

Saturday 1/30, if possible

I have already
run the redraft
maker. LRB-0030/P3
DAK/TAY/kmg:ijs
& RAC

1999 - 2000 LEGISLATURE

D-NOTE

DOA:.....Fossum - Long-term care redesign

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

NOTE TO KAREN:
+ Irma
Text ~~from~~ (or anything
else) from
99-0030/rac line
should not be
used at this time.

NCSL
Your Legislative Support System

1 AN ACT ^{Don't} ^{Go out}; relating to: the budget.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided for a later version.

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

INSERT 1-2

- 2 SECTION 1. 15.07 (2) (k) of the statutes is created to read:
- 3 15.07 (2) (k) The chairperson of the council on long-term care shall be
- 4 designated by the governor.
- 5 SECTION 2. 15.07 (2) (k) of the statutes, as created by 1999 Wisconsin Act
- 6 (this act), is repealed.
- 7 SECTION 3. 15.105 (10) of the statutes is amended to read:
- 8 15.105 (10) BOARD ON AGING AND LONG-TERM CARE. There is created a board on
- 9 aging and long-term care, attached to the department of administration under s.

SECTION 3

1 15.03. The board shall consist of 79 members appointed for staggered 5-year terms.
 2 Members shall have demonstrated a continuing interest in the problems of providing
 3 long-term care for the aged or disabled. ~~At least 4~~ All members shall be public
 4 members with no interest in or affiliation with any nursing home. At least 5
 5 members shall be persons aged 65 or older or persons with physical or developmental
 6 disabilities or their family members, guardians or other advocates.

****NOTE: Does the requirement for all members to be public members conflict with
 any ~~current membership of the board on aging and long-term care?~~

7 **SECTION 4.** 15.197 (5) of the statutes is created to read:

8 15.197 (5) COUNCIL ON LONG-TERM CARE. There is created in the department of
 9 health and family services a council on long-term care, which shall consist of 15
 10 members.

***NOTE: I did not include "appointed by the governor", since s. 15.09 (2) stats.,
 grants that power.

11 **SECTION 5.** 15.197 (5) of the statutes, as created by 1999 Wisconsin Act ... (this
 12 act), is repealed.

13 **SECTION 6.** 16.009 (2) (b) 1. of the statutes is amended to read:

14 16.009 (2) (b) 1. Investigate complaints from any person concerning improper
 15 conditions or treatment of aged or disabled persons who receive care in a long-term
 16 care facility or concerning noncompliance with or improper administration of federal
 17 statutes or regulations or state statutes or rules related to long-term care ~~for the~~
 18 ~~aged or disabled facilities.~~

19 **SECTION 7.** 16.009 (2) (b) 2. of the statutes is amended to read:

20 16.009 (2) (b) 2. Serve as mediator or advocate to resolve any problem or dispute
 21 relating to long-term care for the aged or disabled in long-term care facilities.

22 **SECTION 8.** 16.009 (2) (d) of the statutes is amended to read:

1 16.009 (2) (d) Promote public education, planning and voluntary acts to resolve
2 problems and improve conditions involving ~~long-term~~ care for the aged or disabled
3 in long-term care facilities.

4 **SECTION 9.** 16.009 (2) (e) of the statutes is amended to read:

5 16.009 (2) (e) Monitor the development and implementation of federal, state
6 and local laws, regulations, rules, ordinances and policies that relate to long-term
7 care facilities ~~for the aged or disabled.~~

8 **SECTION 10.** 16.009 (2) (g) of the statutes is amended to read:

9 16.009 (2) (g) Stimulate resident, client and provider participation in the
10 development of programs and procedures involving resident rights and long-term
11 care facility responsibilities, by establishing resident councils and by other means.

12 **SECTION 11.** 16.009 (2) (h) of the statutes is amended to read:

13 16.009 (2) (h) Conduct statewide hearings on issues of concern to aged or
14 disabled persons who are receiving or who may receive care in a long-term care
15 facility.

16 **SECTION 12.** 16.009 (2) (i) of the statutes is amended to read:

17 16.009 (2) (i) Report annually to ~~the governor and the chief clerk of each house~~
18 ~~of the legislature for distribution to the appropriate standing committees of the~~
19 legislature under s. 13.172 (3) and to the governor. The report shall set forth the
20 scope of the programs developed in the state for providing ~~long-term~~ care for the
21 aged or disabled ~~developed in the state~~ in long-term care facilities, findings
22 regarding the state's activities ~~in the field of~~ related to long-term care facilities for
23 the aged and disabled, recommendations for a more effective and efficient total
24 program and the actions taken by the agencies of the state to carry out the board's
25 recommendations.

SECTION 13

1 SECTION 13. 16.009 (2) (p) of the statutes is created to read:

2 16.009 (2) (p) Contract with one or more organizations to provide advocacy
3 services to potential or actual recipients of the family care benefit, as defined in s.
4 46.2805 (4), or their families or guardians. The board and contract organizations
5 under this paragraph shall assist these persons in protecting their rights under all
6 applicable federal statutes and regulations and state statutes and rules. An
7 organization with which the board contracts for these services may not be a provider,
8 nor an affiliate of a provider, of long-term care services, a resource center under s.
9 46.283 or a care management organization under s. 46.284. Advocacy services
10 required under this paragraph shall include all of the following:

for potential or actual recipients of the family care benefit

11 1. Providing information, technical assistance and training ~~for consumers of~~ ^{needed}

12 ~~long-term care services~~ about how to obtain ~~the~~ services or support items.

13 2. Providing advice and assistance in preparing and filing complaints,
14 grievances and appeals of complaints or grievances.

15 3. Providing negotiation and mediation ~~on behalf of consumers of long-term~~
16 ~~care services.~~ ^{Providing individual case advocacy assistance regarding the}

17 4. ~~Assuring the availability of and consulting with legal backup services for~~
18 appropriate interpretation of statutes, rules or regulations.

***NOTE: What does "assuring the availability of" mean?

individual case advocacy

19 5. Providing ~~representation for consumers of long-term care~~ services in
20 administrative hearings and ~~judicial proceedings.~~ ^{legal representation for}

***NOTE: This language would appear to require the services of attorneys, is that contemplated? If so, I understand even less what subd. 4. means.

legal representation for

INSERT 4-20

21 SECTION 14. 20.435 (4) (g) of the statutes is created to read:

regarding family care services or benefits

1 20.435 (4) (g) *Family care benefit; cost sharing.* All moneys received from client
2 cost-sharing requirements under s. 46.286 (2) to be expended for the provision of
3 services under the family care benefit under s. 46.284 (4). (5) ✓

 ****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

 ****NOTE: The numbering of this appropriation is dependent upon the creation of s. 20.435 (4) in LRB-0028. If LRB-0028 is not included in the budget bill, this appropriation must be renumbered.

4 **SECTION 15.** 20.435 (5) (b) of the statutes is amended to read:

5 20.435 (5) (b) *Medical assistance program benefits.* Biennially, the amounts in
6 the schedule to provide the state share of medical assistance program benefits
7 administered under s. 49.45, to provide medical assistance program benefits
8 administered under s. 49.45 that are not also provided under par. (o) and, to fund the
9 pilot project under s. 46.27 (9) and (10), to fund services provided by resource centers

10 under s. 46.283 and to provide services under the family care benefit under s. 46.284. (5) ✓

11 Notwithstanding s. 20.002 (1), the department may transfer from this appropriation
12 to the appropriation under sub. (7) (kb) funds in the amount of and for the purposes
13 specified in s. 46.485. Notwithstanding ss. 20.001 (3) (b) and 20.002 (1), the
14 department may credit or deposit into this appropriation and may transfer between
15 fiscal years funds that it transfers from the appropriation under sub. (7) (kb) for the
16 purposes specified in s. 46.485 (3r). Notwithstanding s. 20.002 (1), the department
17 may transfer from this appropriation to the appropriation account under sub. (7) (bd)
18 funds in the amount and for the purposes specified in s. 49.45 (6v).

46.284
(5)

19 **SECTION 16.** 20.435 (5) (o) of the statutes is amended to read:

20 20.435 (5) (o) *Federal aid; medical assistance.* All federal moneys received for
21 meeting costs of medical assistance administered under ss. 46.284 (4), 49.45 and
22 49.665, to be used for those purposes. (5) ✓

1 SECTION 17. ~~20.435 (5) (p) of the statutes is amended to read:~~

2 20.435 (5) (p) ~~*Federal aid; health care for low-income families and the family*~~
3 ~~*care benefit.*~~ All federal moneys received for the badger care health care program for
4 low-income families under s. ~~49.665~~ and for services of resource centers under s.
5 ~~46.283 (5) and of care management organizations under s. 46.284 (4),~~ to be used for
6 ~~that purpose those purposes.~~

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

****NOTE: Is this appropriation correct? Should both RC's and CMO's be referenced?

7 SECTION 18. 20.435 (7) (b) of the statutes is amended to read:

8 20.435 (7) (b) *Community aids.* The amounts in the schedule for human
9 services under s. 46.40, ~~for services of~~ to fund resource centers under s. 46.283 (5), provided by for
10 ~~services of care management organizations~~ under the family care benefit under s. 46.284 (4), for reimbursement
11 to counties having a population of less than 500,000 for the cost of court attached
12 intake services under s. 48.06 (4), for shelter care under ss. 48.58 and 938.22 and for
13 foster care and treatment foster care under s. 49.19 (10). Social services
14 disbursements under s. 46.03 (20) (b) may be made from this appropriation. Refunds
15 received relating to payments made under s. 46.03 (20) (b) for the provision of
16 services for which moneys are appropriated under this paragraph shall be returned
17 to this appropriation. Notwithstanding ss. 20.001 (3) (a) and 20.002 (1), the
18 department of health and family services may transfer funds between fiscal years
19 under this paragraph. The department shall deposit into this appropriation funds
20 it recovers under ss. 46.495 (2) (b) and 51.423 (15) from prior year audit adjustments
21 including those resulting from audits of services under s. 46.26, 1993 stats., or s.
22 46.27. Except for amounts authorized to be carried forward under s. 46.45, all funds
23 recovered under ss. 46.495 (2) (b) and 51.423 (15) and all funds allocated under s.

5

9

10

1 46.40 and not spent or encumbered by December 31 of each year shall lapse to the
2 general fund on the succeeding January 1 unless carried forward to the next calendar
3 year by the joint committee on finance.

to fund services provided by resource centers under s. 46.283(5)

****NOTE: Does this appropriation need to be amended in any other way, e.g., to provide for transfer of moneys?

4 SECTION 19. 20.435 (7) (bd) of the statutes is amended to read:

5 20.435 (7) (bd) *Community options program and; long-term support pilot*
6 *projects; family care benefit.* The amounts in the schedule for assessments, case
7 planning, services and, administration and risk reserve escrow accounts under s.
8 46.27 and, for pilot projects under s. 46.271 (1), ~~and the amounts carried forward~~
9 ~~under 1997 Wisconsin Act 27, section 9123 (2), for the pilot project under s. 46.271~~
10 ~~(2m)~~ and for services under the family care benefit under s. 46.284 (4). If the

5

11 department transfers funds to this appropriation from the appropriation account
12 under sub. (5) (b), the amounts in the schedule for the fiscal year for which the
13 transfer is made are increased by the amount of the transfer for the purposes
14 specified in s. 49.45 (6v). Notwithstanding ss. 20.001 (3) (a) and 20.002 (1), the
15 department may under this paragraph transfer moneys between fiscal years. Except
16 for moneys authorized for transfer under this appropriation, or under s. 46.27 (7) (fm)
17 or (g) ~~or under 1997 Wisconsin Act 27, section 9123 (2)~~, all moneys under this
18 appropriation that are allocated under s. 46.27 and are not spent or encumbered by
19 counties or by the department by December 31 of each year shall lapse to the general
20 fund on the succeeding January 1 unless transferred to the next calendar year by the
21 joint committee on finance.

