55 years of age." Collecting for community care services provided to under Medicaid to persons under 55 is prohibited by federal law and we do not wish to treat non-MA clients differently.

We still have questions in this area to research and answer. I will get you additional comments on estate recovery very soon.

Attachment 2.

Following are our recommendations for (1) accommodating the transition from the old system to the new, with particular reference to the transition from current requirements for COP assessments to the new functional and financial screen under Family Care and (2) updating the pilot language.

1. Move the authorization for the Department to operate CMO pilots from non-statutory provisions to the statutes. We agree with the drafter's notes that this is a better approach, since the pilots will be funded for the whole biennium (from the same appropriations as those listed in s. 46.284 (4)).

It would seem logical to combine the CMO pilot language with current statutory provisions authorizing limited Resource Center pilots under s. 46.271 (2m). Both of these need to be updated to allow full pilots and allow demonstration of the full program. We could amend the existing s. 46.271 (2m) to accomplish this, but it would be easier to follow if we renumbered that section into the new Family Care legislation—perhaps under s. 46.281. I suggest the following:

Delete s. 46.281 (1) (d), renumber (e) to (d) and add to the beginning of the new (d): "After July 1, 2001,".

Renumber and amend s. 46.271 (2m) as s. 46.281 (1) (e) to read:

(e) 1. *County and Tribal Resource Center Pilots.* Prior to July 1, 2001, the department shall establish, in geographic areas determined by the department, a pilot project under which the department may contract with a county, a **** agency, a tribe or the Great Lakes inter-tribal council, inc., or any under a joint application of two or more of any of these entities, to operate a resource center.

2. *County and Tribal Care Management Organization Pilots.* Prior to July 1, 2001, the department shall contract with counties or tribes under a pilot project to demonstrate the ability of counties or tribes to manage all long-term care programs and administer the family care benefit as a care management organization.

2. Change s. 46.281 (3) to read:

(3) DUTY OF THE SECRETARY. The secretary shall certify to each county, nursing home, ~~and~~ community-based residential facility, adult family home and residential care apartment complex the date on which a resource center that serves the area of the county, nursing home, ~~or~~ community-based residential facility, adult family home or residential care apartment complex is

first available to provide a functional and financial screen under s. 46.283 (3) (b) and (e). To facilitate phase-in of resource centers, the secretary may certify that the resource center is available for specified groups of eligible individuals or for specified facilities in the county.

Explanation: The phase-in provision is needed to accommodate situations like Milwaukee, where the Resource Center pilot is only for elderly people, and where phase-in of pre-admission screening is likely across type of facility and/or geographic area within the county (e.g., by zip code).

3. With respect to current statutory provisions related to requirements for the COP assessment, the department should grant exemptions or waivers of all the requirements on counties under Chapter 46. To cover a few that I missed originally, we should add to s. 46.289 the following cites: 46.27 (5) (e), 46.227 (7) (cj), and 46.277 (5) 1n.

Sections 25 through 28, 31, 35 and 36 of the bill could then be deleted.

4. Section 52 of the bill should be amended as follows:

50.02 (2) (d) The department shall promulgate rules that prescribe the time periods and the methods of providing information specified in ss. 50.033 (2r) and (2s), 50.034 (5m) and (5n), 50.035 (4m) and (4n) and 50.04 (2g) (a) and (2h) (a).

5. The new requirements for facilities look generally good. Several changes should be made:

- The term “an assessment” should be changed to “a functional and financial screen”

- The requirements for providing information and for referring should be subject to the Secretary’s having certified the availability of a resource center for the facility and for the target group(s) for whom the resource center is available. (See note under 2. above.)

- Please add to the first sentence of each section related to forfeitures: “... required to forfeit not more than \$500 for each violation.”

- In the forfeiture provisions for CBRFs and for hospitals, the second sentence of the provision includes the phrase “or for failure to correct it.” This phrase is not used for other facility types. I think we should delete this phrase; it’s hard to see how a facility that had not informed a prospective resident or referred a new admission within the required time frame could later correct it.

- There is no forfeiture provision for Adult Family Homes. Was this deliberate because of their small size, or an oversight?

6. The following additional changes to existing statutes should be made. Cross references used in the following assume that the changes in 1. above have been made; if a different approach is taken, these references would also need to be changed.

S. 50.035 (8), which prohibits admissions of residents in Resource Center pilot areas without required screens (termed assessment in this language) probably should be deleted. The new language requiring provision of information and referral to the Resource Center will kick in instead.

