

D-NOTE

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Gen. Cat.

1 AN ACT to amend 46.278 (title) and (1), 46.278 (1m) (c), 46.278 (2) (a), 46.278 (3)
 2 (a), 46.278 (4) (a), 46.278 (4) (b) 2., 46.278 (5) (a) and (b), 46.278 (6) (a), (b), (c)
 3 and (d), 46.278 (6) (e) 1. and 46.278 (6) (f); and to create 15.197 (11n) (cm),
 4 15.197 (11n) (e), 46.278 (1m) (ac) and 49.45 (2) (a) 24. of the statutes; relating
 5 to: adding legislative members to the council on developmental disabilities;
 6 requiring the council on developmental disabilities to report annually to the
 7 legislature; including the brain injury waiver program in the community
 8 integration program for persons with developmental disability; creating a pilot
 9 program for long-term care of children with disabilities; creating requirements
 10 for review by registered nurses of persons receiving personal care services
 11 under the medical assistance program; requiring the department of health and
 12 family services to develop a plan to administer and fund services for persons

expanding eligibility,
 requiring submission of
 waiver requests by a
 specified date, and
 providing transitional
 services under

1 with developmental disabilities; and requiring the exercise of rule-making
2 authority.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the joint legislative council in the bill.

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

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

PREFATORY NOTE: This bill was prepared for the joint legislative council's special committee on developmental disabilities. The bill contains the following provisions:

1. Legislative Members: Wisconsin Council on Developmental Disabilities

Under current law, the council on developmental disabilities consists of representatives from the following state agencies: (1) the department of workforce development; (2) the department of health and family services (DHFS); (3) the department of public instruction; and (4) the University of Wisconsin.

Also, under current law, the governor appoints additional members to the council for staggered 4-year terms, to represent the following: (1) public and private nonprofit agencies of the state's political subdivisions that provide direct services to persons with developmental disabilities; and (2) nongovernmental agencies and groups concerned with services to persons with developmental disabilities. The governor must make additional appointments to ensure that at least 1/2 of the council's membership consists of persons with developmental disabilities or their parents or guardians.

The bill requires the governor to appoint 4 legislative members to the council on developmental disabilities, as designated by the speaker of the assembly, the assembly minority leader, the senate majority leader and the senate minority leader.

The bill also requires the council to evaluate the waiting lists for developmental disabilities services compiled by DHFS and to submit an annual report regarding the status of the waiting lists to the legislature at the end of each calendar year.

2. Brain Injury Waiver Program

Under current law, the brain injury home and community-based waiver does not have a statutory reference and does not permit counties to provide the nonfederal share of medical assistance (MA), which would enable counties to increase the number of brain injury waiver slots.

Current law specifies that the MA waiver for the community integration program (CIP) IB permits counties to create additional slots by providing the nonfederal share of MA.

The bill amends the CIP IB statute to include the brain injury waiver program. These amendments allow nonfederal local funds to be used as the state match for funding additional brain injury waiver slots and permits DHFS to reimburse counties in an amount equal to the state's share of service costs under the brain injury waiver program.

3. Children's Long-Term Support Redesign

DHFS appointed a children's committee on long-term care as part of the effort to redesign the state system on long-term care. The children's long-term support redesign

committee developed a model to redesign the current system of care for children and their families, to be implemented as a pilot program and funded by federal medicaid waiver funding. The children's home and community-based waiver would define children with physical, sensory, developmental and significant health care needs as eligible. The waiver would permit the blending of the family support program, the community options program (COP), and MA waiver funding into a single funding stream. The intended effects are to streamline services and secure additional federal matching funds. DHFS would offer the waiver to children and families currently receiving services through family support, COP, MA home and community-based waivers and MA fee-for-service. Under the waiver, the funds for these programs would be managed within individual budgets based upon the child's functional needs. DHFS would pilot this waiver on a statewide, voluntary basis. The current family care pilot counties would have the option of piloting the children's waiver and coordinating it with the family care program. Families already receiving long-term support services would be offered the opportunity to enroll in the children's waiver on a voluntary basis.

This bill requires DHFS to seek waivers of federal MA statutes and regulations that are necessary to implement the program in pilot sites. If the waivers are approved, the bill requires DHFS to seek statutory language to implement the children's long-term support redesign on a piloted basis.

4. Nurse Home Visits to Persons Receiving MA Personal Care

Currently, administrative rules of DHFS require personal care services under the MA program to be provided according to a written plan of care, and to be supervised by a registered nurse. Currently, review of the plan of care, evaluation of the recipient's condition and supervisory review of the personal care worker must be made by a registered nurse at least every 60 days. The review must include: a visit to the recipient's home; review of the personal care worker's daily written record and discussion with the physician of any necessary changes in the plan of care.

