

2001 ASSEMBLY BILL 671

December 7, 2001 – Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on Aging and Long-Term Care.

1 **AN ACT** *to amend* 20.435 (4) (w), 46.985 (7) (a), 46.986 (2) (a) (intro.), 46.986 (2)
2 (b) 1. and 46.986 (2) (b) 2. (intro.); **to repeal and recreate** 20.435 (4) (w); and
3 **to create** 15.197 (11n) (ef), 46.278 (6) (am), 46.278 (6m), 46.985 (2) (a) 12.,
4 46.985 (7) (am) and 46.985 (7) (e) of the statutes; **relating to:** increasing
5 funding for services under the family support program and the respite care
6 program; increasing the daily reimbursement rate for the community
7 integration program for persons with mental retardation; providing funding for
8 medical assistance home and community-based services for persons with
9 developmental disabilities who are on waiting lists for services; requiring the
10 department of health and family services to establish criteria for distribution
11 of this funding and to develop a plan to eliminate waiting lists for services for
12 persons with developmental disabilities by the end of state fiscal year 2004–05;
13 requiring the council on developmental disabilities to evaluate, and report to
14 the legislature, the number of persons with developmental disabilities on

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- 1 waiting lists for services at the end of each calendar year; requiring the exercise
2 of rule-making authority; and making appropriations.

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. Family Support Program

Under current law, the department of health and family services is required to distribute not more than \$4,339,800 in each fiscal year for the family support program allocation of community aids funding. The bill increases funding for the family support program by \$700,000 in state fiscal year 2001–02 and by \$2,700,000 in state fiscal year 2002–03 and each fiscal year thereafter. As of December 1, 2000, an estimated 2,500 children were on waiting lists to receive services under this program. Over the 2001–03 biennium, a total of \$3,400,000 additional general purpose revenue could provide services under the family support program for an estimated 400 children in fiscal year 2001–02 and 1,200 children in fiscal year 2002–03, based on the actual average per client cost of providing services under the program in calendar year 1999 (\$1,705). Counties may use these funds either to provide services to additional families with children on waiting lists or to provide additional services to underserved families.

Further, the bill provides that the increased funds must be used by counties as the nonfederal match for the community supported living arrangements (CSLA) medical assistance waiver, when a child is eligible both for CSLA and for the family support program. The bill also provides that the increased funds may be used by counties as the nonfederal match for the community integration program for persons with mental retardation (CIP-IB), when a child is eligible both for CIP-IB and for the family support program.

2. CIP-IB

Under current law, s. 46.278 governs the community integration program (CIP) for persons with mental retardation, commonly referred to as "CIP-IB". Under this program, a person who is diagnosed as developmentally disabled under the definition specified in s. 51.01 (5) and relocated from an institution other than a state center for the developmentally disabled, or who meets the intermediate care facility for the mentally retarded (ICF-MR) level of care requirements for medical assistance (MA) reimbursement in an ICF-MR and is ineligible for services under s. 46.275 or 46.277, may be eligible for this program.

The program authorizes the department of health and family services to serve MA recipients, who meet the level of care requirements for MA reimbursement in an

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ICF-MR, in their communities by providing home or community-based services as part of MA.

Currently, the state of Wisconsin provides funding at a daily rate of \$48.33 per day to serve these individuals under the CIP-IB program. This is MA funding, which is approximately 60% federal funds and 40% nonfederal funds.

This bill provides \$3,700,000 in fiscal year 2001-02 and each fiscal year thereafter to increase the CIP-IB daily rate from the current rate of \$48.33 per day.

3. *Waiting Lists for Developmental Disabilities Services*

The bill creates an appropriation in the department of health and family services (DHFS) to be used to provide services to persons who are on waiting lists for developmental disabilities services. The bill provides \$1,000,000 in fiscal year 2001-02 and \$7,000,000 in each fiscal year thereafter to fund services for persons with developmental disabilities who are waiting for services. In distributing these funds, the DHFS must use the criteria established by the DHFS by rule. The rules must require that the funds be distributed to maximize the capture of federal funds. In addition, the rules must prohibit counties from supplanting funds allocated to developmental disabilities services with the funds received under this appropriation.

