

2003 DRAFTING REQUEST

Bill

Received: **09/20/2002**

Received By: **dkennedy**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget 267-7980**

By/Representing: **Blaine**

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

Drafter: **dkennedy**

May Contact:

Addl. Drafters:

Subject: **Health - medical assistance
Health - long-term care**

Extra Copies: **RLR**

Submit via email: **NO**

Pre Topic:

DOA:.....Blaine - BB0047,

Topic:

Increase access to community-based long-term care for nursing home residents

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>
/?				_____			S&L
/P1	dkennedy 11/15/2002	kfollett 11/15/2002 kfollett 11/27/2002	rschluet 11/27/2002	_____	lemery 11/27/2002		S&L
/P2	dkennedy 01/06/2003	kgilfoy 01/08/2003	chaskett 01/08/2003	_____	amentkow 01/08/2003		S&L
/1	dkennedy 01/15/2003	kgilfoy 01/15/2003	pgreensl 01/16/2003	_____	lemery 01/16/2003		S&L

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/2	dkennedy 02/06/2003	kgilfoy 02/06/2003	chaskett 02/06/2003	_____	mbarman 02/07/2003		

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/P2	dkennedy 01/06/2003	kgilfoy 01/08/2003	chaskett 01/08/2003	_____ _____	amentkow 01/08/2003		

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		kfollett 11/27/2002	p2 cph 1/8	_____			

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Health - long-term care

Extra Copies:

RLR
KMG ✓
CJS ✓
KJF ✓
jld

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Increase access to community-based long-term care for nursing home residents

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Instructions:

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11-27-2
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DHFS

Department of Health and Family Services
2003-2005 Statutory Language Request
September 13, 2002

Increase Access to Community Based Long Term Care For Individuals who Reside in Nursing Homes

Current Language

s. 46.277, s. 46.278, and s. 25.77

Proposed Change

- ✓ 1. Amend s. 46.277 and s. 46.278 to require counties to offer a community placement, if feasible, to a nursing home resident on the waiver wait list who wishes to relocate to the community and has resided in the nursing home for a period of 90 days or for a period in which his/her nursing home costs have been paid by Medical Assistance for 30 days, whichever period is longer.
- ✓ 2. Amend s. 46.277 and s. 46.278 to allow funding provided to counties under the Community Integration Program (CIP) and the Brain Injury Waiver (BIW) to equal the MA institutional costs minus the difference in MA card costs between an institution and community based services for an individual relocated to the community from a nursing home.
3. Delete s. 46.278 (6) (f) to allow counties to receive CIP funding without closure of a nursing home bed. See
46.278
(4)(b)
4. Amend s. 25.77 so that Medical Assistance (MA) Trust Funds can be used to pay administration costs.

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info-

Effect of the Change

These changes will allow the Department to provide additional support to counties to relocate nursing home residents to the community. These changes will also ensure that nursing home residents are provided an opportunity to relocate to the community.

Rationale for the Change

Individuals residing in institutions often prefer to be served in the community where they can receive needed services often at a lower cost. As of December 31, 2001, of the approximately 9,500 individuals on the waiver wait list, there were 5,785 elderly and physically disabled

individuals of which 576 individuals were residents of nursing homes. Because waiver services do not become available very quickly, some nursing home residents will decline or die before receiving them.

MA funding for community-based services is limited, and the demand for waiver services exceeds the available state and county funding. Counties must bear the cost of inflationary increases in their waiver programs whereas counties are not liable for costs of an individual served in an institution.

? { The Department proposes to increase long-term care capacity in the community and reduce counties' cost burdens by providing counties funding for nursing home resident relocations equal to the amount of MA costs for individual in the institution minus the difference in card costs between the institution and the community. This funding will provide counties additional support for community based long-term care costs. A statutory language change is needed to allow counties to receive this proposed level of funding. 2000

In addition, the Department requests a statutory language change to allow counties to receive funding for a relocation from a county operated nursing facility under CIP without requiring the county to close a bed. The change should expedite the relocation process for residents of county nursing homes.

The Department also proposes to provide administrative support to counties for relocation activities. The Department proposes to use SEG funding from the Medical Assistance (MA) Trust Fund to pay for relocation activities. An amendment to the language governing use of the MA Trust Fund is needed to use this SEG funding for administrative costs.

The desired effective date for the above changes is January 1, 2004.