Amend s. 50.04 (2m) to read:

50.04 (2m) PLAN OF CARE AND ASSESSMENT REQUIRED. 1. No Except as provided in subd. 2, no nursing home may admit any patient until a physician has completed a plan of care for the patient and the patient is assessed or the patient is exempt from or waives assessment under s. 46.27 (6) (a) or 46.271 (2m) (a) 2. Failure to comply with this subsection is a class "C" violation under sub. (4) (b) 3.

2. Subd. 1. does not apply to those residents for whom the secretary has certified that a resource center is available under s. 46.281 (3).

Rather than as in the draft, amend s. 50.06 (7) as follows:

50.06 (7) An individual who consents to an admission under this section may request that an assessment be conducted for the incapacitated individual under the long-term support community options program under s. 46.27 (6) or, if the secretary has certified that a resource center is available for the individual, a functional and financial screen to determine eligibility for the family care benefit under s. 46.286 (1).

Amend s. 49.45 (6m) (c) to read:

49.45 (6m) (c) 5. Admit only patients assessed or who waive or are exempt from the requirement of assessment under s. 46.27 (6) (a) or, if required under s. 50.035 (4n) or s. 50.04 (2h), who have been referred to a resource center.

7. Change the new s. 46.283 (4) as follows:

(e) Within 6 months after the family care benefit is available to all eligible persons in the area of the resource center, provide information about the services of the resource center, including the services specified in sub. (3) (d), and about the family care benefit to all ~~current~~ older persons and all persons with a physical disability who are residents of nursing homes, community-based residential facilities, adult family homes and ~~resident~~ residential care apartment complexes in the area of the resource center.

(f) Provide a functional and financial screen to any resident, as specified in par. (e), who requests a screen and assist any resident who is eligible and chooses to enroll in a care management organization to do so.

(g) Provide a functional and financial screen to any person seeking admission to a nursing home, community-based residential facility, residential care apartment complex, or adult family home, if the secretary has certified that the resource center is available to the person and the facility.

8. Add a definition of “functional and financial screen”: “A screen prescribed by the department, used to determine functional eligibility under s. 46.286 (1) (a) and financial eligibility under s. 46.286 (1) (b).”

(Note: this definition could also be used in Ch. 50 as a shorthand term to reduce verbiage there.)

Kennedy, Debora

From: Fossum, Gretchen
Sent: Friday, January 22, 1999 4:19 PM
To: Kennedy, Debora
Subject: FW: Family Care Draft

Here is what I sent to Lorraine.

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

From: Fossum, Gretchen
Sent: Friday, January 22, 1999 4:04 PM
To: Barniskis, Lorraine
Cc: Bove, Fredi-Ellen
Subject: Family Care Draft

I have looked over the draft and your requested changes. Here are my comments etc.

1. The Governor decided that client rights were not to be specified in statute. Secretary Leean concurred with that decision. The rights will be specified in rules. However, we will need an appeals section for those individuals who are entitled to Family Care.
2. I talked to George this AM. He is fine with the changes. My concern is with the addition of "potential" clients. Funding is provided for actual clients. How would you address this issue?
3. Concerning your request to delete s. 20.435(7)(ip) and amend (7)(im). If we do not create (7)(im) I would like to create a separate numeric.
4. On page 19, line 8: should be reservation, not county.
5. On page 21, sub. (j): need clarification that for children with development disabilities that it only applies to the pilot counties. Also, see page 22, line 1.
6. On page 28, line 12: need to delete "or other gains" since you are requiring only interest bearing accounts.
7. On page 28, line 16: need a reference for Treasury instruments. Chuck has agreed that we not want to preclude this financial instruments.
8. On page 39 in the transition section: I have discussed this with the drafter - we will combine (1) and (2) such that the Secretary may grant waivers to counties per the sections identified in (2) and any rules that apply to those specific sections.
9. On page 15, point b at the top of your attachment 1, since CIP1A and CIP 1B are included we will have to reference the new s. 46.281(1)(e).
10. Please review the draft and look for all situations where you have used the term "long-term care" (excluding department duties and the LTC Council). I think we have to replace with "family care".
11. Please review the draft to make sure I have caught all the situations where we will have to clarify the developmentally disabled only apply to the pilots.

Kennedy, Debora

From: Lorraine Barniskis [stitcher@itis.com]
Sent: Sunday, January 24, 1999 10:04 AM
To: Kennedy, Debora
Subject: Trying again



ontst1-23.doc

I don't understand this. This is the same address I sent to last night.
Ethernet mysteries.