This bill requires DHFS to promulgate rules to require that the written plan of care for persons receiving personal care services be reviewed at least every 60 days, as under current law. However, this bill provides that the written plan of care shall designate an interval for visits to the recipient's home by a registered nurse as part of the review of the plan of care. The designated interval must be based on the individual recipient's needs. The rules must also provide that a nurse visit to the recipient is required if, in the course of the nurse's review of the plan of care, a change in the recipient's condition has occurred that may warrant a change in the plan of care. In addition, all recipients must be visited in their home by a registered nurse at least once in every 12-month period. These rules will authorize a nurse visit at intervals tailored to the individual recipient's needs, rather than every 60 days for all recipients, as is currently required.

5. Administration and Funding of Developmental Disabilities Services

This bill requires DHFS to develop a plan to administer and fund services for persons with developmental disabilities, and to submit that plan to the department of administration as part of DHFS's budget request for the 2003-05 biennium. The plan that is submitted shall include any recommended statutory language changes that are needed to implement the plan. The plan must require all institutional and community-based services for persons with developmental disabilities to be administered within one administrative subunit of DHFS. The subunit designated to do this must be the subunit that is administering community-based services for persons with developmental disabilities as of the effective date of this act.

Further, the plan must provide that funding under the medical assistance program for institutional services and home and community-based waiver services for persons with developmental disabilities shall be combined into one appropriation to the extent permissible under federal law. DHFS must apply for any necessary waivers of federal MA statutes and regulations from the federal department of health and human services.

1 SECTION 1. 15.197 (11n) (cm) of the statutes is created to read:

2 15.197 (11n) (cm) Four members of the legislature, of which one each is
3 designated by the speaker of the assembly, the senate majority leader, and the
4 minority leader in each house of the legislature and appointed by the governor.

5 SECTION 2. 15.197 (11n) (e) of the statutes is created to read:

6 15.197 (11n) (e) By January 31 annually, the council shall prepare a report for
7 the preceding calendar year and shall submit the report to the legislature under s.
8 13.172 (2). The report shall evaluate the waiting lists compiled by the department
9 of health and family services for services for persons with developmental disabilities.

10 SECTION 3. 46.278 (title) and (1) of the statutes are amended to read:

11 **46.278 (title) Community integration program and brain injury waiver**
12 **program for persons with mental retardation developmental disabilities.**

13 (1) LEGISLATIVE INTENT. The intent of the ~~program~~ programs under this section
14 is to provide home or community-based care to serve in a noninstitutional
15 community setting a person who meets eligibility requirements under 42 USC 1396n
16 (c) and who is diagnosed as developmentally disabled under the definition specified
17 in s. 51.01 (5) and relocated from an institution other than a state center for the
18 developmentally disabled or who meets the intermediate care facility for the
19 mentally retarded or a brain injury rehabilitation facility level of care requirements
20 for medical assistance reimbursement in an intermediate care facility for the
21 mentally retarded or brain injury rehabilitation facility and is ineligible for services
22 under s. 46.275 or 46.277. The intent of the program is also that counties use all
23 existing services for providing care under this section, including those services
24 currently provided by counties.

25 SECTION 4. 46.278 (1m) (ac) of the statutes is created to read:

1 46.278 (1m) (ac) "Brain injury rehabilitation facility" means a nursing facility
2 or hospital designated as a facility for brain injury rehabilitation by the department
3 under the approved state medicaid plan.

4 **SECTION 5.** 46.278 (1m) (c) of the statutes is amended to read:

5 46.278 (1m) (c) "Program" means the community integration program or the
6 brain injury waiver program, for facilities certified as medical assistance providers,
7 for which a waiver has been received under sub. (3).

8 **SECTION 6.** 46.278 (2) (a) of the statutes is amended to read:

9 46.278 (2) (a) The department may request a ~~waiver~~ one or more waivers from
10 the secretary of the federal department of health and human services, under 42 USC
11 1396n (c), authorizing the department to serve medical assistance recipients, who
12 meet the level of care requirements for medical assistance reimbursement in an
13 intermediate care facility for the mentally retarded or in a brain injury rehabilitation
14 facility, in their communities by providing home or community-based services as
15 part of medical assistance. If the department requests a waiver, it shall include all
16 assurances required under 42 USC 1396n (c) (2) in its request.