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

****NOTE: Does this appropriation need to be amended in any other way, e.g., to provide for the transfer of moneys?

1 SECTION 20. ~~20.435 (7) (ip) of the statutes is created to read:~~
 2 20.435 (7) (ip) *Family care benefit; recovery of costs of care.* All moneys received
 3 from the recovery of costs of care under ss. 46.286 (6) and 867.035, for payments to
 4 ***** for provision of the family care benefit under s. 46.284 (4).

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

****NOTE: The wording of this appropriation is dependent on decisions relating to s. 46.286 (6) (c) and (d); please see s. 20.435 (7) (im), stats., which I used as a model.

INSERT 8-4

5 SECTION 21. 46.215 (1) (r) of the statutes is created to read:

6 46.215 (1) (r) If authorized under s. 46.283 (1) (a) 1., to apply to the department
 7 to operate a resource center under s. 46.283 and, if the department contracts with
 8 the county under s. 46.283 (2), to operate the resource center.

of health and family services

INSERT 8-8

9 SECTION 22. 46.22 (1) (b) 1. j. of the statutes is created to read:

10 46.22 (1) (b) 1. j. If authorized under s. 46.283 (1) (a) 1., to apply to the
 11 department to operate a resource center under s. 46.283 and, if the department
 12 contracts with the county under s. 46.283 (2), to operate the resource center.

INSERT 8-12

13 SECTION 23. 46.27 (2) (k) of the statutes is created to read:

14 46.27 (2) (k) Review and approve or disapprove the terms of risk reserve escrow
 15 accounts created under sub. (7) (fr) and approve or disapprove disbursements for
 16 administrative or staff costs from the risk reserve escrow accounts.

17 SECTION 24. 46.27 (5) (e) of the statutes is renumbered 46.27 (5) (e) 1.

****NOTE: Please see ****Note under s. 46.277 (5) (d) 1n. ab.

18 SECTION 25. 46.27 (5) (e) 2. of the statutes is created to read:

19 46.27 (5) (e) 2. After the date specified in s. 46.281 (3), subd. 1. does not apply
 20 to persons who are aged 65 or older or are physically disabled and who reside in the
 21 area that is served by a resource center to which s. 46.281 (3) applies.

****NOTE: Please see ****Note under s. 46.277 (5) (d) 1n. ab.

1 **SECTION 26.** ~~46.27 (6) (a) 2. i. of the statutes is created to read:~~
 2 ~~46.27 (6) (a) 2. i. After the date specified in s. 46.281 (3), persons who are aged~~
 3 ~~65 or older or are physically disabled and who reside in the area that is served by a~~
 4 ~~resource center to which s. 46.281 (3) applies.~~

~~****NOTE: Please see ****Note under s. 46.277 (5) (d) 1n. ab.~~

5 **SECTION 27.** ~~46.27 (6) (a) 3. of the statutes is renumbered 46.27 (6) (a) 3. a.~~

~~****NOTE: Please see ****Note under s. 46.277 (5) (d) 1n. ab.~~

6 **SECTION 28.** ~~46.27 (6) (a) 3. b. of the statutes is created to read:~~

7 ~~46.27 (6) (a) 3. b. After the date specified in s. 46.281 (3), the requirement to~~
 8 ~~conduct an assessment under subd. 3. a. does not apply to persons who are aged 65~~
 9 ~~or older or are physically disabled and who reside in the area that is served by a~~
 10 ~~resource center to which s. 46.281 (3) applies.~~

~~****NOTE: Please see ****Note under s. 46.277 (5) (d) 1n. ab.~~

INSERT 9-10

11 **SECTION 29.** 46.27 (7) (am) of the statutes is amended to read:

12 46.27 (7) (am) From the appropriation under s. 20.435 (7) (bd), the department
 13 shall allocate funds to each county or private nonprofit agency with which the
 14 department contracts to pay assessment and case plan costs under sub. (6) not
 15 otherwise paid by fee or under s. 49.33 (2) or 49.45. The department shall reimburse
 16 counties for the cost of assessing persons eligible for medical assistance under s.
 17 49.46, 49.468 or 49.47 as part of the administrative services of medical assistance,
 18 payable under s. 49.45 (3) (a). Counties may use unspent funds allocated under this
 19 paragraph to pay the cost of long-term community support services and for a risk
 20 reserve under par. (fr).

21 **SECTION 30.** 46.27 (7) (b) of the statutes is amended to read:

1 46.27 (7) (b) 1m. From the appropriations under s. 20.435 (7) (bd) and (im), the
2 department shall allocate funds to each county to pay the cost of providing long-term
3 community support services under sub. (5) (b) not otherwise paid under s. 49.45 to
4 persons eligible for medical assistance under s. 49.46 or 49.47 or to persons whom
5 the county department or aging unit administering the program finds likely to
6 become medically indigent within 6 months by spending excess income or assets for
7 medical or remedial care. The average per person reimbursement under this
8 paragraph may not exceed the state share of the average per person payment rate
9 the department expects under s. 49.45 (6m). The county department or aging unit
10 administering the program may spend funds received under this paragraph only in
11 accordance with the case plan and service contract created for each person receiving
12 long-term community support services. Counties may use unspent funds allocated
13 under this paragraph from the appropriation under s. 20.435 (7) (bd) for a risk
14 reserve under par. (fr).

15 **SECTION 31.** ~~46.27 (7) (cj) 3. ab. of the statutes is created to read:~~

16 ~~46.27 (7) (cj) 3. ab. After the date specified in s. 46.281 (3), subd. 3. a. does not~~
17 ~~apply to persons who are aged 65 or older or are physically disabled and who reside~~
18 ~~in the area that is served by a resource center to which s. 46.281 (3) applies.~~

****NOTE: Please see the ****Note under s. 46.277 (5) (d) 1n. ab.

19 **SECTION 32.** 46.27 (7) (fm) of the statutes is amended to read:

20 46.27 (7) (fm) The department shall, at the request of a county, carry forward
21 up to 10% of the amount allocated under this subsection to the county for a calendar
22 year if up to 10% of the amount so allocated has not been spent or encumbered by the
23 county by December 31 of that year, for use by the county in the following calendar
24 year, ~~except that this amount shall be reduced by the amount of funds remaining in~~

the

carried
forward

that the county has
notified the department
that the county wishes to
place

1 ~~the county's~~ ^(a) risk reserve under par. (fr) ~~at the end of the calendar year.~~ The
 2 department may transfer funds within s. 20.435 (7) (bd) to accomplish this purpose.
 3 An allocation under this paragraph does not affect a county's base allocation under
 4 this subsection and shall lapse to the general fund unless expended within the
 5 calendar year to which the funds are carried forward. A county may not expend funds
 6 carried forward under this paragraph for administrative or staff costs, except
 7 administrative or staff costs that are associated with implementation of the waiver
 8 under sub. (11) and approved by the department.

9 SECTION 33. 46.27 (7) (fr) of the statutes is created to read:

10 46.27 (7) (fr) 1. ~~A~~ county may place in a risk reserve funds that are allocated
 11 under par. (am) or (b) or sub. (11) (c) 3. and are not expended or encumbered for
 12 services under this subsection or sub. (11). The county shall notify the department
 13 of this decision and of the amount to be placed in the risk reserve. The county shall
 14 maintain the risk reserve in an interest-bearing escrow account with a financial
 15 institution, as defined in s. 69.30 (1) (b), if the department has approved the terms

16 of the escrow. ^{not} All interest from the principal shall be reinvested
 in the escrow account.

***NOTE: Please see my change to wording proposed; it follows your explanation.

17 2. The annual amount of a county's expenditure for a risk reserve, as specified
 18 in subd. 1., may not exceed 10% of the county's most recent allocation under ~~this~~
 19 ~~paragraph~~ or \$750,000, whichever is ^{less} greater. The total amount of the risk reserve,
 20 including interest, may not exceed 15% of the county's most recent allocation under
 21 this subsection.

***NOTE: I have used "not expended or encumbered" rather than "not needed".
With the numbers of waiting lists in counties for services, is it realistic to assume that
\$750,000 (or more) would be available for this account annually in a county?

par. (am) and (b) and sub. (11) (c) 3.

(5)

(11)

(3)

new PO:
new
change

***NOTE Your requested language was for an interest bearing escrow account which would yield only interest; therefore, I have not drafted the requested language referring to "other gains accruing from investment of the funds".

1 3. A county may expend funds maintained in a risk reserve, as specified in subd.
2 1., for any of the following purposes:

3 a. To defray costs of long-term community support services under this section.

4 b. To meet requirements under any contract that the county has with the
5 department to operate a care management organization under s. 46.284.

6 c. If approved by a resolution of the county board of supervisors, to transfer
7 funds to a ~~department~~ family care district.

8 d. If approved by the department, for administrative or staff costs under this
9 section.

10 4. A county that maintains a risk reserve, as specified in subd. 1., shall
11 annually, on a form prescribed by the department, submit to the department a record
12 of the status of the risk reserve, including revenues and disbursements.

13 **SECTION 34.** 46.27 (7) (g) (intro.) of the statutes is amended to read:

14 46.27 (7) (g) (intro.) The department may carry forward to the next state fiscal
15 year up to \$500,000 of funds allocated under this subsection and not encumbered by
16 counties by December 31 or carried forward under par. (fm). The department may
17 transfer moneys within s. 20.435 (7) (bd) to accomplish this purpose. An allocation
18 under this paragraph shall not affect a county's base allocation for the program. The
19 department may allocate these transferred moneys during the next fiscal year to
20 counties for planning and implementation of resource centers under s. 46.283 or care
21 management organizations under s. 46.284 and for the improvement or expansion
22 of long-term community support services for clients whose cost of care significantly

1 exceeds the average cost of care provided under this section, including any of the
2 following:

3 **SECTION 35.** 46.27 (11) (c) 5n. ab. of the statutes is created to read:

4 46.27 (11) (c) 5n. ab. After the date specified in s. 46.281 (3), subd. 5n. a. does
5 not apply to persons who are aged 65 or older or are physically disabled and who
6 reside in the area that is served by a resource center to which s. 46.281 (3) applies.