To ensure that individuals in a nursing home are provided an opportunity to relocate to the community, the Department proposes to require counties to offer a community placement to their residents in a nursing home if the following conditions are met:

- a. The nursing home resident is on the waiver wait list and has resided in a nursing home for a period of 90 days or a period in which MA has paid the cost of nursing home care for 30 days, whichever period is longer.
 - b. The county has contacted the nursing home resident and he/she is still interested in receiving long-term care services in the community.
 - c. The community placement is determined to be feasible. A placement is feasible if costs for community-based services are less than or equal to the funding available to counties for the relocation. Feasibility assessments must consider if costs for relocating more than one person within a similar time period and same county together could make community costs less than or equal to the funding available.
- Section 2?

A county would be required to begin a feasibility assessment for nursing home residents on the waiver wait list prior to the end of the residency period of 90 days or of 30 days of MA payments, whichever period is longer. The county would be required to complete a feasibility

assessment and offer a community placement, if determined feasible, within 90 days after the assessment was started. If the feasibility assessment was not completed and, if applicable, a community placement was not offered within the above specified 90 days, the non-federal share of the MA cost of nursing home services would be paid by the county. The Department would pay the non-federal share of MA nursing home costs for an individual after the above specified period only if the individual refused a community placement or if a placement was determined not feasible.

The desired effective date for the above county requirements is July 1, 2004. This effective date will give counties 6 months to begin assessments for current nursing home residents on the waiver wait list before feasibility assessments and community placements are required.

Desired Effective Date: January 1, 2004

For the proposed change in funding available for CIP and BIW, for the proposed change to the MA Trust Fund, and for the proposed deletion of the bed closure requirement for county facilities.

June 1, 2004

For the proposed county requirements.

Agency:

DHFS

Agency Contact:

Anne Miller

Phone:

266-5422

11/13/02 Mtg. w/ Anne Miller, Lyle Updyke, Robert Blaine,
Neal Gebhart, and Dave Lund

Re 03-0208:

- ✓ 1. Card costs are allowable charges under s. 49.46
(2)(a) and (b)
- ✓ 2. Community card costs are higher than nh card
costs
- ✓ 3. For this bill, the nh. costs are specific to
the nh and are indexed on an average by nh rate
increase/yr.
- ✓ 4. Card costs. (commun + nh) are averaged
- not done; awaiting info.
5. DHS does not want to require a nh to
delicense a bed under 46.277 for this program -
Anne Miller will check to see if this wd. be in
conflict with the fed-waiver



SOON - In edit 11/15/02
State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-0208/P1

DAK: KJ f/kmg

D-NOTE

CPS -
Fix request
sheet pls.

DOA:.....Blaine - BB0047 Increase access to community-based long-term care for nursing home residents

X

FOR 2003-05 BUDGET - NOT READY FOR INTRODUCTION

Do Not Gen

- 1 AN ACT ...; relating to: relocation of nursing home residents to communities
- 2 under community integration programs and making an appropriation.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

MEDICAL ASSISTANCE

medical assistance

Under current law, several community integration programs in DHFS provide reimbursement under the Medical Assistance Program (MA) for the relocation or diversion from institutions into communities of ~~MA~~ recipients. Services provided under these programs are permitted MA reimbursement under waivers of federal MA laws. The number of persons served is not to exceed the number of nursing home beds that are delicensed. One of these programs, commonly known as "CIP II," provides home or community-based care to persons who are relocated from institutions other than the state centers for the developmentally disabled and to persons who meet MA level-of-care requirements in nursing homes. Another program, commonly known as "CIP IB," provides home or community-based care to persons with developmental disabilities who are relocated from institutions other than the state centers for the developmentally disabled and to persons who meet MA level-of-care requirements in intermediate care facilities for the mentally retarded or brain injury facilities.

XX

Beginning ^{on} June 1, 2004, this bill requires a county department of human services, developmental disabilities services, or community programs of a county

that participates in CIP II or CIP IB to offer home or community-based services under CIP II or CIP IB to nursing home residents. The nursing home resident to whom the services are offered must be eligible for but not receiving services under the program; must have resided in the nursing home for the longer of 90 continuous days or a period in which his or her nursing home care has been paid under MA for at least 30 days; must indicate that he or she prefers services in the community, rather than in the nursing home; must require services whose costs are below limits ascertained under a formula specified in the bill; and must have had a feasibility assessment that determined that the relocation was feasible. The county department must initiate the feasibility assessment before the person has resided in the nursing home for 90 days or before the resident's nursing home care has been paid under MA for 30 days, whichever is longer, and must complete the assessment within 90 days. A county department that fails to meet these requirements and offer home or community-based care to the resident must pay the nonfederal share of the resident's MA nursing home care, unless the resident refused to participate or the feasibility assessment determined that relocation was not feasible. Beginning January 1, 2004, DHFS is authorized to provide funding to counties from the MA trust fund, to conduct these relocation activities and to provide increased funding, under a formula specified in the bill, for services to the nursing home residents who are relocated to communities.