17 **SECTION 7.** 46.278 (3) (a) of the statutes is amended to read:

18 46.278 (3) (a) Evaluate the effect of the each program on medical assistance
19 costs and on the program's ability to provide community care alternatives to
20 institutional care in facilities certified as medical assistance providers.

21 **SECTION 8.** 46.278 (4) (a) of the statutes is amended to read:

22 46.278 (4) (a) Sections 46.27 (3) (b) and 46.275 (3) (a) and (c) to (e) apply to
23 county participation in ~~this~~ a program, except that services provided in the program
24 shall substitute for care provided a person in an intermediate care facility for the
25 mentally retarded or brain injury rehabilitation facility who meets the intermediate

1 care facility for the mentally retarded or brain injury rehabilitation facility level of
2 care requirements for medical assistance reimbursement to that facility rather than
3 for care provided at a state center for the developmentally disabled.

4 **SECTION 9.** 46.278 (4) (b) 2. of the statutes is amended to read:

5 46.278 (4) (b) 2. Each county department participating in ~~the a~~ program shall
6 provide home or community-based care to persons eligible under this section, except
7 that the number of persons who receive home or community-based care under this
8 section may not exceed the number that are approved under ~~the an~~ an applicable waiver
9 received under sub. (3).

10 **SECTION 10.** 46.278 (5) (a) and (b) of the statutes are amended to read:

11 46.278 (5) (a) Any medical assistance recipient who meets the level of care
12 requirements for medical assistance reimbursement in an intermediate care facility
13 for the mentally retarded or in a brain injury rehabilitation facility and is ineligible
14 for service under s. 46.275 or 46.277 is eligible to participate in ~~the a~~ program, except
15 that persons eligible for the brain injury waiver program must meet the definition
16 of brain injury under s. 51.01 (2g), and except that the number of participants may
17 not exceed the number approved under the waiver received under sub. (3). Such a
18 recipient may apply, or any person may apply on behalf of such a recipient, for
19 participation in ~~the a~~ program. Section 46.275 (4) (b) applies to participation in ~~the~~
20 a program.

21 (b) To the extent authorized under 42 USC 1396n, if a person discontinues
22 participation in ~~the a~~ program, a medical assistance recipient may participate in ~~the~~
23 a program in place of the participant who discontinues if that recipient meets the
24 ~~intermediate care facility for the mentally retarded level of care requirements for~~
25 ~~medical assistance reimbursement in an intermediate care facility for the mentally~~

1 ~~retarded except that the number of participants concurrently served may not exceed~~
2 ~~the number approved under the waiver received under sub. (3) requirements under~~
3 ~~par. (a).~~

4 **SECTION 11.** 46.278 (6) (a), (b), (c) and (d) of the statutes are amended to read:

5 46.278 (6) (a) The provisions of s. 46.275 (5) (a), (b) and (d) apply to funding
6 received by counties under the program programs.

7 (b) Total funding to counties for relocating each person under ~~the~~ a program
8 may not exceed the amount approved in the waiver received under sub. (3).

9 (c) Funding may be provided under ~~the~~ a program for services of a family
10 consortium.

11 (d) If a county makes available nonfederal funds equal to the state share of
12 service costs under ~~the~~ a waiver received under sub. (3), the department may, from
13 the appropriation under s. 20.435 (4) (o), provide reimbursement for services that the
14 county provides under this section to persons who are in addition to those who may
15 be served under this section with funds from the appropriation under s. 20.435 (4)
16 (b).

17 **SECTION 12.** 46.278 (6) (e) 1. of the statutes is amended to read:

18 46.278 (6) (e) 1. The department may provide enhanced reimbursement for
19 services under the community integration program for an individual who was
20 relocated to the community by a county department from one of the following:

21 **SECTION 13.** 46.278 (6) (f) of the statutes is amended to read:

22 46.278 (6) (f) If a county owns the institution or intermediate care facility for
23 the mentally retarded from which an individual is relocated to the community under
24 this section, in order to receive funding under the community integration program,

1 the county shall submit a plan for delicensing a bed of the institution or intermediate
2 care facility for the mentally retarded that is approved by the department.

3 SECTION 14. 49.45 (2) (a) 24. of the statutes is created to read:

4 49.45 (2) (a) 24. Promulgate rules that require that the written plan of care for
5 persons receiving personal care services under medical assistance be reviewed by a
6 registered nurse at least every 60 days. The rules shall provide that the written plan
7 of care shall designate intervals for visits to the recipient's home by a registered
8 nurse as part of the review of the plan of care. The designated intervals for visits
9 shall be based on the individual recipient's needs, and each recipient shall be visited
10 in his or her home by a registered nurse at least once in every 12-month period. The
11 rules shall also provide that a visit to the recipient is also required if, in the course
12 of the nurse's review of the plan of care, there is evidence that a change in the
13 recipient's condition has occurred that may warrant a change in the plan of care.