***NOTE: Please see the ***Note under s. 46.277 (5) (d) 1n. ab.

7 **SECTION 36.** 46.277 (5) (d) 1n. ab. of the statutes is created to read:

8 46.277 (5) (d) 1n. ab. After the date specified in s. 46.281 (3), subd. 1n. a. does
9 not apply to persons who are aged 65 or older or are physically disabled and who
10 reside in the area that is served by a resource center to which s. 46.281 (3) applies.

***NOTE: The amendments to s. 46.27 (6) (a) 2. and 3. conflict with some of the
limited waivers or exemptions in s. 46.289. Please review all of the provisions that are
keyed to this ***Note, and the treatment of s. 50.06 (7) (a) and (b) and decide which
treatment you prefer.

***NOTE: Numerous provisions should be looked at to determine if they should be
amended to provide for functional screening by a resource center as well as COP
assessment, including ss. 46.277 (5) (d) 1n., 49.45 (6m) (c) 5., 50.04 (2m) and 50.06 (7),
stats.

INSERT 13-10

11 **SECTION 37.** 46.2805 of the statutes is created to read:

12 **46.2805 Definitions; long-term care.** In ss. 46.2805 to 46.2895:

13 (1) "Care management organization" means an entity that is certified as
14 meeting the requirements for a care management organization under s. 46.284 (1)
15 and that has a contract under s. 46.284 (2). "Care management organization" does
16 not mean an entity that contracts with the department to operate one of the
17 following:

18 (a) A program of all-inclusive care for persons aged 65 or older authorized
19 under 42 USC 1395 to 1395ggg.

1 (b) A demonstration program known as the Wisconsin partnership program
2 under a ~~wavier of sections 1813, 1814, 1833, 1886 and 1902 of the Federal Social~~
3 ~~Security Act.~~ federal waiver authorized under 42 USC 1315

****NOTE: Can you possibly obtain citations to the U. S. Code for these provisions?
We are reluctant to cite in the above manner.

4 (2) "Eligible person" means a person who meets ~~both the~~ criteria ^{all eligibility} for functional
5 eligibility under s. 46.286 (1) (a) and the criteria for financial eligibility under s.
6 46.286 (1) (b).

7 (3) "Enrollee" means a person who is enrolled in a care management
8 organization.

9 (4). "Family care benefit" means financial assistance for long-term care and
10 [✓] support items for an enrollee.

INSERT 14-10

11 ~~(5) "Long-term care system" means the organizations and programs that~~
12 ~~provide the family care benefit or other publicly funded long-term care benefits or~~
13 ~~that provide information about and access to those organizations and programs.~~

****NOTE: I changed "services" to "organizations and programs" because I was
unsure of the antecedent. This term is now used in ss. 46.281 (1) (g) 3. and 4., 46.282 (1)
and (3), 46.283 (2) (a) and 46.289 (intro.). Are the uses correct?

14 ~~(6)~~ ⁽⁸⁾ "Nonprofit organization" has the meaning given in s. 108.02 (19).

15 ~~(7)~~ ⁽⁹⁾ "Older person" means a person who is aged at least 65.

16 ~~(8)~~ ⁽¹⁰⁾ "Resource center" means an entity that meets the standards for operation
17 under s. 46.283 (3) or, if under contract to provide a portion of the services specified
18 under s. 46.283 (3), meets the standards for operation with respect to those services.

****NOTE: Does this language do what you want?

19 ~~(9)~~ ⁽¹¹⁾ "Tribe or band" means a federally recognized American Indian tribe or
20 band.

21 SECTION 38. 46.281 of the statutes is created to read:

1 **46.281 Powers and duties of the department and the secretary;**
2 **long-term care. (1) DUTIES OF THE DEPARTMENT.** The department shall do all of the
3 following:

4 (a) Provide training to members of the council on long-term care who are aged
5 65 or older or who have physical or developmental disabilities or their family
6 members, guardians or other advocates, to enable these members to participate in
7 the council's duties.

8 (b) Provide information to the council on long-term care and seek
9 recommendations of the council.

and that is consistent with ss. 46.2805 to 46.2895

10 (c) Request from the secretary of the federal department of health and human
11 services any waivers of federal medicaid laws necessary to permit the use of federal
12 moneys to provide the family care benefit to recipients of medical assistance. The
13 department shall implement any waiver that is approved. Regardless of whether a
14 waiver is approved, the department may implement operation of resource centers,
15 care management organizations and the family care benefit.

16 (d) ~~Implement the operation of resource centers, care management~~
17 ~~organizations and the family care benefit statewide, on a phased-in basis, by~~
18 ~~December 31, 2004.~~ *After July 1, 2001,*

✓
INSERT
15-18

19 (e) ~~Contract with one or more entities certified as meeting requirements under~~
20 s. 46.284 ~~(1)~~ ³ for services of the entity as a care management organization and one or
21 more entities for services specified under s. 46.283 ~~(2)~~ ³ *and (4)*

22 (f) Prescribe and implement a per person monthly rate structure for costs of the
23 family care benefit.

***NOTE: Needs exception from rule-making requirements of ch. 227A

1 (g) In order to maintain continuous quality assurance and quality
2 improvement for resource centers and care management organizations, do all of the
3 following:

4 1. Prescribe by rule and by contract and enforce performance standards for
5 operation of resource centers and care management organizations.

6 2. Use performance expectations that are related to outcomes for persons
7 ~~receiving long-term care services~~ in contracting with care management
8 organizations and resource centers.

9 3. Conduct ongoing evaluations of the long-term care system.

specified in
ss. 46.2805
to 46.2895

10 4. Require that quality assurance and quality improvement efforts be included

11 throughout the long-term care system.

12 5. Ensure that reviews of the quality of management and service delivery of
13 resource centers and care management organizations are conducted by external
14 organizations and make information about specific review results available to the
15 public.

16 ~~(h) Include in each contract with a resource center or a care management
17 organization requirements for the protection of the rights specified in s. 46.287 (3).~~

INSERT 16-17

18 (i) Prescribe criteria to assign priority equitably on any necessary waiting lists
19 for persons who are eligible for the family care benefit but who do not meet the
20 criteria under s. 46.286 (3).

21 (2) POWERS OF THE DEPARTMENT. The department may develop risk-sharing
22 arrangements in contracts with care management organizations, in accordance with
23 applicable state laws and federal statutes and regulations.

24 (3) DUTY OF THE SECRETARY. The secretary shall certify to each county, nursing
25 home ~~and~~ community-based residential facility the date on which a resource center

, adult family home and residential care
apartment complex

adult family home or residential care apartment complex

1 that serves the area of the county, nursing home ¹ or community-based residential
2 facility is first available to provide a functional screen ~~under s. 46.283(3) and (4).~~
3 and financial

3 SECTION 39. 46.281 (1) (a) of the statutes, as created by 1999 Wisconsin Act
4 (this act), is repealed.

INSERT 17-2
no #

5 SECTION 40. 46.281 (1) (b) of the statutes, as created by 1999 Wisconsin Act
6 (this act), is repealed.

7 SECTION 41. 46.282 of the statutes is created to read:
8 46.282 Council on long-term care. The council on long-term care appointed
9 under s. 15.197 (5) shall do all of the following:

10 (1) Assist the department in developing broad policy issues related to
11 long-term care services ~~and the long-term care system.~~ services and systems

12 (2) Assist the department in developing, implementing, coordinating and
13 guiding ~~the~~ long-term care ~~system~~, including by reviewing and making nonbinding
14 recommendations to the department on all of the following:

15 (a) The department's standard contract provisions for resource centers and
16 care management organizations.

17 (b) The family care benefit, including the per person rate structure for the
18 benefit.

19 (c) The long-term support community options program under s. 46.27.

20 (d) The community integration programs under ss. 46.275, 46.277 and 46.278.

21 (e) Programs other than those under pars (c) and (d) that provide home and
22 community-based services.

23 (f) The provision of medical assistance services under a fee-for-service system.

24 (3) Monitor patterns of complaints ² or grievances and appeals ~~regarding the~~
25 ~~long-term care system~~ in order to identify issues of statewide importance.

related to long-term care

1 (4) Monitor the numbers of persons on waiting lists.

2 (5) Review patterns of utilization of various types of services by care
3 management organizations.

4 (6) Monitor the pattern of care management organization enrollments and
5 disenrollments throughout the state.

6 (7) ~~Review annual reports submitted by local long-term care councils and~~
7 ~~other information and~~ report annually to the legislature ~~in the manner provided~~
8 under s. 13.172 (2) and to the governor on the status, significant achievements and
9 problems of resource centers, care management organizations and the family care
10 benefit, including all of the following:

11 (a) Numbers of persons served.

12 (b) Costs of long-term care provided under the family care benefit.

13 (c) The number and service areas of resource centers and care management
14 organizations.

15 (d) Waiting list information.

16 (e) Results of reviews of quality of services provided by resource centers and
17 care management organizations.

18 SECTION 42. 46.282 of the statutes, as created by 1999 Wisconsin Act (this
19 act), is repealed.

20 SECTION 43. 46.283 of the statutes is created to read:

21 46.283 Resource centers. (1) APPLICATION FOR CONTRACT. (a) A county board
22 of supervisors and, in a county with a county executive or a county administrator, the
23 county executive or county administrator, may decide all of the following:

24 1. Whether to authorize one or more county departments under s. 46.21,
25 46.215, 46.22 or 46.23 or an aging unit under s. 46.82 to apply to the department for

(1) (a) 1. or 2.

1 a contract to operate a resource center and, if so, which to authorize and what client
2 group to serve.

3 2. Whether to create a ~~tribal agency~~ *family care district* to apply to the department for a
4 contract to operate a resource center.

5 (b) The governing body of a tribe or band or of the Great Lakes inter-tribal
6 council, inc., may decide whether to authorize a tribal agency to apply to the
7 department for a contract to operate a resource center for tribal members ~~within the~~
8 ~~boundaries of a county~~ and, if so, which client group to serve.

9 (c) Under the requirements of par. (a), a county board of supervisors may decide
10 to apply to the department for a contract to operate a multicounty resource center
11 in conjunction with the county board or boards of one or more other counties or a
12 county-tribal resource center in conjunction with the governing body of a tribe or
13 band or the Great Lakes inter-tribal council, inc.

14 (d) Under the requirements of par. (b), the governing body of a tribe or band may
15 decide to apply to the department for a contract to operate a resource center in
16 conjunction with the governing body or governing bodies of one or more other tribes
17 or bands or the Great Lakes inter-tribal council, inc., or with a county board of
18 supervisors.

19 (2) EXCLUSIVE CONTRACT. (a) ~~Except as provided in par. (b), during the first 54~~
20 ~~months after the effective date of this paragraph [revisor inserts date], or the first~~
21 ~~54 months after the approval by the secretary of the federal department of health and~~
22 ~~human services of all waivers of federal medicaid laws that are necessary to~~
23 ~~implement the long-term care system, as determined by the department, whichever~~

24 ~~is later,~~ the department may contract only with a county, a ~~tribal agency~~ *family care district*, the

Before July 1, 2001

family care district

SECTION 43

After June 30, 2001

with 2 or more of these entities

1 governing body of a tribe or band or the Great Lakes inter-tribal council, inc., or
2 under a joint application of any of these, to operate a resource center.