The rules must also require that the DHFS collect data from county departments on the number of persons requesting, but not receiving, developmental disabilities services. The data must indicate the number of these persons placed on waiting lists by the county department, as well as the length of time the person has been on a waiting list and person's severity of need. Further, the rules must provide that the funds appropriated under this bill be distributed by the DHFS utilizing this data. The rules must be submitted to the legislative council staff for review no later than the first day of the 6th month beginning after the effective date of this bill. However, the DHFS must administer this bill prior to the promulgation of these rules according to procedures established by the DHFS.

This bill also requires the DHFS to develop a plan to eliminate waiting lists for services for persons with developmental disabilities in Wisconsin by the end of fiscal year 2004-05.

Finally, the bill requires the council on developmental disabilities under s. 15.197 (11n), stats., at the end of each calendar year, to evaluate the number of persons with developmental disabilities on waiting lists for services and report this information to the legislature as provided under s. 15.197 (11n), stats.

4. *Lifespan Respite Care*

Under current law, the department of health and family services (DHFS) uses general purpose revenues to contract with a private, nonprofit organization that prescribes criteria for, awards, and oversees grants to conduct respite care projects. ("Respite care" is care that is provided to a person with special needs, or a person at risk of abuse or neglect, in order to provide temporary relief to the caregiver of that person or when the caregiver is unable to provide care.) The organization may award grants to conduct respite care projects to county departments of social services, human services, community programs, or developmental disabilities services; governing bodies of federally recognized American Indian tribes or bands; or nonprofit or for-profit community-based private entities. The grant funds must be equally distributed among five administrative regions of the state, as prescribed by DHFS.

This bill increases an appropriation of general purpose revenues by a total of \$225,000 in fiscal year 2002-03 and in each fiscal year thereafter for the respite care program, including grant funds for one additional respite care project in each of the five

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administrative regions prescribed by DHFS and two additional respite care projects anywhere in the state.

5. Medical Assistance Trust Fund

This bill modifies the medical assistance trust fund to provide that moneys from this trust fund are used for providing funding increases for the family support program and life-span respite care project grants.

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

2 15.197 **(11n)** (ef) *Annual report.* By January 31 of each year, the council shall
3 prepare a report for the preceding calendar year and shall submit the report to the
4 legislature under s. 13.172 (2). The report shall evaluate waiting lists for services
5 for persons with developmental disabilities in Wisconsin based on data compiled by
6 the department of health and family services.

7 **SECTION 2.** 20.435 (4) (w) of the statutes, as created by 2001 Wisconsin Act 16,
8 is amended to read:

9 20.435 **(4)** (w) *Medical assistance trust fund.* From the medical assistance trust
10 fund, biennially, the amounts in the schedule for meeting costs of medical assistance
11 administered under ss. 46.27, 46.275 (5), 46.278 (6), 46.283 (5), 46.284 (5), 49.45, and
12 49.472 (6) ~~and~~, for administrative costs associated with augmenting the amount of
13 federal moneys received under 42 CFR 433.51, for the family support program under
14 s. 46.985 (7) (am), and for life-span respite care project grants under s. 46.986 (2) (a)
15 (intro.). The department may transfer from this appropriation to the appropriation
16 account under par. (x) moneys in the amount and for the purpose specified in 2001
17 Wisconsin Act 16, section 9123 (8e).

18 **SECTION 3.** 20.435 (4) (w) of the statutes, as affected by 2001 Wisconsin Act 16,
19 section 717b, and 2001 Wisconsin Act (this act), is repealed and recreated to read:

20 20.435 **(4)** (w) *Medical assistance trust fund.* From the medical assistance trust
21 fund, biennially, the amounts in the schedule for meeting costs of medical assistance

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1 administered under ss. 46.27, 46.275 (5), 46.278 (6), 46.283 (5), 46.284 (5), 49.45, and
2 49.472 (6), for administrative costs associated with augmenting the amount of
3 federal moneys received under 42 CFR 433.51, for the family support program under
4 s. 46.985 (7) (am), and for life–span respite care project grants under s. 46.986 (2) (a)
5 (intro.).

6 **SECTION 4.** 46.278 (6) (am) of the statutes is created to read:

7 46.278 (6) (am) In addition to the funding specified in par. (a), from the
8 appropriation under s. 20.435 (4) (w), the department shall distribute all of the
9 following:

10 1. In fiscal year 2001–02 and each fiscal year thereafter, \$3,700,000 to
11 supplement the daily rate paid under par. (a) for the provision of home and
12 community–based services for eligible persons.