NOTE: Requires DHFS to promulgate administrative rules that require the written plan of care for persons receiving personal care services under medical assistance to be reviewed at least every 60 days, as under current law. This bill provides that the written plan of care shall designate an interval for visits by a registered nurse as part of the review of the plan of care, instead of requiring a home visit at least once every 60 days, as under current law. The designated interval must be based on the individual recipient's needs. Each recipient must be visited in his or her home by a registered nurse at least once in every 12-month period. The rules must also provide that a nurse visit to the recipient is required if, in the course of the nurse's review of the plan of care, there is evidence that a change in the recipient's condition has occurred that may warrant a change in the plan of care.

→ INS. "KA" from pp. 10 to 13. ←
14 SECTION 15. Nonstatutory provisions; health and family services.

15 (1) PLAN FOR SERVICES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES. The
16 department of health and family services shall develop a plan to administer and fund
17 services for persons with developmental disabilities. The plan, which shall include
18 any recommended statutory language changes that are needed to implement the
19 plan, shall be included in that department's budget request that is submitted to the

1 department of administration for the 2003–05 biennium. The plan shall include the
2 following components:

3 (a) Institutional and community–based services for persons with
4 developmental disabilities shall be administered within one administrative subunit
5 of the department of health and family services. The subunit that is designated to
6 administer these services shall be the subunit that is administering
7 community–based services for persons with developmental disabilities on the
8 effective date of this paragraph.

9 (b) Funding under the medical assistance program for institutional services
10 and home and community–based waiver services for persons with developmental
11 disabilities shall be combined into one appropriation, to the extent permissible under
12 federal law. The funding in this appropriation may not be tied to any specific
13 program or service setting, but shall be individually tailored to enable the person to
14 live in the least restrictive setting appropriate to his or her needs and preferences.

15 (2) MEDICAL ASSISTANCE WAIVERS FOR DEVELOPMENTAL DISABILITIES SERVICES. The
16 department of health and family services shall determine whether any new waivers
17 under the medical assistance program are necessary to administer funding for
18 medical assistance services as described in subsection (1) (b). That department shall
19 apply for any waivers of federal medical assistance statutes and regulations from the
20 federal department of health and human services that the department of health and
21 family services determines are necessary to administer funding for medical
22 assistance services as described in subsection (1) (b).

23 ~~(3) WRITTEN PLANS OF CARE FOR PERSONAL CARE SERVICES; RULES. The department~~
24 ~~of health and family services shall submit in proposed form the rules required under~~
25 ~~section 49.45 (2) (a) 24. of the statutes, as created by this act, to the legislative council~~

INSERT "KA" - goes on

1 staff under section 227.15 (1) of the statutes no later than the first day of the 4th
2 month beginning after the effective date of this subsection.

3 (4) PILOT PROGRAM FOR LONG-TERM CARE OF CHILDREN WITH DISABILITIES.

4 (a) In this subsection:

5 1. "Administering agency" means a county department under section 46.23,
6 51.42, or 51.437 of the statutes or a human services agency that administers the
7 program under a contract with such a county department.

8 2. "Program" means a pilot program that provides a system of long-term care
9 for children with disabilities and their families.

SECTION #. 2001 Wisconsin Act 16, section 9123 (16rs) (b) (intro.) is amended to read:

10 (b) The department of health and family services shall, as soon as possible
11 (intro.) before July 1, 2002, seek waivers of federal medical assistance statutes and
12 regulations from the federal department of health and human services that are
13 necessary to implement, in pilot sites, the program. If the waivers are granted, the
14 program shall have all of the following characteristics:

SECTION #. 2001 Wisconsin Act 16, section 9123 (16rs) (b) 1. is created to read:

15 1. Eligibility under sections 46.27 (11), 46.275, 46.277, 46.278, 46.985, and
16 51.44 of the statutes shall be expanded to include children with severe disabilities
17 and long-term care needs and children eligible for medical assistance with high
18 medical costs, and medical assistance coverage of services shall be expanded to
19 include services focused on the needs of children with developmental disabilities and
20 their families.

21 2. The administration of the program shall be consistent with section 46.985
22 of the statutes, including a family centered assessment and planning process.