3 (b) During the period specified in par. (a), the department may contract with
4 a private nonprofit organization that is entirely separate from an entity that
5 operates a care management organization to operate a resource center if ~~the~~
6 board of supervisors or the governing body of a tribe or band or the Great Lakes
7 inter-tribal council, inc. declines to apply for a contract to operate a resource center
8 or fails to meet the standards specified in sub. (3). INSERT 20-8 (no #)

9 (c) After the period specified in par. (a), the department may contract to operate
10 a resource center with counties, ~~agencies~~ family care districts, the governing body of a tribe
11 or band or the Great Lakes inter-tribal council, inc., or under a joint application of
12 any of these, or with a private nonprofit organization that is entirely separate from
13 an entity that operates a care management organization.

****NOTE: Are subs. (1) and (2) now accurate? Please note ss 46.215 (1) (r), 46.22
(1) (b) 1, j. and 46.82 (3) (a) 19

14 (3) STANDARDS FOR OPERATION. The department shall assure that at least all of
15 the following are available to a person who contacts a resource center for service:

16 (a) Information and referral services and other assistance at hours that are
17 convenient for the public.

18 (b) A determination of functional eligibility for the family care benefit,
19 including the availability of functional screening and a determination of eligibility,
20 on an emergency basis, 24 hours per day.

NOTE: Is "a determination of eligibility" what is meant by "response"?

Within the limits of available funding,

21 (c) Prevention and intervention services.

22 (d) Counseling concerning public and private benefits programs.

financial eligibility and of

① (e) A determination of the maximum amount of cost sharing required for a
2 person who is seeking long-term care services, under standards prescribed by the
3 department.

4 (f) Assistance to a person who is eligible for the family care benefit with respect
5 to the person's choice of whether or not to enroll in a care management organization
6 and, if so, which available care management organization would best meet his or her
7 needs.

8 (g) Assistance in enrolling in a care management organization for persons who
9 choose to enroll.

10 (h) Equitable assignment of priority on any necessary waiting lists, consistent
11 with criteria prescribed by the department, for persons who are eligible for the family
12 care benefit but who do not meet the criteria under s. 46.286 (f).³

~~****NOTE: It was unclear to me what "management" meant in the language
proposed for this paragraph. Is my language accurate?~~

13 (i) Assessment of risk for each person who is on a waiting list, as described in
14 par. (h), development with the person of an interim plan of care and assistance to the
15 person in arranging for services.

16 (j) Transitional services to families whose children with physical or
17 developmental disabilities are preparing to enter the adult service system.

~~18 (k) Services under s. 46.90 and ch. 55, if a person is eligible for the services~~

19 (k) A determination of eligibility for state supplemental payments under s.
20 49.77, medical assistance under s. 49.46, 49.468 or 49.47 or the federal food stamp
21 program under 7 USC 2011 to 2029.

② (4) ~~RESOURCE CENTER~~ DUTIES. A resource center shall do all of the following:

1 (a) Provide services within the entire ~~division~~ geographic area prescribed for
2 the resource center by the department.

3 (b) Submit to the department all reports and data required or requested by the
4 department.

5 (c) Implement internal quality improvement and quality assurance processes
6 that meet standards prescribed by the department.

to all eligible persons

7 (d) Cooperate with any review by an external advocacy organization.

8 (e) Within 6 months after the family care benefit is available in the area of the
9 resource center, provide information about the services of the resource center,
10 including the services specified in sub. (d), and about the family care benefit to

11 all ~~current~~ residents of nursing homes, community-based residential facilities, adult
12 family homes and ~~residential~~ care apartment complexes in the area of the resource
13 center.

elder persons and persons with a physical disability who are

residential

about assessments under s. 46.284 (4) (b) and care plans under s. 46.284 (4) (c)

****NOTE: Instructions for this paragraph required informing a resident about the availability of the "assessment and care plan"; these are not part of the duties of a resource center; correct? Do you want me to add anything else?

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

and financial

for performance of the duties under sub. (4)

INSERT 22-16

17 (5) FUNDING. From the appropriation accounts under s. 20.435 (p) and (7)
18 (b) and (md), the department may contract with organizations that meet standards
19 under sub. (3) and shall distribute funds for services provided by resource centers.

20 (6) GOVERNING BOARD ~~MEMBERSHIP DUTIES~~ A resource center shall have a
21 governing board that reflects the ethnic and economic diversity of the geographic
22 area served by the resource center. At least one-fourth of the members of the

**** NOTE: The numbering of s. 20.435 (4) (bm) and (p) is dependent on the renumbering of s. 20.435 (1) (bm) and (p) in LRB-0028.

(4) (bm) and

LRB-0028 is not included in the budget bill, these cross-references must be renumbered

1 governing board shall be older persons or persons with physical or developmental
2 disabilities or their family members, guardians or other advocates.

INSERT 23-2 ✓

INSERT 23-4

3 SECTION 44. 46.284 of the statutes is created to read:

4 **46.284 Care management organizations.** ² ~~(a)~~ ² CONTRACTS. (a) The
5 department may contract for operation of a care management organization only with
6 an entity that is certified as meeting the requirements under sub. ³ ~~(a)~~. No entity may
7 operate as a care management organization under the requirements of this section
8 unless so certified and under contract with the department.

Except as provided in par. (c),

9 (b) Within each county, the department shall initially contract to operate a care
10 management organization with the county or a ~~state~~ ^{agency} if the county elects to
11 operate a care management organization and the care management organization
12 meets the requirements of sub. ³ ~~(a)~~ and performance standards prescribed by the
13 department. A county that contracts under this paragraph may operate the care
14 management organization for all of the target groups or for a selected group or
15 groups. ~~The initial contracts shall be for 2 years.~~ During the first 2 years in which
16 the county has a contract under which it accepts a per person per month payment
17 for each enrollee in the care management organization, the department may not
18 contract with another organization to operate a care management organization in
19 the county unless any of the following applies:

family care district

20 1. The county agrees in writing that at least one additional care management
21 organization is necessary or desirable.

22 2. Because the county does not elect to serve both older persons and persons
23 with a physical disability or is unable to meet requirements for both of these client
24 groups, an additional care management organization is necessary to serve the group
25 that is not served by the county.

1 3. The governing body of a tribe or band or the Great Lakes inter-tribal council,
2 inc., elects to operate a care management organization within the area and is
3 certified under sub. (3).

INSERT
24-3

4 (4) For contracts following the initial contracts specified in par. (b), the
5 department shall, after consulting with the council on long-term care, prescribe
6 criteria to determine the number of care management organizations that are
7 necessary for operation in a county. Under these criteria, the department shall solicit
8 applications, certify those applicants that meet the requirements specified in sub. (3)
9 (a), select certified applicants for contract and contract with the selected applicants.

~~***NOTE: Would it not be appropriate to have a provision that precedes sub. (1) that
corresponds to s. 46.283 (1)? This also would affect ss. 46.215 (1) (r), 46.22 (1) (b) 1. j and
46.82 (3) (a) 19. It also would appear to be necessary to be consistent with s. 46.285.~~

10 (3) CERTIFICATION; REQUIREMENTS. (a) If an entity meets the requirements
11 under par. (b) and applicable rules of the department and submits to the department
12 an application for initial certification or certification renewal, the department shall
13 certify that the entity meets the requirements for a care management organization.

14 (b) To be certified as a care management organization, an applicant shall
15 demonstrate or ensure all of the following:

16 1. Adequate availability of providers with the expertise and ability to provide
17 services that are responsive to the disabilities or conditions of all of the applicant's
18 proposed enrollees and sufficient representation of programmatic philosophies and
19 cultural orientations to accommodate a variety of enrollee preferences and needs.

20 2. Adequate availability of providers that can meet the preferences and needs
21 of its proposed service recipients for services at various times, including evenings,
22 weekends and, when applicable, on a 24-hour basis.

likely to be

1 3. Adequate availability of providers that are able and willing to perform all
2 of the tasks that are identified in proposed enrollees' service and care plans.

3 4. Adequate availability of residential and day services that are geographically
4 accessible to proposed enrollees' homes, families or friends.

5 5. Adequate supported living arrangements of the types and sizes that meet
6 proposed enrollees' preference and needs.

7 6. Expertise in determining and meeting the needs of every target population
8 that the applicant proposes to serve and connections to the appropriate service
9 providers.

10 7. Thorough knowledge of local long-term care and other community resources.

11 8. The ability to manage and deliver, either directly or through subcontracts
12 or partnerships with other organizations, the full range of benefits to be included in
13 the monthly payment amount.

14 9. Thorough knowledge of methods for maximizing informal caregivers and
15 community resources and integrating them into a service or care plan.

16 10. Coverage for a geographic area specified by the department.

17 11. The ability to develop strong linkages with systems and services that are
18 not directly within the scope of the applicant's responsibility but that are important
19 to the target group that it proposes to serve, including primary and acute health care
20 services.

21 12. Adequate and competent staffing by qualified personnel to perform all of
22 the functions that the applicant proposes to undertake.

23 4) ~~DUTIES OF THE CARE MANAGEMENT ORGANIZATION~~ A care management
24 organization that is under contract with the department shall do all of the following:

in addition to meeting all contract requirements,

SECTION 44

and for whom funding is available

entitled to the family care benefit and of any person who is

- 1 (a) Accept requested enrollment of any person who is eligible for the family care
- 2 benefit. No care management organization may disenroll any enrollee, except under
- 3 circumstances specified by the department by contract. No care management
- 4 organization may encourage any enrollee to disenroll in order to obtain long-term
- 5 care services under the medical assistance fee-for-service system. No involuntary
- 6 disenrollment is effective unless the department has reviewed and approved it.
- 7 (b) Conduct a comprehensive assessment for each enrollee, including an
- 8 in-person interview with the enrollee, using a standard format developed by the
- 9 department.
- 10 (c) With the enrollee and the enrollee's family or guardian, if appropriate,
- 11 develop a comprehensive care plan that reflects the enrollee's values and
- 12 preferences.
- 13 (d) Provide or contract for the provision of necessary services and monitor the
- 14 provided or contracted services.
- 15 (e) Provide, within guidelines established by the department, a mechanism by
- 16 which an enrollee may arrange for, manage and monitor his or her family care benefit
- 17 directly or with the assistance of another person chosen by the enrollee. The care
- 18 management organization shall monitor the enrollee's use of a fixed budget for
- 19 purchase of services or support items from any qualified provider, monitor the health
- 20 and safety of the enrollee and provide ~~supportive services uniquely tailored to meet~~
- 21 ~~the needs of these enrollees.~~ assistance in management of the enrollee's budget
- 22 and services at a level tailored to the enrollee's
- 23 need and desire for the assistance
- 24 (f) Provide, on a fee-for-service basis, case management services to persons
- 25 who are functionally eligible but not financially eligible for the family care benefit.
- (g) Meet all performance standards required by the federal government ~~and~~ or

promulgated by the department by rule.

~~***NOTE: I did not draft "or by contract", as requested, because it is unnecessary; if the CMO fails to meet those standards, it is a breach of contract.~~

(1) (h) Submit, ~~in the manner prescribed by~~ ^{to} the department ~~by rule, any~~
(2) ~~information or~~ ^{and data} reports ^{or requested} required by the department.