13 2. In fiscal year 2001–02, \$1,000,000, and in fiscal year 2002–03 and each fiscal
14 year thereafter, \$7,000,000 to provide home and community–based services for
15 eligible persons who are identified as specified in sub. (6m).

16 **SECTION 5.** 46.278 (6m) of the statutes is created to read:

17 46.278 (6m) **RULES FOR DISTRIBUTION OF FUNDS.** The department shall
18 promulgate rules establishing criteria for distribution of the funds specified under
19 sub. (6) (am) 2., for services for persons with developmental disabilities who are
20 waiting for services. The rules shall require the following:

21 (a) That the department collect data from each county department under ss.
22 46.21, 46.23, 51.42, and 51.437 on the total number of persons with developmental
23 disabilities who have requested services and have not received services from the
24 county department. The data shall indicate which of these persons have been placed
25 on waiting lists for services by the county department. The data shall also indicate

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1 the length of time each person has been on a waiting list, and the severity of the
2 person's need for services.

3 (b) That the funds be distributed to county departments to provide services to
4 persons identified using the data collected under par. (a) and that county
5 departments may not use these funds to supplant funds allocated as of the effective
6 date of this paragraph [revisor inserts date], for services for persons with
7 developmental disabilities.

8 (c) That the funds be distributed to maximize the capture of federal matching
9 funds for medical assistance.

10 **SECTION 6.** 46.985 (2) (a) 12. of the statutes is created to read:

11 46.985 (2) (a) 12. Criteria for administering funds under sub. (7) (am).

12 **SECTION 7.** 46.985 (7) (a) of the statutes, as affected by 2001 Wisconsin Act 16,
13 is amended to read:

14 46.985 (7) (a) ~~From~~ Except as provided in par. (am), from the appropriations
15 under s. 20.435 (7) (b) and (o), the department shall allocate to county departments
16 funds for the administration and implementation of the program.

17 **SECTION 8.** 46.985 (7) (am) of the statutes is created to read:

18 46.985 (7) (am) From the appropriation under s. 20.435 (4) (w), the department
19 shall distribute \$700,000 in fiscal year 2001–02 and \$2,700,000 in fiscal year
20 2002–03 and in each fiscal year thereafter, in accordance with the following
21 requirements:

22 1. For a disabled child that an administering agency determines is eligible for
23 the program under this section, the department shall ensure that the county
24 department determines whether the child is also eligible for any medical assistance
25 home and community–based waiver program.

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1 2. If a county department determines that a disabled child is eligible, under
2 subd. 1., for the medical assistance community–supported living arrangements
3 program under 42 USC 1396u, the department shall require the county department
4 to use the available funds under this paragraph as the required nonfederal matching
5 funds for the child’s participation under that waiver program.

6 3. If a county department determines that a disabled child is eligible, under
7 subd. 1., for the program under s. 46.278, the department shall encourage the county
8 department to use the available funds under this paragraph as the required
9 nonfederal matching funds under s. 46.278.

10 4. If subd. 2. or 3. applies, the administering agency may approve funding
11 under par. (a) or this paragraph for all or a portion of the cost of any services or goods
12 that have been identified as necessary in a family’s service plan, that meet the
13 criteria specified by rule under sub. (2) (a) 9., and that are not services or goods that
14 may be provided under any of the programs for which the family’s child is determined
15 eligible under subd. 2. or 3.

16 **SECTION 9.** 46.985 (7) (e) of the statutes is created to read:

17 46.985 (7) (e) The department shall assist county departments in maximizing
18 the use of the medical assistance waiver programs described in par. (am) 2. or 3. for
19 disabled children who are also eligible for the program under this section.