23 3. The program shall operate within rate settings based upon a child's level of
24 care and support needs. The department of health and family services shall

[2001 Wisconsin Act 16] Section 9123 (16rs) (b)

[2001 Wisconsin Act 16] Section 9123 (16rs)

Fix component
PROOF for Act 16
Fix comp.

Page 8.
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1 promulgate rules that specify rates that are consistent with federal medical
2 assistance home and community-based waiver regulations.

3 4. The department of health and family services shall coordinate supports and
4 services under the program with the medical assistance fee-for-service system,
5 including the prior-authorization process.

6 5. The lead agency for the program shall be an administering agency.

7 6. Counties in which the program is located shall provide, contract for the
8 provision of, organize, or arrange for long-term care supports for eligible children up
9 to age 24 years, consistent with section 46.985 (1) (b) and (6) (f) of the statutes.

10 7. Information and assistance services operated under the program shall
11 provide, contract, or arrange for the provision of all of the following:

12 a. Information and referral services and other assistance at hours that are
13 convenient for the public.

14 b. Within the limits of available funding, prevention and intervention services.

15 c. Counseling concerning public and private benefits programs.

16 d. Assistance with understanding rights of children and parents within the
17 long-term care system.

18 8. The administering agency shall determine functional and financial
19 eligibility for the program by coordinating with the department of health and family
20 services in completing all of the following:

21 a. A determination of functional eligibility for the children's long-term support
22 benefit.

23 b. A determination of financial eligibility and of the maximum amount of cost
24 sharing required for a family who is seeking long-term care services, under
25 standards prescribed by the department of health and family services.

cont

1 c. Assistance to a child who is eligible for a long-term support benefit and to
2 the child's family with respect to the choice of whether or not to participate in the
3 waiver pilot.

4 d. Assistance in enrolling in the program for families who choose to enroll their
5 children.

6 9. The cost of the program may not exceed the cost of existing services under
7 sections 46.27 (11), 46.275, 46.277, 46.278, 46.985, and 51.44 of the statutes.

8 10. The program shall blend the costs per child served in the areas of the sites
9 in which services are provided under sections 46.27 (11), 46.275, 46.277, 46.278,
10 46.985, and 51.44 of the statutes.

11 11. The department of health and family services may develop a methodology
12 to distribute funding under the program on a per-child, per-month basis.

13 12. The department of health and family services shall reinvest in the
14 children's long-term support system any funding saved by this new methodology.

15 13. The department of health and family services shall equitably assign
16 priority on any necessary waiting lists, consistent with criteria prescribed by that
17 department, for children who are eligible for the program, but for whom resources
18 are not available.

19 14. The department of health and family services shall provide transitional
20 services to families whose children with physical or developmental disabilities are
21 preparing to enter the adult service system.

22 15. The department of health and family services shall determine eligibility for
23 program applicants for state supplemental payments under section 49.77 of the
24 statutes, medical assistance under section 49.46 of the statutes, and the federal food
25 stamp program under 7 USC 2011 to 2029.

[2001 Wisconsin Act 16] Section 9123 (16rs) (b)

SECTION #. 2001 Wisconsin Act 16, section 9123 (16rs) (b) 14. is created to read:

File component

cont.



SECTION #: 2001 Wisconsin Act 16, section 9123 (16rs)(c) is amended to read:

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(c) If the federal waivers specified under paragraph (b) are approved, the department of health and family services shall, as soon as possible before July 1, 2002, seek enactment of statutory language, including appropriation of necessary funding, to implement the model described under paragraph (b), as approved under the federal waivers. Any new resources for supports and services for long-term care for children with disabilities and their families shall be managed under the program after approval of the federal waivers specified in paragraph (b) and enactment of necessary statutory language to implement the model under paragraph (b).

freeze

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to read:

NOTE: Subsection (3) requires DHS to submit rules in proposed form to the legislative council rules clearinghouse no later than the first day of the fourth month beginning after the effective date of this act.

PROOF
w/01 Act 16

(END)

[2001 Wisconsin Act 16] Section 9123 (16rs)

Fix component

End of "KA"
Insert

D-NOTE

To Laura Rose:

I have not changed the Prefatory Note for
this redraft.

DAK

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3357/P3dn
DAK:kmg:jf

October 4, 2001

To Laura Rose:

I have not changed the Prefatory Note for this redraft.