3 (i) Implement internal quality improvement and assurance processes that
4 meet standards prescribed by the department by rule.

~~***NOTE: Please see the ***NOTE under par. (e)~~

5 (j) Cooperate with external quality assurance reviews.

6 (k) Meet departmental requirements for protection of solvency.

(7) (L) Annually submit to the department ~~&~~ financial audit that meets ~~the~~
(8) requirements ~~of 42 CFR~~ ^{federal}.

~~***NOTE: The proposed CFR cite is incorrect, most likely it is 42 CFR~~

~~***NOTE: Paragraphs (g) to (L) were formerly located in sub. 22 (c)~~

(9) ✓ (5) (1) FUNDING AND RISK-SHARING. (a) From the appropriation accounts under s.
(10) 20.435 (4) (g), (5) (b) ^{and} (o) ~~and (p)~~ and (7) (b) and (bd), the department shall provide
11 funding on a capitated payment basis for the provision of services under this section.

(12) Notwithstanding s. 46.036, a care management organization that is under contract
13 with the department may expend the funds, consistent with this section, including
14 providing payment, on a capitated basis, to providers of services under the family
15 care benefit.

~~***NOTE: Do you really want to notwithstand all of s. 46.036?~~

~~***NOTE: Are the appropriations referenced correct?~~

16 (b) If the expenditures by a care management organization under par. (a)
(17) exceed payments received from the department under par. (a), the department may
18 share the loss with the care management organization, within the limits prescribed
19 under the contract with the department.

as determined by
the department by
contract,

1 (c) If the payments received from the department under par. (a) exceed the
 2 expenditures by a care management organization under par. (a), the care
 3 management organization may retain a portion of the excess payments, within the
 4 limits prescribed under the contract with the department, and shall return the
 5 remainder to the department.

as determined by the department by contract.

6 (d) The department may, by contract, impose solvency protections that the
 7 department determines are reasonable and necessary to retain federal financial
 8 participation. These protections may include all of the following:

9 1. The requirement that a care management organization segregate a risk
 10 reserve from other funds of the care management organization or the authorizing
 11 body for the care management organization.

12 2. The requirement that interest ~~on the reserve~~ accruing to the risk reserve
 13 remain in the escrow account for the risk reserve.

INSERT 28-13

#4. The requirement that a care management organization

14 ~~A county may~~ place funds in a risk reserve and maintain the risk reserve
 15 in an interest-bearing escrow account with a financial institution, as defined in s.

16 69.30 (1) (b) Moneys in the risk reserve *or invested as specified in this subdivision*
 17 may be expended only for the provision of
 18 services under this section. If a care management organization ceases participation
 19 under this section, the funds in the risk reserve, minus any contribution of moneys
 20 other than those specified in par. (c), shall be returned to the department. The
 21 department shall expend the moneys for the payment of outstanding debts to
 22 providers of family care benefit services and for the continuation of family care
 benefit services to enrollees.

****NOTE: I wasn't sure how to characterize "non-family care funds"; please review to see if my characterization is accurate.

or invest funds as specified in s. 46.2895 (4)(j) 2. or 30

1 ^(e)
2 ~~(1)~~ 1. Subject to subd. 2., a care management organization may enter into
3 contracts with providers of family care benefit services and may limit profits of the
4 providers under the contracts.

5 2. The department shall review the contracts in subd. 1., including rates for the
6 provision of service, to ensure that the contract terms protect services access by
7 enrollees and financial viability of the care management organization, and may
8 require contract revision.

9 ~~(g) A care management organization shall annually be subject to an
independent financial audit that the department shall obtain.~~

10 ^{(B)(L)}
11 ~~(8)~~ GOVERNING BOARD. A care management organization shall have a governing
12 board that reflects the ethnic and economic diversity of the geographic area served
13 by the care management organization. At least one-fourth of the members of the
14 governing board shall be older persons or persons with physical or developmental
15 disabilities or their family members, guardians or other advocates.

✓
INSERT
29-14

***NOTE: Note that I deleted sub. (6); please see s. 80.49 (B)(1).

who are representative of the care management organization's enrollees

16 SECTION 45. 46.284 ~~(17)~~ ^{(2)(d)} of the statutes, as created by 1999 Wisconsin Act ...
(this act), is amended to read:

17 46.284 ~~(1)~~ ^{(2)(b)} ~~(1)~~ ^(d) For contracts following the initial contracts specified in par. (b),
18 the department shall, after consulting with the council on long-term care, prescribe
19 criteria to determine the number of care management organizations that are
20 necessary for operation in a county. Under these criteria, the department shall solicit
21 applications, certify those applicants that meet the requirements specified in sub. ⁽³⁾ ~~(1)~~
22 (a), select certified applicants for contract and contract with the selected applicants.

23 SECTION 46. 46.285 of the statutes is created to read:

INSERT 30-2 v^o #

1 **46.285** ~~Joint~~ ⁰ **operation of resource center and care management**

2 **organization.** If a county board of supervisors and, in a county with a county
3 executive or a county administrator, the county executive or county administrator,
4 decide to authorize a county agency to apply to the department for both a contract
5 to operate a resource center and a contract to operate a care management
6 organization, the county board of supervisors and, if applicable, the county executive
7 or county administrator, may do one of the following:

- 8 (1) Operate the care management organization and create a
9 *****agency to operate the resource center.
- 10 (2) Operate the resource center and create a *****agency to operate the care
11 management organization.
- 12 (3) Create a *****agency to operate the resource center and create a ****
13 agency to operate the care management organization.

14 **SECTION 47.** 46.286 of the statutes is created to read:

Except as provided in par. (4), a

15 **46.286 Family care benefit.** (1) **ELIGIBILITY.** ~~A~~ ^{necessarily} person is eligible for, but not
16 entitled to, the family care benefit if the person is at least 18 years of age and meets
17 all of the following criteria:

- 18 (a) *Functional eligibility.* A person is functionally eligible if, ~~due to a primary~~ ^{; does not have a primary}
19 ~~disabling condition other than mental illness, substance abuse or developmental~~ ^{disabling condition of mental illness, substance abuse or developmental}
20 ~~disability,~~ any of the following applies, as determined by the department or its
21 designee:

***NOTE: I added "primary" to "disabling condition", since your instructions for rule making included the whole term. Is this accurate? Another problem: is the "condition" referred to in par. (a) 1. a. and b. the same as the "primary disabling condition"? If so, it should be termed that.

levels

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

1 a. The comprehensive level, if the person has a long-term or irreversible
2 condition, expected to last at least 90 days or result in death within one year of the
3 date of application, and requires ongoing care, assistance or supervision.

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

8 2. The person was receiving long-term care services funded under any of the
9 following or was a resident in a nursing home on the date that the family care benefit
10 became available in the person's county of residence:

INSERT 31-10

- 11 a. The long-term support community options program under s. 46.27 ~~WVA (11)~~
Home and community-based waiver programs under 42 USC 1396n (c),
- 12 b. ~~community integration program under s. 46.275, 46.277 or 46.278.~~ *including a*
- 13 c. The Alzheimer's family caregiver support program under s. 46.87.
- 14 d. Community aids under s. 46.40. *, if documented by the county*
under a method prescribed by
- 15 e. County funding. *the department*

***NOTE: Would personal care or other MA services be appropriate to be included here?

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

18 1. ~~As determined by the department or its designee, either of the following applies:~~
19 ~~The projected cost of the person's care plan, as calculated by the department~~
20 ~~or its designee, exceeds the person's gross monthly income, ~~deductions and~~~~
~~allowances specified by rule by the department,~~ *countable* plus one-twelfth of his or her
21 ~~available~~ *assets*, *less deductions and allowances permitted by*
rule by the department

22 2. ~~The person is eligible for medical assistance under s. 46.22 (1), 46.275,~~
23 ~~46.277, 46.278, 49.46 (1) (b) 4. or 6m 2, 49.47 (4) (a) 3 or 4. or 49.47 (4)~~
under ch. 49

INSERT 31-23

~~***NOTE: If LRB-0266 (the Pathways to Independence draft) is not included in the budget bill, the reference to s. 49.472 in par. (b) 2 must be eliminated.~~

his or her

that is

, plus one-twelfth of countable assets,

1 (2) COST SHARING. (a) ^(A) Persons who ^(S) are determined to be financially eligible
2 under sub. (1) (b) shall contribute to the cost of ~~their~~ care an amount calculated by
3 the department or its designee after subtracting from the person's gross income ^(the)
4 deductions and allowances permitted by the department by rule.

~~***NOTE: The cost sharing applies to all of sub. (1) (b), correct?~~

5 (b) Funds received under par. (a) shall be used to pay for ~~long-term care~~
6 services. *under the family care benefit* by a care management organization

~~***NOTE: How is this intended to work? Who "uses" the money? The CMO? The resource center? Or does the department credit it to the program revenue appropriation?~~

7 (3) DIVESTMENT. (a) The department or its designee shall require all persons
8 applying for the family care benefit and, annually, all persons receiving the benefit
9 to provide a declaration of assets, on a form prescribed by the department. The
10 declaration shall include all of the following:

11 1. All assets that the person or his or her spouse transferred to another for less
12 than fair market value at any time within the 36-month period immediately before
13 the date of the declaration.

14 2. All payments made from a trust or portions of a trust established by the
15 person or his or her spouse that would be treated as assets transferred by an
16 individual under s. 49.454 (2) (c) or (3) (b), if made within the 60-month period
17 immediately before the date of the declaration.

***NOTE: Note my changes to the language proposed. Is the draft accurate?

18 (b) In determining financial eligibility under sub. (1) (a) and in calculating the
19 amount under par. (a), the department or its designee shall include as the assets for
20 any person, except those persons who are eligible for medical assistance under s.

1 49.46, 49.468 or 49.47, any portion of assets that the person or the person's spouse
 2 has transferred to another as specified in par. (a), unless one of the following applies:
 3 1. The transferred asset has no current value.
 4 2. The department or its designee determines that undue hardship would
 5 result to the person or to his or her family from a denial of financial eligibility or from
 6 including all or a portion of a transferred asset in the calculation of the amount of
 7 cost sharing required.

INSERT
33-7

(a) Subject to pars. (c) and (d), a

8 ~~ENTITLEMENT.~~ ⁽³⁷⁾ A person is entitled to and may receive the family care benefit
 9 through enrollment in a care management organization if he or she is financially
 10 eligible, ~~participates in cost sharing, if applicable,~~ and meets any of the following
 11 criteria:

cost-sharing ^{fulfills any applicable requirements}

- 12 1. ~~Is functionally eligible at the comprehensive level.~~
- 13 2. ~~Is functionally eligible at the intermediate level and is ~~partially~~ eligible~~
 14 under sub. (1) (b) ^{1.b}.
- 15 3. ~~Is functionally eligible at the intermediate level and is determined by an~~
 16 agency under s. 46.90 (2) or ^{55.} 55.05 ~~to be in need of protective services under s. 55.05~~
 17 or protective placement under s. 55.06. ^(1t)
- 18 4. ~~Is functionally eligible under sub. (1) (a) 2.~~

(*)

19 (5) RECOVERY OF COSTS OF CARE; MEDICAL ASSISTANCE ELIGIBILITY. For a person
 20 who is eligible for medical assistance under s. 49.46, 49.468 or 49.47 and receives the
 21 family care benefit, ^{55.} ~~s. 49.496, applies.~~ ^{49.497 and 867.035 apply}

22 (6) RECOVERY OF COSTS OF CARE; OTHER ELIGIBILITY. (a) In this subsection:
 23 1. "Client" means a person who receives or received the family care benefit.
 24 2. "Disabled" has the meaning given in s. 49.468 (1) (a) 1.