20 **SECTION 10.** 46.986 (2) (a) (intro.) of the statutes is amended to read:

21 46.986 (2) (a) (intro.) From the appropriation account under s. 20.435 (4) (w)
22 using not more than \$225,000 in fiscal year 2002–03 and each fiscal year thereafter
23 and from the appropriation account under s. 20.435 (7) (br), the department shall
24 contract for the administration of life–span respite care projects with an
25 organization to which all of the following apply:

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1 **SECTION 11.** 46.986 (2) (b) 1. of the statutes is amended to read:

2 46.986 (2) (b) 1. After consulting with the department, county departments,
3 tribes or bands, providers and caregivers, prescribe criteria for the distribution of
4 grants to conduct life–span respite care projects. The criteria shall include the
5 requirement that grant funds be equally distributed among 5 administrative regions
6 of the state, as prescribed by the department, except that, beginning July 1, 2002,
7 the grant funds shall also be used to conduct 2 respite care projects anywhere in the
8 state.

9 **SECTION 12.** 46.986 (2) (b) 2. (intro.) of the statutes, as affected by 2001
10 Wisconsin Act 16, is amended to read:

11 46.986 (2) (b) 2. (intro.) Solicit applications from and, using the criteria under
12 subd. 1., award in each state fiscal biennium up to ~~one grant~~ 2 grants in each of the
13 5 administrative regions prescribed by the department and up to 2 additional grants
14 anywhere in the state to any of the following to conduct a life–span respite care
15 project:

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

17 (1) RULES. The department of health and family services shall submit in
18 proposed form the rules required under section 46.278 (6m) of the statutes, as
19 created by this act, to the legislative council staff no later than the first day of the
20 6th month beginning after the effective date of this subsection. Before the date on
21 which the proposed rules are finally promulgated, the department of health and
22 family services shall administer section 46.278 (6m) of the statutes, as created by this
23 act, according to procedures established by that department, notwithstanding the
24 absence of rules to administer that section.

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1 (2) PLAN TO ELIMINATE WAITING LISTS. By July 1, 2002, the department of health
2 and family services shall develop a plan to eliminate waiting lists for services for
3 persons with developmental disabilities by the end of state fiscal year 2004–05. This
4 plan shall utilize criteria set forth by the department by rule under section 46.278
5 (6m) of the statutes, as created by this act, and shall include a fiscal estimate of the
6 amount of moneys necessary to implement the plan in each state fiscal year. The
7 department of health and family services shall ensure that public and private
8 providers of services to persons with developmental disabilities are provided
9 information about the department’s plan.

SECTION 14. Appropriation changes.

10 (1) RATE INCREASE FOR COMMUNITY INTEGRATION PROGRAM. In the schedule under
11 section 20.005 (3) of the statutes for the appropriation to the department of health
12 and family services under section 20.435 (4) (w) of the statutes, as affected by the acts
13 of 2001, the dollar amount is increased by \$3,700,000 for fiscal year 2001–02 and by
14 \$3,700,000 for fiscal year 2002–03 to supplement the daily rate paid for the provision
15 of home and community–based services under section 46.278 of the statutes.
16

17 (2) INCREASE FOR COMMUNITY INTEGRATION PROGRAM. In the schedule under
18 section 20.005 (3) of the statutes for the appropriation to the department of health
19 and family services under section 20.435 (4) (w) of the statutes, as affected by the acts
20 of 2001, the dollar amount is increased by \$1,000,000 for fiscal year 2001–02 and by
21 \$7,000,000 for fiscal year 2002–03 to increase funding for home and
22 community–based services under section 46.278 of the statutes.

23 (3) FAMILY SUPPORT PROGRAM. In the schedule under section 20.005 (3) of the
24 statutes for the appropriation to the department of health and family services under
25 section 20.435 (4) (w) of the statutes, as affected by the acts of 2001, the dollar amount

ASSEMBLY BILL 671**SECTION 14**

1 is increased by \$700,000 for fiscal year 2001–02 and by \$2,700,000 for fiscal year
2 2002–03 to increase funding for the family support program under section 46.985 (7)
3 (am) of the statutes.

4 (4) RESPITE CARE PROJECTS. In the schedule under section 20.005 (3) of the
5 statutes for the appropriation to the department of health and family services under
6 section 20.435 (4) (w) of the statutes, as affected by the acts of 2001, the dollar amount
7 is increased by \$225,000 for fiscal year 2002–03 to increase funding for respite care
8 projects under section 46.986 (2) (a) (intro.) of the statutes.

9 **SECTION 15. Effective dates.** This act takes effect on the day after publication,
10 except as follows:

11 (1) The repeal and recreation of section 20.435 (4) (w) of the statutes takes effect
12 on July 1, 2003.

13 (END)