

**1999 DRAFTING REQUEST**

**Assembly Amendment (AA-AB133)**

Received: **06/4/99**

Received By: **kenneda**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Fiscal Bureau 6-3912**

By/Representing: **Megna**

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

Drafter: **kenneda**

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Subject: **Mental Health - miscellaneous**

Extra Copies: **MGD**

**Pre Topic:**

LFB:.....Megna -

**Topic:**

Mental health institutes expanded services

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kenneda 06/7/99	chanaman 06/7/99		_____			
/1			kfollet 06/8/99	_____	lrb_docadmin 06/8/99		
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1?	kenneda	cmh 1 u/1	KJF 6/8	KJF/JF 6/8			

FE Sent For:

<END>

LRB - 0023

# DHFS

Department of Health and Family Services  
 Technicals to 1999-2001 Biennial Budget  
 March 19, 1999

## Mental Health Services Contracting

### Description of Change

Make changes to section 1000 in the budget bill, as follows:

- ✓ 1. Delete the underlined material in the following provision:

s.46.043(3)(a) Except as provided in pars. (b) and (c), services under this section are governed by all of the following:

- ✓ 2. Delete the underlined material in the following provisions:

s.46.043(3)(b) In the event of a conflict between par.(a)1.and2.or3., the services shall comply with the contractual, statutory or rules provision that is most protective of the service recipient's health, safety, welfare or rights, as determined by the mental health institute.

3. Revise s.46.043(3)(c) to read:

Services offered under this section, including the facilities in which such services are provided, are not subject to any statutes or rules other than those enumerated under par.(a) 2., including but not limited to ss.46.03(18), 46.10, 51.15(2), 51.20(13)(c)1. and 51.42(3)(as), or to zoning or any other ordinances or regulations of the county or municipality in which the services are provided or the facility is located.

### Explanation

1. The only exception to the provisions under 46.043(3)(a) are given in paragraph (b), not paragraph (c).
2. Protective provisions may derive from other sources than the mental health institutes.
3. The intent of this paragraph is to provide that the services authorized are not subject to other statutes or rules, with certain exceptions. This revised language provides a more specific listing of these exceptions.



## Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

April 22, 1999

Joint Committee on Finance

Paper #526

### **Mental Health Institutes Expanded Services (DHFS -- Care and Treatment Facilities)**

[LFB 1999-01 Budget Summary: Page 304, #12]

#### **CURRENT LAW**

The state Mental Health Institutes (MHIs) may provide outpatient services in two situations. First, the MHIs may contract with county departments of community programs for outpatient services. Second, the Winnebago MHI may contract with a school district to provide outpatient services to the school district's pupils.

#### **GOVERNOR**

Broaden the scope of services the state Mental Health Institutes (MHIs) can provide by authorizing the MHIs to offer expanded services when DHFS determines that community services need to be supplemented.

As part of these provisions, specify that except: (a) in cases of conflict between contracts DHFS makes with referring entities; and (b) cases where other specified state statutes relating to care in treatment facilities and local zoning or other ordinances or regulations do not apply to these services, the services provided by the MHI would be governed by: (1) the terms of the contract between DHFS and the referring entity; (2) state laws relating to the contracted entity; and (3) rules promulgated under the state statutes.

In addition, specify that, in the event of conflict between the terms of the contracts, statutes or rules, the services would comply with the contractual, statutory or rule provision that is most protective of the service recipient's health, safety, welfare or rights, as determined by the MHI. Further, exempt contracted services from specified state statutes relating to care in treatment facilities and local zoning or other ordinances or regulations of the county, city, town or village in which the services are provided or the facility is located.

## **MODIFICATION**

Modify the provision to specify that, except in cases of conflict between contracts DHFS makes with the referring entities, the services provided by the MHI would be governed by: (1) the terms of the contract between DHFS and the referring entity; (2) state laws relating to the contracted entity; and (3) rules promulgated under the state statutes.

In addition, delete the provisions that exempt contracted services from specified state statutes relating to care and treatment facilities and local zoning ordinances. Instead, specify that contracted services, including the facilities in which such services are provided, are not subject to any statutes or rules other than enumerated state laws relating to the contracted entity, or to zoning or other ordinances or regulations of the county or municipality in which the services are provided or the facility is located.

Finally, delete the provision that authorizes the MHI to determine which contractual, statutory or rules provision is most protective of the service recipient's health, safety, welfare or rights.

**Explanation:** This modification, requested by DHFS, changes provisions in the bill that would have exempted contracted services from state laws regarding care and treatment of patients and local zoning or other ordinances or regulations. The administration's intent was to specify that these services would not be subject to other statutes or rules, but would be subject to those enumerated in the bill. Further, this change recognizes that protective provisions may derive from other sources than the MHIs, and so the MHIs should not solely determine the resolution between all conflicts between contracts, state statutes and rules. This was not the administration's intent. Finally, this modification clarifies the administration's intent that contracted services would be governed by the terms of the contract between DHFS and the referring entity and specified statutes and rules promulgated under those statutes.

Prepared by: Charles Morgan

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

LRB-0023/3dn  
DAK:jlj:jf

2

February 1, 1999

To Sue Jablonsky:

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

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

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



SOON - 2u edit 6/7

State of Wisconsin  
1999 - 2000 LEGISLATURE

LRBb0515/1  
DAK.....  
CMH

LFB:.....Magna - Mental health institutes expanded services

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

LFB AMENDMENT

TO 1999 ASSEMBLY BILL 133 AND 1999 SENATE BILL 45

1 At the locations indicated, amend the bill as follows:

2 1. Page 1058, line 23: after that line insert:

3 "SECTION 2278r. 150.46 (3) of the statutes is created to read:

4 150.46 (3) This subchapter does not apply to the nursing care facility operated  
5 by the department of veterans affairs under s. 45.385."

6 (END)



SOON - In edit 6/10



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRBb0515/2  
DAK:cmh:1

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#. Page 577, line 24: delete "par. (b) and (c)" and substitute "par. (b)".  
#. Page 578, line 8: delete "as determined by the mental".  
#. Page 578, line 9: delete "health institute".  
#. Page 578, line 10: after "(as)" insert "other similar provisions in chs. 46 and 51".  
#. Page 578, line 16: after "facility" insert "operated by a mental health institute".



State of Wisconsin  
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5 **4.** Page 578, line 10: after “(as)” insert “, other similar provisions in chs. 46 and  
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7 **5.** Page 578, line 16: after “facility” insert “operated by a mental health  
8 institute”.

9 (END)