1 3. "Home" means property in which a person has an ownership interest
2 consisting of the person's dwelling and the land used and operated in connection with
3 the dwelling.

4 (b) 1. Except as provided in subd. 4., the department shall file a claim against
5 the estate of a client or against the estate of the surviving spouse of a client for the
6 value of services under the family care benefit paid on behalf of the client, unless
7 already recovered by the department under this subsection.

****NOTE: I deleted "after the client attained 55 years of age", which is contained in
s. 46.27 (7g) (e) 1. Okay?

8 2. The affidavit of a person designated by the secretary to administer this
9 paragraph is evidence of the amount of the claim.

10 3. The court shall reduce the amount of a claim under subd. 1. by up to \$3,000
11 if necessary to allow the client's heirs or the beneficiaries of the client's will to retain
12 the following personal property:

13 a. The decedent's wearing apparel and jewelry held for personal use.

14 b. Household furniture, furnishings and appliances.

15 c. Other tangible personal property not used in trade, agriculture or other
16 business, not to exceed \$1,000 in value.

17 4. A claim under subd. 1. is not allowable if the decedent has a surviving child
18 who is under age 21 or disabled or a surviving spouse.

19 5. If the department's claim is not allowable because of subd. 4. and the estate
20 includes an interest in a home, the court exercising probate jurisdiction shall, in the
21 final judgment, assign the interest in the home subject to a lien in favor of the
22 department for the amount described in subd. 1. The personal representative shall
23 record the final judgment as provided in s. 863.29.

1 6. The department may not enforce the lien under subd. 5. as long as any of the
2 following survive the decedent:

- 3 a. A spouse.
- 4 b. A child who is under age 21 or disabled.

5 7. The department may enforce a lien under subd. 5. by foreclosure in the same
6 manner as a mortgage on real property.

7 (c) The department may require the resource center in each county to gather
8 and provide the department with information needed to recover payment of the value
9 of services under the family care benefit under this subsection. The department shall
10 pay to the resource center an amount equal to 5% of the recovery collected by the
11 department relating to a client for whom the resource center made the last
12 determination of eligibility under sub. (1). A resource center may use funds received
13 under this paragraph only to pay costs incurred under this paragraph and shall
14 remit the remainder, if any, to the department to be credited to the appropriation
15 account ^{(5)(im) and} under s. 20.435 ^(im) (7) ~~and~~. The department may withhold payments under this
16 paragraph for failure to comply with the department's requirements under this
17 paragraph. The department shall treat payments made under this paragraph as
18 costs of administration of the program.

****NOTE: Are the provisions under this paragraph with respect to the share of the department vis-a-vis that of the resource center to be deleted? Does all of the money go for the costs of the family care benefit and none for administration in collecting the liens?

19 (d) From the appropriation ^{accounts} under s. 20.435 ^{(5)(im) and} (7) ~~and~~ ^(im), the department shall pay
20 the amount of the payments under par. (c) and shall spend the remainder of the funds
21 recovered under this subsection for the family care benefit under s. 46.284 (4).

****NOTE: See questions under par. (c).

1 (e) 1. The department may recover amounts under this subsection for the
 2 provision of the family care benefit paid on and after *****.

3 2. The department may file a claim under par. (b) only with respect to a client
 4 who dies after *****.

5 (f) If the department determines that the application of this subsection would
 6 work an undue hardship in a particular case, under standards prescribed by rule, the
 7 department shall waive application of this subsection in that case.

****NOTE: Please read this subsection very carefully, in tandem with s. 46.27 (7g),
 stats., to ascertain that it does what you want. I lack information to complete certain
 provisions and have so indicated with *****. I changed par. (f) because I have added
 a requirement for rule making to s. 46.288 (5).

****NOTE: I do not understand the instructions about spousal impoverishment. If
 a person is eligible under medical assistance, s. 49.455, stats., applies. But, for persons
 receiving the family care benefit, is this relevant? "Spousal impoverishment" is supposed
 to protect the community spouse when the other spouse is institutionalized. I'm having
 difficulty figuring out how the concept works with respect to community long-term care.

INSERT 36-7
8

SECTION 48. 46.287 of the statutes is created to read:

Hearings B

9 ~~46.287 Rights of clients, eligible persons and enrollees.~~ (1) DEFINITION.

10 In this section, "client" means ~~an eligible person and an enrollee.~~

a person applying for eligibility for the family care benefit,

11 (2) RIGHTS OF ELIGIBLE PERSONS. An eligible person has the right to enroll in a
 12 care management organization and receive the family care benefit.

13 (3) RIGHTS OF ENROLLEES. An enrollee has the right to all of the following:

14 (a) Full participation in planning and evaluating the treatment and services
 15 that he or she receives.

16 (b) Development of a plan of care that does all of the following:

17 1. Is tailored to meet his or her unique needs and circumstances as indicated
 18 by performance of an individualized assessment.

19 2. As much as possible, enables the enrollee to preserve his or her health, safety
 20 and well-being.

1. Except as provided in subd. 2, a

1 3. As much as possible, enables the enrollee to be free from abuse or neglect.

2 (c) Prompt receipt of services and support items that are included in the plan
3 of care and that are adequate and appropriate in meeting the enrollee's individual
4 needs.

5 (d) Choice as to whether to disenroll from a care management organization for
6 any reason.

7 ~~(e)~~ HEARING. (a) ~~A~~ client may contest any of the following by ~~sending~~, within
8 ~~10~~ days after receipt of notice of any ~~of the following~~, a written request for a hearing
9 under a mechanism for hearing ~~the~~ dispute that ~~is~~ prescribed by the department by
10 rule: *that shall be held under procedures*

11 ~~1.~~ Denial of eligibility under s. 46.286 (1).

12 ~~d.~~ Failure to provide timely services and support items that are included in the
13 plan of care.

14 ~~e.~~ Reduction of services or support items under the family care benefit.

15 ~~g.~~ Termination of the family care benefit.

16 ~~h.~~ Development of a plan of care that is unacceptable for any of the following
17 reasons: *because*

18 ~~a.~~ The plan of care requires the enrollee to live in a place that is unacceptable
19 to the enrollee. *or*

20 ~~b.~~ The plan of care provides care, treatment or support items that are
21 insufficient to meet the enrollee's needs, are unnecessarily restrictive or are
22 unwanted by the enrollee. *the enrollee's*

23 (b) ~~A~~ client may contest the type, amount or quality of service under the family
24 care benefit or may contest the choice of service provider under the procedure

other than those specified in par. (a) d. to f.,

a decision of a care management organization regarding

INSERT
37-11

INSERT
37-22

filing

the contested matter

(2)

these

that shall be held under procedures

a

e

g

f

An enrollee

the enrollee's

1 specified in par. (a) ~~(intro.)~~ only if the contract monitoring unit of the department has
2 first reviewed and attempted to resolve the dispute.

****NOTE: What event triggers the client's right to request a s. 227.44, stats., hearing under this subsection? Note that I have included language about resolving the issue. Should the contract monitoring unit be required to issue a written response to the client's complaint?

****NOTE: I am told by the civil procedures drafter, Bob Nelson, that the proposal to require that the hearing under s. 227.44 be a *de novo* review is unnecessary.

3 (c) Whenever an action that is specified under par. (a) 1. to 5. is taken or a
4 dispute under par. (b) arises, ~~*****~~ shall provide the client, in writing, with
5 notice of appeal procedures available, an explanation of how the procedures operate
6 and a recommendation about the most appropriate procedure for the client to pursue.

****NOTE: Who (what) is to provide the client with this information? What if the recommendation is misleading, inaccurate, etc.?

****NOTE: It is clear that, because receipt of the family care benefit is an entitlement, certain procedural due process requirements must be met. Please review to determine if this changed section now comports with your intent.

✓
INSECT
38-6
7

SECTION 49. 46.288 of the statutes is created to read:

8 **46.288 Rule-making.** The department shall promulgate as rules all of the
9 following:

10 (1) Standards for performance by resource centers and care management
11 organizations, including requirements for maintaining quality assurance and
12 quality improvement.

13 (2) Rights of clients, eligible persons and enrollees that are specified in s.
14 46.287.

15 (3) Criteria and procedures for determining functional eligibility under s.
16 46.286 (1) (a), financial eligibility under s. 46.286 (1) (b), cost sharing under s. 46.286

17 (2) (a) and entitlement under s. 46.286 ~~(1) (a) (i) (a)~~ ⁽³⁾ ~~including~~ definitions of the following
18 terms applicable to s. 46.286:

19 (a) "Primary disabling condition".

The rules for determining functional eligibility under s. 46.286 (1)(a) 1. a. shall be substantially similar to eligibility criteria for receipt of ~~medicaid assistance for nursing facilities~~ ~~for~~ the long-term support community options program under s. 46.27. Rules under this subsection shall include

- 1 (b) "Mental illness".
- 2 (c) "Substance abuse".
- 3 (d) "Long-term or irreversible".
- 4 (e) "Requires ongoing care, assistance or supervision".
- 5 (f) "Condition that is expected to last at least 90 days or result in death within
- 6 one year".

~~***NOTE: This term differs from that proposed; it follows the December 22 language creating s. 46.286.~~

- 7 (g) "At risk of losing independence or functional capacity".

~~***NOTE: I did not draft "publicly-funded long-term care services"; where is this term used?~~

- 8 (h) "Gross monthly income".

- 9 (i) "Deductions and allowances".

- 10 (j) ~~Available~~ assets".

Countable

(2)

- 11 (4) Procedures and standards for procedures for s. 46.287 (A).

- 12 ~~(5) Standards for determining undue hardship under s. 46.286 (c) (f).~~

13 SECTION 50. 46.289 of the statutes is created to read:

14 **46.289 Transition.** In order to facilitate the transition to the long-term care
 15 system specified in ss. 46.2805 to 46.2895, all of the following may take place:

16 ~~(1) The department may waive, on a county-specific basis and within the limits~~
 17 of applicable federal statutes and regulations, ~~all rules promulgated under ss. 48.27~~
 18 ~~and 48.270~~ and

19 ~~(2)~~ If the secretary of health and family services finds it necessary, he or she
 20 may grant a county limited waivers to or exemptions from ss. 46.27 (3) (e) (intro.),

21 1. and 2. and (f), (5) (d), (6) (a) 1., 2. and 3. and (b) (intro.), 1. and 2., (6r) (c), (7) (b)

e
and (e)

SECTION 50

(1) and (cm) and (11) (c) 5m. (intro.) and 6. and 46.277 (3) (a), (4) (a) and (5) (d) 1m. and

(,lez)

,1n.