Date: January 23, 1999

To: Gretchen Fossum - DOA/Budget

From: Lorraine Barniskis - DHFS/DSL/BALTCR

Re: Third Draft of Family Care Legislation

In response to your questions and comments:

1. Please see comments below concerning the hearing issue.
2. You raised a question about the inclusion of "potential" clients in the language related to BOALTC's advocacy responsibilities for Family Care. We feel strongly that these advocacy services have to be available to people who want to contest eligibility determinations, and it was anticipated by the Advocacy Workgroup that they would be. The funding request was indeed based on a formula related to enrollment, but assumes that for every 1000 enrollees, a certain number of people would also need assistance in contesting eligibility determinations. I also spoke to George about this and he is satisfied that the funding will be sufficient to include these potential enrollees.
3. I'll let Fredi respond to the appropriation question.
4. Re: p. 19, line 8 of the draft, where you suggest that the word "county" be changed to "reservation.": As suggested in my earlier comments and our telephone discussion, I think we should just delete the phrase "within the boundaries of a county" from this provision; a tribal Resource Center would still be "for tribal members." I understand that separation of jurisdictions is necessary for functions like eligibility determination, but the intro to s. 46.283 (3) does not require that a Resource Center *provide* the listed functions, only that we assure that all of them are available to somebody who contacts a Resource Center. We can handle jurisdictional issues through our contracting requirements, for example by arrangements among agencies for co-location, telephone connections, or other mechanisms.
5. I disagree that we should delete s. 46.283 (3) (j). I believe you attended the Executive Committee meeting at which we discussed the implications of the decision to limit this legislation with respect to people with developmental disabilities. I summarized those decision in my memo to you of December 20, 1998. In brief, we said that the Resource Centers would continue to be required to provide general services to this population, prescreening would continue to be required for nursing homes and ICFs-MR, but that they would not be eligible to enroll for Family Care benefits except in pilot counties.

Sorry, I don't understand your reference to page 22, line 1 of the draft in this context.

6. I suppose it is okay to delete the phrase "or other gains" from page 28, line 12 of the draft. Is this consistent with your recommendation to inched Treasury instruments? I admit to

ignorance regarding financial terminology; is a dividend considered "interest"? Do you want me to follow up on this?

7. We have no objection to including Treasury instruments.
8. We haven't had time to think through the implications of limiting our authority to waive rules to only those sections enumerated in the cited statutory provisions.
9. I'm not sure it's necessary to include a reference to s. 46.281 (1) (e) in the grandfathering provisions, since the intro. to this subsection excludes people with a primary disabling condition of developmental disability from eligibility. However, your comment makes me realize that we omitted a critical phrase from the suggested language to include people with developmental disabilities in eligibility for the pilots. Please add, in the suggested s. 46.286 (1) (d), something like "and who meets all other eligibility criteria under this subsection."
10. As requested, I have reviewed the draft one more time to look for places where the term "long term care" or a variation of it might cause confusion or be inappropriate. In our telephone conversation, you pointed out several places you thought it should be changed. Here are my thoughts on those:
 - Page 21, line 2: I have already recommended a change here to "family care benefit."
 - Page 25, line 10: This is appropriately used; it relates to an applicant organization's knowledge of local LTC services and other community resources.
 - Page 26, line 4: This is appropriately used; it refers to LTC services under the MA card.
 - Page 32, lines 5-6: I would change this to "services under the family care benefit."
11. As requested, I have reviewed the draft again for possible additional clarifications that people with developmental disabilities are eligible for the family care benefit only in the pilot counties and for pre-admission screening only for nursing homes (including ICFs-MR). I did not find any other places where this should be clarified.

Special Districts:

Our position, in general, is that all the statutory provisions that apply to counties should apply to the new special districts that are being authorized. We are authorizing counties to create these entities only for the purpose of providing separation of the functions of the Resource Center and the CMO. The new districts should not have the power to tax (since their governing boards are not elected).

The good news is that all of the provisions in Debora's list that would apply to the districts without an exception should apply; none need to be amended. The bad news is that a reference to the new district will have to be inserted in all relevant statutes in the latter part of her list. It's hard to see how s. 23.09 (19) (a) 2. or Subch. II., Ch. 44 would possibly be relevant to the purposes of the new districts; otherwise, these provisions should apply.

Hearing Provisions:

I will request review by our attorneys who are involved in grievance and hearing processes on Monday, but for now here's my proposal for dealing with the hearing and related provisions.

I don't know how to word it, but somehow we need to require that a Medicaid recipient can't contest the same action or dispute twice: under the family care provisions and under Chapter 49 provisions. We also don't want to run two parallel systems, just to add to existing Medicaid rights of appeal/hearing the special family care issues regarding care planning and services, and the fact that eligibility under Family Care does not automatically include entitlement.