Debora A. Kennedy
Managing Attorney
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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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2 *affect* 2001 Wisconsin Act 16, section 9123 (16rs) (b) (intro.), 2001 Wisconsin
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6 council on developmental disabilities to report annually to the legislature;
7 expanding eligibility, requiring submission of wavier requests by a specified
8 date, and providing transitional services under a pilot program for long-term
9 care of children with disabilities; requiring the department of health and family
10 services to develop a plan to administer and fund services for persons with
11 developmental disabilities; and requiring the exercise of rule-making
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The bill amends the CIP IB statute to include the brain injury waiver program. These amendments allow nonfederal local funds to be used as the state match for funding additional brain injury waiver slots and permits DHFS to reimburse counties in an amount equal to the state's share of service costs under the brain injury waiver program.

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DHFS appointed a children's committee on long-term care as part of the effort to redesign the state system on long-term care. The children's long-term support redesign committee developed a model to redesign the current system of care for children and their families, to be implemented as a pilot program and funded by federal medicaid waiver funding. The children's home and community-based waiver would define children with physical, sensory, developmental and significant health care needs as eligible. The waiver would permit the blending of the family support program, the community options program (COP), and MA waiver funding into a single funding stream. The intended effects are to streamline services and secure additional federal matching funds. DHFS would offer the waiver to children and families currently receiving services through family support, COP, MA home and community-based waivers and MA fee-for-service. Under the waiver, the funds for these programs would be managed within individual

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~~This bill~~ requires DHFS to seek waivers of federal MA statutes and regulations that are necessary to implement the program in pilot sites. If the waivers are approved, the bill requires DHFS to seek statutory language to implement the children's long-term support redesign on a piloted basis. (insert @ here)

4. Nurse Home Visits to Persons Receiving MA Personal Care

Currently, administrative rules of DHFS require personal care services under the MA program to be provided according to a written plan of care, and to be supervised by a registered nurse. Currently, review of the plan of care, evaluation of the recipient's condition and supervisory review of the personal care worker must be made by a registered nurse at least every 60 days. The review must include: a visit to the recipient's home; review of the personal care worker's daily written record and discussion with the physician of any necessary changes in the plan of care.

This bill requires DHFS to promulgate rules to require that the written plan of care for persons receiving personal care services be reviewed at least every 60 days, as under current law. However, this bill provides that the written plan of care shall designate an interval for visits to the recipient's home by a registered nurse as part of the review of the plan of care. The designated interval must be based on the individual recipient's needs. The rules must also provide that a nurse visit to the recipient is required if, in the course of the nurse's review of the plan of care, a change in the recipient's condition has occurred that may warrant a change in the plan of care. In addition, all recipients must be visited in their home by a registered nurse at least once in every 12-month period. These rules will authorize a nurse visit at intervals tailored to the individual recipient's needs, rather than every 60 days for all recipients, as is currently required.

3. Administration and Funding of Developmental Disabilities Services

This bill requires DHFS to develop a plan to administer and fund services for persons with developmental disabilities, and to submit that plan to the department of administration as part of DHFS's budget request for the 2003-05 biennium. The plan that is submitted shall include any recommended statutory language changes that are needed to implement the plan. The plan must require all institutional and community-based services for persons with developmental disabilities to be administered within one administrative subunit of DHFS. The subunit designated to do this must be the subunit that is administering community-based services for persons with developmental disabilities as of the effective date of this act.

Further, the plan must provide that funding under the medical assistance program for institutional services and home and community-based waiver services for persons with developmental disabilities shall be combined into one appropriation to the extent permissible under federal law. DHFS must apply for any necessary waivers of federal MA statutes and regulations from the federal department of health and human services.

- 1 **SECTION 1.** 15.197 (11n) (cm) of the statutes is created to read:
- 2 **15.197 (11n) (cm)** Four members of the legislature, of which one each is
- 3 designated by the speaker of the assembly, the senate majority leader, and the
- 4 minority leader in each house of the legislature and appointed by the governor.

1 **SECTION 2.** 15.197 (11n) (e) of the statutes is created to read:

2 15.197 (11n) (e) By January 31 annually, the council shall prepare a report for
3 the preceding calendar year and shall submit the report to the legislature under s.
4 13.172 (2). The report shall evaluate the waiting lists compiled by the department
5 of health and family services for services for persons with developmental disabilities.