2
INSERT 40-2

and rules promulgated under those provisions.

SECTION 51. 46.82 (3) (a) 19. of the statutes is created to read:

(4) 46.82 (3) (a) 19. If authorized under s. 46.283 (1) (a) 1., apply to the department
5 to operate a resource center under s. 46.283 and, if the department contracts with
6 the county under s. 46.283 (2), operate the resource center.

***NOTE: Should s. 49.45, stats. be amended in any way to provide for administration of the family care benefit as a part of medical assistance?

an aging unit under sub. (1) (a) 1. or 2. and if

INSERT 40-C

SECTION 52. 50.02 (2) (d) of the statutes is created to read:

8 50.02 (2) (d) The department shall promulgate rules that prescribe the time
9 periods specified in ss. 50.033 (2r) and (2s), 50.034 (5m) and (5n), 50.035 (4m) and
10 (4n) and 50.04 (2g) (a) and (2h) (a).

and the methods of providing information

SECTION 53. 50.033 (2r) of the statutes is created to read:

Subject to sub. (2t),

(12) 50.033 (2r) PROVISION OF INFORMATION REQUIRED. An adult family home shall,
13 within the time period after inquiry by a prospective resident that is prescribed by
14 the department by rule, inform the prospective resident of the services of a resource
15 center under s. 46.283, the family care benefit under s. 46.286 and the availability
16 of ~~assessment~~ to determine the prospective resident's eligibility for the family care
17 benefit under s. 46.286 (1).

a functional and financial screen

SECTION 54. 50.033 (2s) of the statutes is created to read:

(19) 50.033 (2s) REQUIRED REFERRAL. An adult family home shall, within the time
20 period prescribed by the department by rule, refer to a resource center under s.
21 46.283 a person who is seeking admission, who is at least 65 years of age or has a
22 physical disability and whose disability or condition is expected to last at least 90
23 days, unless any of the following applies:

1 (a) The person has received an ~~assessment~~^{screen for} of functional eligibility under s.
2 46.286 (1) (a) within the previous 6 months.

3 (b) The person is entering the adult family home only for respite care.

4 (c) The person is an enrollee of a care management organization.

INSERT 41-4

5 SECTION 55. 50.034 (5m) of the statutes is created to read:

Subject to sub. (5p), a

6 50.034 (5m) PROVISION OF INFORMATION REQUIRED. A residential care apartment
7 complex shall, within the time period after inquiry by a prospective resident that is
8 prescribed by the department by rule, inform the prospective resident of the services
9 of a resource center under s. 46.283, the family care benefit under s. 46.286 and the
10 availability of ~~an assessment~~ to determine the prospective resident's eligibility for
11 the family care benefit under s. 46.286 (1).

a functional and financial screen

12 SECTION 56. 50.034 (5n) of the statutes is created to read:

13 50.034 (5n) REQUIRED REFERRAL. A residential care apartment complex shall,
14 within the time period prescribed by the department by rule, refer to a resource
15 center under s. 46.283 a person who is seeking admission, who is at least 65 years
16 of age or has a physical disability and whose disability or condition is expected to last
17 at least 90 days, unless any of the following applies:

18 (a) The person has received an ~~assessment~~ functional eligibility under s.
19 46.286 (1) (a) within the previous 6 months.

20 (b) The person is entering the residential care apartment complex only for
21 respite care.

22 (c) The person is an enrollee of a care management organization.

INSERT 41-22

23 SECTION 57. 50.034 (8) of the statutes is created to read:

24 50.034 (8) FORFEITURES. (a) Whoever violates sub. (5m) or (5n) or rules
25 promulgated under sub. (5m) or (5n) may be required to forfeit not more than \$500.

for each violation

1 (b) The department may directly assess forfeitures provided for under par. (a).
2 If the department determines that a forfeiture should be assessed for a particular
3 violation, it shall send a notice of assessment to the residential care apartment
4 complex. The notice shall specify the amount of the forfeiture assessed, the violation
5 and the statute or rule alleged to have been violated, and shall inform the residential
6 care apartment complex of the right to a hearing under par. (c).

7 (c) A residential care apartment complex may contest an assessment of a
8 forfeiture by sending, within 10 days after receipt of notice under par. (b), a written
9 request for a hearing under s. 227.44 to the division of hearings and appeals created
10 under s. 15.103 (1). The administrator of the division may designate a hearing
11 examiner to preside over the case and recommend a decision to the administrator
12 under s. 227.46. The decision of the administrator of the division shall be the final
13 administrative decision. The division shall commence the hearing within 30 days
14 after receipt of the request for a hearing and shall issue a final decision within 15
15 days after the close of the hearing. Proceedings before the division are governed by
16 ch. 227. In any petition for judicial review of a decision by the division, the party,
17 other than the petitioner, who was in the proceeding before the division shall be the
18 named respondent.

19 (d) All forfeitures shall be paid to the department within 10 days after receipt
20 of notice of assessment or, if the forfeiture is contested under par. (c), within 10 days
21 after receipt of the final decision after exhaustion of administrative review, unless
22 the final decision is appealed and the order is stayed by court order. The department
23 shall remit all forfeitures paid to the state treasurer for deposit in the school fund.

24 (e) The attorney general may bring an action in the name of the state to collect
25 any forfeiture imposed under this section if the forfeiture has not been paid following

1 the exhaustion of all administrative and judicial reviews. The only issue to be
2 contested in any such action shall be whether the forfeiture has been paid.

~~***NOTE: Please see ***Note under s. 50.035 (12)~~

Subject to sub. (4p), a

3 SECTION 58. 50.035 (4m) of the statutes is created to read:

4 50.035 (4m) PROVISION OF INFORMATION REQUIRED. ~~A~~ community-based
5 residential facility shall, within the time period after inquiry by a prospective
6 resident that is prescribed by the department by rule, inform the prospective
7 resident of the services of a resource center under s. 46.283, the family care benefit
8 under s. 46.286 and the availability of ~~an assessment~~ to determine the prospective
9 resident's eligibility for the family care benefit under s. 46.286 (1).

a functional and financial screen

10 SECTION 59. 50.035 (4n) of the statutes is created to read:

11 50.035 (4n) REQUIRED REFERRAL. ~~A~~ community-based residential facility shall,
12 within the time period prescribed by the department by rule, refer to a resource
13 center under s. 46.283 a person who is seeking admission, who is at least 65 years
14 of age or has a physical disability and whose disability or condition is expected to last
15 at least 90 days, unless any of the following applies:

a screen for

16 (a) The person has received ~~an assessment of~~ functional eligibility under s.
17 46.286 (1) (a) within the previous 6 months.

18 (b) The person is entering the community-based residential facility only for
19 respite care.

20 (c) The person is an enrollee of a care management organization.

INSERT 43-20

21 SECTION 60. 50.035 (11) of the statutes is created to read:

22 50.035 (11) FORFEITURES. (a) Whoever violates sub. (4m) or (4n) or rules
23 promulgated under sub. (4m) or (4n) may be required to forfeit not more than \$500.

for each violation

1 (b) The department may directly assess forfeitures provided for under par. (a).
2 If the department determines that a forfeiture should be assessed for a particular
3 violation ~~or for failure to correct it~~, it shall send a notice of assessment to the
4 community-based residential facility. The notice shall specify the amount of the
5 forfeiture assessed, the violation and the statute or rule alleged to have been
6 violated, and shall inform the licensee of the right to a hearing under par. (c).

7 (c) A community-based residential facility may contest an assessment of a
8 forfeiture by sending, within 10 days after receipt of notice under par. (b), a written
9 request for a hearing under s. 227.44 to the division of hearings and appeals created
10 under s. 15.103 (1). The administrator of the division may designate a hearing
11 examiner to preside over the case and recommend a decision to the administrator
12 under s. 227.46. The decision of the administrator of the division shall be the final
13 administrative decision. The division shall commence the hearing within 30 days
14 after receipt of the request for a hearing and shall issue a final decision within 15
15 days after the close of the hearing. Proceedings before the division are governed by
16 ch. 227. In any petition for judicial review of a decision by the division, the party,
17 other than the petitioner, who was in the proceeding before the division shall be the
18 named respondent.

19 (d) All forfeitures shall be paid to the department within 10 days after receipt
20 of notice of assessment or, if the forfeiture is contested under par. (c), within 10 days
21 after receipt of the final decision after exhaustion of administrative review, unless
22 the final decision is appealed and the order is stayed by court order. The department
23 shall remit all forfeitures paid to the state treasurer for deposit in the school fund.

24 (e) The attorney general may bring an action in the name of the state to collect
25 any forfeiture imposed under this section if the forfeiture has not been paid following

1 the exhaustion of all administrative and judicial reviews. The only issue to be
2 contested in any such action shall be whether the forfeiture has been paid.

****NOTE: Because of due process and certainty requirements, it is inappropriate for the department to promulgate a penalty by rule. Please review s. 50.035 (11). I have drafted an administrative forfeiture, but the forfeiture could be court-imposed if you prefer. The amount of the forfeiture is the same as that of a class "C" violation by a nursing home.

3 SECTION 61. 50.04 (2g) of the statutes is created to read:

Subject to Sub. (2i), a

4 50.04 (2g) PROVISION OF INFORMATION REQUIRED. (a) A nursing home shall,
5 within the time period after inquiry by a prospective resident that is prescribed by
6 the department by rule, inform the prospective resident of the services of a resource
7 center under s. 46.283, the family care benefit under s. 46.286 and the availability
8 of ~~an assessment~~ to determine the prospective resident's eligibility for the family care
9 benefit under s. 46.286 (1).

a functional and financial screen

10 (b) Failure to comply with this subsection is a class "C" violation under sub. (4)
11 (b) 3.

12 SECTION 62. 50.04 (2h) of the statutes is created to read:

13 50.04 (2h) REQUIRED REFERRAL. (a) A nursing home shall, within the time
14 period prescribed by the department by rule, refer to a resource center under s.
15 46.283 a person who is seeking admission, who is at least 65 years of age or has
16 developmental disability or physical disability and whose disability or condition is
17 expected to last at least 90 days, unless any of the following applies:

- 18 1. The person has received ~~an assessment of~~ functional eligibility under s.
19 46.286 (1) (a) within the previous 6 months.
- 20 2. The person is seeking admission to the nursing home only for respite care.
- 21 3. The person is an enrollee of a care management organization.

a screen for

1 (b) Failure to comply with this subsection is a class "C" violation under sub. (4)

2 (b) 3.

INSERT 46-2 ✓

3 SECTION 63. 50.06 (7) of the statutes is ~~renumbered 50.06 (7) (a) and~~ amended ✓

4 to read:

5 50.06 (7) (a) ~~An individual who consents to~~ ^{stet} an individual who consents to

6 an admission under this section may request that an assessment be conducted for
7 the incapacitated individual under the long-term support community options

8 program under s. 46.27 (6). INSERT 46-8 no #

9 SECTION 64. 50.06 (7) (b) of the statutes is created to read:

10 50.06 (7) (b) After the date specified in s. 46.281 (3), par. (a) does not apply to
11 persons who are aged 65 or older or are physically disabled and who reside in the area
12 that is served by a resource center to which s. 46.281 (3) applies.