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:

1 SECTION 1. 20.435 (4) (w) of the statutes, as affected by ~~2003 Wisconsin Act~~ 2001
 2 Wisconsin Act 16, is amended to read: *section 717b,*

3 20.435 (4) (w) *Medical assistance trust fund.* From the medical assistance trust
 4 fund, biennially, the amounts in the schedule for meeting costs of medical assistance
 5 administered under ss. 46.27, 46.275 (5), 46.278 (6), 46.283 (5), 46.284 (5), 49.45, and
 6 49.472 (6) and, for administrative costs associated with augmenting the amount of
 7 federal moneys received under 42 CFR 433.51, and for administrative relocation
 8 activities specified under ss. 46.277 (5) (am) and 46.278 (6) (am).

NOTE: NOTE: Par. (w) is amended eff. 7-1-03 by 2001 Wis. Act 16 to read: ~~NOTE:~~

(w) *Medical assistance trust fund.* From the medical assistance trust fund, biennially, the amounts in the schedule for meeting costs of medical assistance administered under ss. 46.27, 46.275 (5), 46.278 (6), 46.283 (5), 46.284 (5), 49.45, and 49.472 (6) and for administrative costs associated with augmenting the amount of federal moneys received under 42 CFR 433.51.

History: 1971 c. 125 ss. 138 to 155, 522 (1); 1971 c. 211, 215, 302, 307, 322; 1973 c. 90, 198, 243; 1973 c. 284 s. 32; 1973 c. 308, 321, 322, 333, 336; 1975 c. 39 ss. 153 to 173, 732 (1), (2); 1975 c. 41 s. 52; 1975 c. 82, 224, 292; 1975 c. 413 s. 18; 1975 c. 422, 423; 1975 c. 430 ss. 1, 2, 80; 1977 c. 29 ss. 236 to 273, 1057 (18); 1977 c. 112; 1977

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c. 203 s. 106; 1977 c. 213, 233, 327; 1977 c. 354 s. 101; 1977 c. 359; 1977 c. 418 ss. 129 to 137, 924 (18) (d), 929 (55); 1977 c. 428 s. 115; 1977 c. 447; 1979 c. 32 s. 92 (11); 1979 c. 34, 48; 1979 c. 102 s. 237; 1979 c. 111, 175, 177; 1979 c. 221 ss. 118g to 133, 2202 (20); 1979 c. 238, 300, 331, 361; 1981 c. 20 ss. 301 to 356b, 2202 (20) (b), (d), (g); 1981 c. 93 ss. 3 to 8, 186; 1981 c. 298, 314, 317, 359, 390; 1983 a. 27 ss. 318 to 410, 2202 (20); 1983 a. 192, 199, 245; 1983 a. 333 s. 6; 1983 a. 363, 398, 410, 427; 1983 a. 435 ss. 2, 3, 7; 1983 a. 538; 1985 a. 24, 29, 56, 73, 120, 154, 176, 255, 281, 285, 332; 1987 a. 27, 339, 368, 398, 399, 402; 1987 a. 403 ss. 25, 256; 1987 a. 413; 1989 a. 31, 53; 1989 a. 56 ss. 13, 259; 1989 a. 102; 1989 a. 107 ss. 11, 13, 17 to 37; 1989 a. 120, 122, 173, 199, 202, 318, 336, 359; 1991 a. 6, 39, 189, 266, 275, 290, 315, 322; 1993 a. 16, 27, 76, 98, 99, 168, 183, 377, 437, 445, 446, 450, 469, 479, 490, 491; 1995 a. 27 ss. 806 to 961r, 9126 (19); 1995 a. 77, 98; 1995 a. 216 ss. 26, 27; 1995 a. 266, 276, 289, 303, 404, 417, 440, 448, 464, 468; 1997 a. 27 ss. 211, 214, 216, 217, 527 to 609; 1997 a. 35, 105, 231, 237, 280, 293; 1999 a. 5, 9, 32, 52, 84, 103, 109, 113, 133, 185, 186; 2001 a. 16, 69, 103, 105.

INSERT
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SECTION 2. 46.277 (1m) (ak) of the statutes is created to read:

46.277 (1m) (ak) "Nursing home" means a nursing home, as defined in s. 50.01

(3), that is certified as a provider of medical assistance.

SECTION 3. 46.277 (3) (d) of the statutes is created to read:

46.277 (3) (d) Each county department participating in the program shall offer and, if accepted, provide home or community-based services under this section to any nursing home resident to whom all of the following apply:

1. The nursing home resident has applied for participation and has been found eligible under sub. (4), but is not participating in the program.

2. The nursing home resident has resided in the nursing home for the longer of 90 continuous days or a period in which his or her nursing home care has been paid under medical assistance for at least 30 days.