6 **SECTION 3.** 2001 Wisconsin Act 16, section 9123 (16rs) (b) (intro.) is amended
7 to read:

8 [2001 Wisconsin Act 16] Section 9123 (16rs) (b) (intro.) The department of
9 health and family services shall, as soon as possible before July 1, 2002, seek waivers
10 of federal medical assistance statutes and regulations from the federal department
11 of health and human services that are necessary to implement, in pilot sites, the
12 program. If the waivers are granted, the program shall have all of the following
13 characteristics:

14 **SECTION 4.** 2001 Wisconsin Act 16, section 9123 (16rs) (b) 1. is created to read:

15 [2001 Wisconsin Act 16] Section 9123 (16rs) (b) 1. Eligibility under sections
16 46.27 (11), 46.275, 46.277, 46.278, 46.985, and 51.44 of the statutes shall be expanded
17 to include children with severe disabilities and long-term care needs and children
18 eligible for medical assistance with high medical costs, and medical assistance
19 coverage of services shall be expanded to include services focused on the needs of
20 children with developmental disabilities and their families.

21 **SECTION 5.** 2001 Wisconsin Act 16, section 9123 (16rs) (b) 14. is created to read:

22 [2001 Wisconsin Act 16] Section 9123 (16rs) (b) 14. The department of health
23 and family services shall provide transitional services to families whose children
24 with physical or developmental disabilities are preparing to enter the adult service
25 system.

1 **SECTION 6.** 2001 Wisconsin Act 16, section 9123 (16rs) (c) is amended to read:

2 [2001 Wisconsin Act 16] Section 9123 (16rs) (c) If the federal waivers specified
3 under paragraph (b) are approved, the department of health and family services
4 shall, as soon as possible before July 1, 2002, seek enactment of statutory language,
5 including appropriation of necessary funding, to implement the model described
6 under paragraph (b), as approved under the federal waivers. Any new resources for
7 supports and services for long-term care for children with disabilities and their
8 families shall be managed under the program after approval of the federal waivers
9 specified in paragraph (b) and enactment of necessary statutory language to
10 implement the model under paragraph (b).

11 **SECTION 7. Nonstatutory provisions; health and family services.**

12 (1) **PLAN FOR SERVICES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES.** The
13 department of health and family services shall develop a plan to administer and fund
14 services for persons with developmental disabilities. The plan, which shall include
15 any recommended statutory language changes that are needed to implement the
16 plan, shall be included in that department's budget request that is submitted to the
17 department of administration for the 2003-05 biennium. The plan shall include the
18 following components:

19 (a) Institutional and community-based services for persons with
20 developmental disabilities shall be administered within one administrative subunit
21 of the department of health and family services. The subunit that is designated to
22 administer these services shall be the subunit that is administering
23 community-based services for persons with developmental disabilities on the
24 effective date of this paragraph.



SOON - Iuedit 10/12
State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-3357/P31

DAK:kmg:jf

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

Gen. Carl

1 AN ACT to create 15.197 (11n) (cm) and 15.197 (11n) (e) of the statutes; and to
2 affect 2001 Wisconsin Act 16, section 9123 (16rs) (b) (intro.), 2001 Wisconsin
3 Act 16, section 9123 (16rs) (b) 1., 2001 Wisconsin Act 16, section 9123 (16rs) (b)
4 14. and 2001 Wisconsin Act 16, section 9123 (16rs) (c); **relating to:** adding
5 legislative members to the council on developmental disabilities; requiring the
6 council on developmental disabilities to report annually to the legislature;
7 expanding eligibility, requiring submission of wavier requests by a specified
8 date, and providing transitional services under a pilot program for long-term
9 care of children with disabilities; requiring the department of health and family
10 services to develop a plan to administer and fund services for persons with
11 developmental disabilities; and requiring the exercise of rule-making
12 authority.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the joint legislative council in the bill.

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

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

PREFATORY NOTE: This bill was prepared for the joint legislative council's special committee on developmental disabilities. The bill contains the following provisions:

1. Legislative Members: ~~Wisconsin~~ Council on Developmental Disabilities

Under current law, the council on developmental disabilities consists of representatives from the following state agencies: (1) the department of workforce development; (2) the department of health and family services (DHFS); (3) the department of public instruction; and (4) the University of Wisconsin.

Also, under current law, the governor appoints additional members to the council for staggered 4-year terms, to represent the following: (1) public and private nonprofit agencies of the state's political subdivisions that provide direct services to persons with developmental disabilities; and (2) nongovernmental agencies and groups concerned with services to persons with developmental disabilities. The governor must make additional appointments to ensure that at least 1/2 of the council's membership consists of persons with developmental disabilities or their parents or guardians.

The bill requires the governor to appoint 4 legislative members to the council on developmental disabilities, as designated by the speaker of the assembly, the assembly minority leader, the senate majority leader and the senate minority leader.