13 SECTION 65. 50.36 (2) (c) of the statutes is created to read:

14 50.36 (2) (c) The department shall promulgate rules that require that a
15 hospital, before discharging a patient who is aged 65 or older or who has
16 developmental disability or physical disability and whose disability or condition
17 requires long-term care that is expected to last at least 90 days, refer the patient to
18 the resource center under s. 46.283. INSERT 46-18 no #

19 SECTION 66. 50.38 of the statutes is created to read:

20 50.38 Forfeitures. (1) Whoever violates rules promulgated under s. 50.36 (2)
21 (c) may be required to forfeit not more than \$500. for each violation

22 (2) The department may directly assess forfeitures provided for under sub. (1).
23 If the department determines that a forfeiture should be assessed for a particular
24 violation ~~of a failure to correct it~~, the department shall send a notice of assessment
25 to the hospital. The notice shall specify the amount of the forfeiture assessed, the

1 violation and the statute or rule alleged to have been violated, and shall inform the
2 hospital of the right to a hearing under sub. (3).

3 (3) A hospital may contest an assessment of a forfeiture by sending, within 10
4 days after receipt of notice under sub. (2), a written request for a hearing under s.
5 227.44 to the division of hearings and appeals created under s. 15.103 (1). The
6 administrator of the division may designate a hearing examiner to preside over the
7 case and recommend a decision to the administrator under s. 227.46. The decision
8 of the administrator of the division shall be the final administrative decision. The
9 division shall commence the hearing within 30 days after receipt of the request for
10 a hearing and shall issue a final decision within 15 days after the close of the hearing.
11 Proceedings before the division are governed by ch. 227. In any petition for judicial
12 review of a decision by the division, the party, other than the petitioner, who was in
13 the proceeding before the division shall be the named respondent.

14 (4) All forfeitures shall be paid to the department within 10 days after receipt
15 of notice of assessment or, if the forfeiture is contested under sub. (3), within 10 days
16 after receipt of the final decision after exhaustion of administrative review, unless
17 the final decision is appealed and the order is stayed by court order. The department
18 shall remit all forfeitures paid to the state treasurer for deposit in the school fund.

19 (5) The attorney general may bring an action in the name of the state to collect
20 any forfeiture imposed under this section if the forfeiture has not been paid following
21 the exhaustion of all administrative and judicial reviews. The only issue to be
22 contested in any such action shall be whether the forfeiture has been paid.

****NOTE. Please see ***Note under s. 50.035 (11).*

23 **SECTION 67.** 50.49 (4) of the statutes is amended to read:

1 50.49 (4) LICENSING, INSPECTION AND REGULATION. ~~The~~ Except as provided in sub.
 2 (6m), the department may register, license, inspect and regulate home health
 3 agencies as provided in this section. The department shall ensure, in its inspections
 4 of home health agencies, that a sampling of records from private pay patients are
 5 reviewed. The department shall select the patients who shall receive home visits as
 6 a part of the inspection. Results of the inspections shall be made available to the
 7 public at each of the regional offices of the department.

8 **SECTION 68.** 50.49 (6m) of the statutes is created to read:

9 50.49 (6m) EXCEPTIONS. None of the following is required to be licensed as a
 10 home health agency under sub. (4), regardless of whether any of the following
 11 provides services that are similar to services provided by a home health agency:

12 (a) A care management organization, as defined in s. 46.2805 (1).

13 (b) A program specified in s. 46.2805 (1) (a).

14 (c) A demonstration program specified in s. 46.2805 (1) (b).

*a. Except as provided
in subd. 10.b.,*

INSERT 48-14

15 **SECTION 69.** 600.01 (1) (b) 10. of the statutes is created to read:

16 600.01 (1) (b) 10. Long-term care services funded by the family care benefit,
 17 as defined in s. 46.2805 (4), that are provided by a care management organization
 18 that contracts with the department of health and family services under s. 46.284 and
 19 enrolls only individuals who are eligible under s. 46.286.

****NOTE: I reworded this language to fit more grammatically within s. 600.01 (1)
 (b). Note that I omitted "for long-term care services"; I did not understand its meaning
 and it is probably surplusage.

INSERT 48-19

20 **SECTION 70.** 701.065 (1) (b) 1. of the statutes is amended to read:

21 701.065 (1) (b) 1. The claim is a claim based on tort, on a marital property
 22 agreement that is subject to the time limitations under s. 766.58 (13) (b) or (c), on
 23 Wisconsin income, franchise, sales, withholding, gift or death taxes, or on

[Handwritten initials]

rules promulgated under

1 unemployment compensation contributions due or benefits overpaid, a claim for
2 funeral or administrative expenses, a claim of this state under s. 46.27 (7g), ~~46.286~~
3 ~~(g)~~, 49.496 or 49.682 or a claim of the United States. *So*

4 SECTION 71. 705.04 (2g) of the statutes is amended to read:

5 705.04 (2g) Notwithstanding subs. (1) and (2), the department of health and
6 family services may collect, from funds of a decedent that are held by the decedent
7 immediately before death in a joint account or a P.O.D. account, an amount equal to
8 the medical assistance that is recoverable under s. 49.496 (3) (a), an amount equal
9 to aid under 49.68, 49.683 or 49.685 that is recoverable under s. 49.682 (2) (a) ~~or~~, an
10 amount equal to long-term community support services under s. 46.27 that is
11 recoverable under s. 46.27 (7g) (c) 1. and that was paid on behalf of the decedent or
12 the decedent's spouse or an amount equal to the family care benefit under s. 46.286
13 that is recoverable under ~~s. 46.286 (6)(a)(i)~~ and that was paid on behalf of the
14 decedent or the decedent's spouse. *(7)*

15 SECTION 72. 859.02 (2) (a) of the statutes is amended to read:

16 859.02 (2) (a) It is a claim based on tort, on a marital property agreement that
17 is subject to the time limitations under s. 766.58 (13) (b) or (c), on Wisconsin income,
18 franchise, sales, withholding, gift or death taxes, or on unemployment insurance
19 contributions due or benefits overpaid, a claim for funeral or administrative
20 expenses, a claim of this state under s. 46.27 (7g), ~~46.286 (g)~~, 49.496 or 49.682 or a
21 claim of the United States; or *S.* *(7)*

INSERT 49-21

22 SECTION 73. 867.035 (1) (a) (intro.) of the statutes is amended to read:

23 867.035 (1) (a) (intro.) Except as provided in par. (bm), the department of
24 health and family services may collect from the property of a decedent, including
25 funds of a decedent that are held by the decedent immediately before death in a joint

SECTION 73

that is recoverable under rules

*Promulgated
cycles*

K

1 account or a P.O.D. account, by affidavit under this section an amount equal to the
2 medical assistance that is recoverable under s. 49.496 (3) (a), the long-term
3 community support services under s. 46.27 that is recoverable under s. 46.27 (7g) (c)
4 1., the family care benefit under s. 46.286 ~~(6) (b) (i)~~ ⁽⁷⁾ or the aid under s. 49.68, 49.683
5 or 49.685 that is recoverable under s. 49.682 (2) (a) and that was paid on behalf of
6 the decedent or the decedent's spouse, if all of the following conditions are satisfied:

7 **SECTION 74.** 867.035 (4n) of the statutes is created to read:
8 867.035 (4n) From the appropriation under s. 20.435 (7) (ip), with respect to
9 funds collected by the department of health and family services under sub. (1) related
10 to the family care benefit funded under s. 46.284 (4) paid on behalf of the decedent
11 or the decedent's spouse, the department shall pay claims under sub. (3) and shall
12 spend the remainder of the funds recovered under this subsection for the family care
13 benefit funded under s. 46.284 (4).
****NOTE: Are the references to s. 46.284 (4) what you intend?.

INSERT 50-13

14 **SECTION 75.** 1997 Wisconsin Act 237, section 9122 (4) is repealed and recreated
15 to read:

16 [1997 Wisconsin Act 237] Section 9122 (4) PILOT PROJECT FOR COUNTY OR TRIBAL
17 MANAGEMENT OF LONG-TERM CARE PROGRAMS.

18 (a) The department of health and family services shall contract with counties
19 or tribes under a pilot project to demonstrate the ability of counties or tribes to
20 manage all long-term care programs under a long-term care management
21 organization.

22 (b) Notwithstanding the exclusion in section 46.286 (1) (a) (intro.) of the
23 statutes, as created by 1999 Wisconsin Act ... (this act), from functional eligibility
24 of a person whose primary disabling condition is developmental disability, such a

1 person is functionally eligible for the family care benefit if the person is a resident
2 of a county or is a member of a tribe operating a care management organization under
3 this subsection.

****NOTE: Is it correct, in par. (b) to refer to “a member of a tribe”? If the intent is to provide funding for the entire 2-year period of the budget, i.e., 1999–2001, this nonstatutory provision should probably be renumbered into the statutes. Moreover, these provisions are very confusing. From what appropriation are they funded? It may be inaccurate to refer to the family care benefit, because the pilot projects do not fulfill all of the requirements under ss. 46.2805 to 46.2895. Please review.

4 **SECTION 9103. Nonstatutory provisions; aging and long-term care**
5 **board.**

6 (1) LENGTH OF INITIAL TERMS OF MEMBERS OF BOARD ON AGING AND LONG-TERM CARE.
7 Notwithstanding the length of terms specified for members of the board on aging and
8 long-term care appointed under section 15.105 (10) of the statutes, as affected by this
9 act, one of the 2 additional initial members appointed under that subsection shall be
10 appointed for a term expiring on May 1, 2005, and the other of the 2 additional initial
11 members appointed under that subsection shall be appointed for a term expiring on
12 May 1, 2006.

13 **SECTION 9123. Nonstatutory provisions; health and family services.**

14 (1) RULES FOR FAMILY CARE BENEFIT. Using the procedure under section 227.24
15 of the statutes, the department of health and family services shall promulgate the
16 rules required under sections 46.288 (1) to ~~(5)~~ and 50.02 (2) (d) of the statutes, as
17 created by this act, for the period before the effective date of the permanent rules
18 promulgated under sections 46.288 (1) to ~~(5)~~ and 50.02 (2) (d) of the statutes, as
19 created by this act, but not to exceed the period authorized under section 227.24 (1)
20 (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b) and (3) of
21 the statutes, the department is not required to provide evidence that promulgating
22 a rule under this subsection as an emergency rule is necessary for the preservation

1 of the public peace, health, safety or welfare and is not required to provide a finding
2 of emergency for a rule promulgated under this subsection.

3 **SECTION 9423. Effective dates; health and family services.**

4 (1) ELIMINATION OF COUNCIL ON LONG-TERM CARE. The repeal of sections 15.07 (2)
5 (k), 15.197 (5), 46.281 (1) (a) and (b) and 46.282 of the statutes and the amendment
6 of section 46.284 ~~of~~ of the statutes take effect on July 1, 2001.

7 (END)

(2)(d)

D-NOTE

on
of the day after
Publication of the
2001-03 biennial
budget act,
whichever is
later