Revise the draft for s. 46.287 to read something like the following:

(1) DEFINITION. In this section, "client" means a person applying for eligibility for the family care benefit, an eligible person and an enrollee.

(2) HEARING. (a) A client may contest any of the following by sending a written request for a hearing under a mechanism for hearing the dispute that is prescribed by the department by rule:

1. Denial of eligibility under s. 46.286 (1).
2. Denial of entitlement under s. 46.286 (4).
3. Determination of cost-sharing under s. 46.286 (2).
4. Failure to provide timely services and support items that are included in the plan of care.
5. Reduction of services or support items under the family care benefit.
6. Development of a plan of care that is unacceptable for any of the following reasons:
 - a. The plan of care requires the enrollee to live in a place that is unacceptable to the enrollee.
 - b. The plan of care provides care, treatment or support items that are insufficient to meet the enrollee's needs, are unnecessarily restrictive or are unwanted by the enrollee.
7. Termination of the family care benefit.

(b) An enrollee may contest a decision of a care management organization regarding the type, amount or quality of the client's services under the family care benefit other than those specified in par. (a) 4. to 6. In this case, the client shall first send a written request for review by the unit of the department that monitors care management organization contracts. This unit shall review and attempt to resolve the dispute. If the dispute is not resolved to the satisfaction of the enrollee, he or she may request a hearing under the mechanism specified in par. (a) (intro.).

(c) Whenever an action that is specified under par. (a) 1. to 3. or 7. is taken, the resource center shall provide the client, in writing and in a form approved by the department, all of the following:

1. Notice of appeal procedures available.
2. An explanation of how the appeal procedures operate.
3. A recommendation about the most appropriate procedure for the client to pursue.
4. Information about the advocacy services under s. 16.009 (2) (p), including the address and telephone number of the appropriate advocacy agency for the client to contact.

(d) Whenever an action that is specified under par. (a) 5. or 6. is taken, or a dispute under par. (a) 4. or par. (b) arises, the care management organization shall provide the client, in writing and in a form approved by the department, all of the information specified in par. (c) 1. to 4..

Add a prohibition against reprisal, or the overt or implied threat of reprisal for registering complaints or grievances or for requesting a hearing under s. 46.287 (a).

Since the enumeration of rights is being deleted, s. 46.281 (h) should be changed to read something like the following:

“Require by contract that resource centers and care management organizations establish mechanisms through which individuals who are applying for or receiving the family care benefit may register complaints and grievances and mechanisms for resolving complaints and grievances.”

Miscellany:

A couple of oversights and corrections:

1. At the end of the second sentence of s. 46.281 (1) (c), please add: “that is consistent with ss. 46.2805 to 46.2895.”
2. In my memo of January 21, I recommended adding the qualifier “within the limits of available funding” to the intro. of s. 46.283 (3). That was an error; please add it instead to par. (c). We can’t limit things like eligibility determination. However, a concern was raised about the vagueness of what the department was assuring under par. (c) that should be limited.
3. As I looked again at the recommendations for s. 46.285 in my Jan. 21 memo, I wondered whether the language suggested regarding tribes is accurate. A tribe *per se* wouldn’t “create”

a corporation, would it? Wouldn't it be better to say that "tribal members may form" a corporation? They could do that without statutory authorization, of course, so maybe it would be better to reword this as a directive to the department about how it should treat tribal applications.

1/26/99 From Lorraine:

- ① Jurisdictional provision (46.2895(3)) okay
- ② OK to create 46.285(3) re joint operation
- ③ ok to notwithstanding s. 46.2895(3) w/ respect to 46.285(2)(a) + (b)
- ④ ok to prohib. tribal governing bd members from being members of gov. bd. of corp.

From Lorraine Bawiskis 1/28 + Gretchen Fossum 1/29:

all
Delete provisions relating to divestment, trusts,
estate recovery and spousal impoverishment
+ substitute rules by DHS that are substantially
similar to applicable provisions of ch. 49
(49.453, 49.454, 49.455, 49.496)

NOTE: This affects 20.435 (5)(im) + (7)(im)

GF: Do
not
affect

701.065(1)(b)1.

705.04(2g)

859.02(2)(a)

867.035(1)(a)(intro.)

OTHERS: See TAY

99-1295/2

Comments

✓ 49.497

✓ 867.035

✓ 859.07(a)

✓ 867.01(3)(d)

✓ 867.02(2)(a)^(a)6.

✓ 867.03(1)(a) + (b)

(a) + (b)

✓ 700.24

✓ 867.01(3)(a)4.

✓ 867.03(1g)(c)