~~The bill also~~ requires the council to evaluate the waiting lists for developmental disabilities services compiled by DHFS and to submit an annual report regarding the status of the waiting lists to the legislature at the end of each calendar year.

2. Brain Injury Waiver Program

Under current law, the brain injury home and community-based waiver does not have a statutory reference and does not permit counties to provide the nonfederal share of medical assistance (MA), which would enable counties to increase the number of brain injury waiver slots.

Current law specifies that the MA waiver for the community integration program (CIP) IB permits counties to create additional slots by providing the nonfederal share of MA.

The bill amends the CIP IB statute to include the brain injury waiver program. These amendments allow nonfederal local funds to be used as the state match for funding additional brain injury waiver slots and permits DHFS to reimburse counties in an amount equal to the state's share of service costs under the brain injury waiver program.

3. Children's Long-Term Support Redesign

DHFS appointed a children's committee on long-term care as part of the effort to redesign the state system on long-term care. The children's long-term support redesign committee developed a model to redesign the current system of care for children and their families, to be implemented as a pilot program and funded by federal medicaid waiver funding. The children's home and community-based waiver would define children with physical, sensory, developmental and significant health care needs as eligible. The waiver would permit the blending of the family support program, the community options program (COP), and MA waiver funding into a single funding stream. The intended effects are to streamline services and secure additional federal matching funds. DHFS would offer the waiver to children and families currently receiving services through family support, COP, MA home and community-based waivers and MA fee-for-service. Under the waiver, the funds for these programs would be managed within individual

restores language concerning the council on developmental disabilities that was vetoed by the Governor in 2001 Wisconsin Act 16 (the biennial budget act). The restored language does the following:
#2.

b.

The biennial budget act

budgets based upon the child's functional needs. DHFS would pilot this waiver on a statewide, voluntary basis. The current family care pilot counties would have the option of piloting the children's waiver and coordinating it with the family care program. Families already receiving long-term support services would be offered the opportunity to enroll in the children's waiver on a voluntary basis.

~~This bill~~ requires DHFS to seek waivers of federal MA statutes and regulations that are necessary to implement the program in pilot sites. If the waivers are approved, ~~the bill~~ requires DHFS to seek statutory language to implement the children's long-term support redesign on a piloted basis.

biennial budget act

INSERT A

4. Nurse Home Visits to Persons Receiving MA Personal Care

Currently, administrative rules of DHFS require personal care services under the MA program to be provided according to a written plan of care, and to be supervised by a registered nurse. Currently, review of the plan of care, evaluation of the recipient's condition and supervisory review of the personal care worker must be made by a registered nurse at least every 60 days. The review must include: a visit to the recipient's home; review of the personal care worker's daily written record and discussion with the physician of any necessary changes in the plan of care.

This bill requires DHFS to promulgate rules to require that the written plan of care for persons receiving personal care services be reviewed at least every 60 days, as under current law. However, this bill provides that the written plan of care shall designate an interval for visits to the recipient's home by a registered nurse as part of the review of the plan of care. The designated interval must be based on the individual recipient's needs. The rules must also provide that a nurse visit to the recipient is required if, in the course of the nurse's review of the plan of care, a change in the recipient's condition has occurred that may warrant a change in the plan of care. In addition, all recipients must be visited in their home by a registered nurse at least once in every 12 month period. These rules will authorize a nurse visit at intervals tailored to the individual recipient's needs, rather than every 60 days for all recipients, as is currently required.

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22 administer these services shall be the subunit that is administering
23 community-based services for persons with developmental disabilities on the
24 effective date of this paragraph.

INSERT A

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This bill restores language governing the children's long-term support redesign pilot program that was vetoed by the Governor in ~~2002 Wisconsin Act 10~~. The restored language does the following:

a. Requires ~~the~~ DHFS to seek the necessary federal waivers and enactment of necessary statutory language and funding as soon as possible before July 1, 2002.

b. Provides for the expansion of eligibility under certain long-term care programs currently serving children to include children with severe disabilities and long-term care needs and children eligible for medical assistance with high medical costs, and the expansion of medical assistance to include services focused on the needs of children with developmental disabilities and their families.

c. Requires ~~the~~ DHFS to provide transitional services to families whose children with physical or developmental disabilities are preparing to enter the adult service system.



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

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STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

October 16, 2001

MEMORANDUM

To: Legislative Council - JLC

From: Debora A. Kennedy, Managing Attorney

Rc: LRB-3357/1 Various provisions relating to developmental disabilities

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

companion bills

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-0137 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.