3. The nursing home resident indicates that he or she prefers to receive services in the community, rather than in the nursing home.

4. Costs for home or community-based services for the nursing home resident, as determined under a feasibility assessment conducted under par. (e), are equal to or less than the available funding specified in sub. (5) (bm). The feasibility assessment shall consider if the relocation of more than one nursing home resident in the county within the same time period would reduce costs to the limit specified in this subdivision.

5. The nursing home resident's feasibility assessment under subd. 4. determines that the relocation of the nursing home resident is feasible.

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1 SECTION 4. 46.277 (3) (e) of the statutes is created to read:

2 46.277 (3) (e) For each nursing home resident in a county who has applied for
3 participation and has been found eligible under sub. (4), but is not participating in
4 the program, the county department shall initiate a feasibility assessment before the
5 resident has resided in the nursing home 90 continuous days or before the resident's
6 nursing home care has ben paid under ^Mmedical ^Aassistance for 30 days, whichever is
7 longer. The county department shall complete the feasibility assessment and offer
8 services, as specified under par. (d), to the nursing home resident within 90 days after
9 initiating the assessment.

Cost of the

10 SECTION 5. 46.277 (5) (am) of the statutes is created to read:

11 46.277 (5) (am) From the appropriation under s. 20.435 (4) (w), the department
12 may provide reimbursement to a county for activities by the county to relocate a
13 nursing home resident under sub. (3) (d).

14 SECTION 6. 46.277 (5) (bm) of the statutes is created to read:

15 46.277 (5) (bm) 1. Funding to a county for an individual who is relocated from
16 a nursing home under this section shall equal the per-person, per-day payment rate
17 for the nursing home under s. 49.45 (6m), indexed annually by the percentage of any
18 annual nursing home average rate increase under s. 49.45 (6m), minus the amount
19 that is obtained by subtracting the average annual costs for allowable charges under
20 s. 49.46 (2) (a) and (b) payable on behalf of individuals in nursing homes from the
21 average annual costs per ^Mmedical ^Aassistance recipient for the identical allowable
22 charges payable on behalf of individuals who are relocated into communities from
23 nursing homes.

24 2. If a county department fails to complete a feasibility assessment and offer
25 home or community-based services under this section to a nursing home resident

1 within the time period specified in sub. (3) (e), the county shall pay the nonfederal
2 share of ^Mmedical ^Aassistance for his or her nursing home care unless the nursing home
3 resident refused participation or the feasibility assessment determined that
4 participation was not feasible.

5 SECTION 7. 46.278 (1m) (bg) of the statutes is created to read:

6 46.278 (1m) (bg) "Nursing home" means a nursing home, as defined in s. 50.01
7 (3), that is certified as a provider of [✓]medical [✓]assistance.

8 SECTION 8. 46.278 (4) (c) of the statutes is created to read:

9 46.278 (4) (c) Each county department participating in the program shall offer
10 and, if accepted, provide home or community-based services under this section to
11 any nursing home resident to whom all of the following apply:

12 1. The nursing home resident has applied for participation and has been found
13 eligible under sub. (5), but is not participating in the program.

14 2. The nursing home resident has resided in the nursing home for the longer
15 of 90 continuous days or a period in which ^uhis or her nursing home care ^hhas been paid
16 under ^Mmedical ^Aassistance for at least 30 days. the cost of ^q

17 3. The nursing home resident indicates that he or she prefers to receive services
18 in the community, rather than in the nursing home.

19 4. Costs for home or community-based services for the nursing home resident,
20 as determined under a feasibility assessment conducted under par. (d), are equal to
21 or less than the available funding specified in sub. (6) (bm). The feasibility
22 assessment shall consider if the relocation of more than one nursing home resident
23 in the county within the same time period would reduce costs to the limit specified
24 in this subdivision.

1 5. The nursing home resident's feasibility assessment under subd. 4.
 2 determines that the relocation of the nursing home resident is feasible.

3 SECTION 9. 46.278 (4) (d) of the statutes is created to read:

4 46.278 (4) (d) For each nursing home resident in a county who has applied for
 5 participation and has been found eligible under sub. (5), but is not participating in
 6 the program, the county department shall initiate a feasibility assessment before the
 7 resident has resided in the nursing home 90 continuous days or before the resident's
 8 nursing home care has ben paid under ^Mmedical ^Aassistance for 30 days, whichever is
 9 longer. The county department shall complete the feasibility assessment and offer
 10 services, as specified under par. (a), to the nursing home resident within 90 days after
 11 initiating the assessment.

12 SECTION 10. 46.278 (6) (am) of the statutes is created to read:

13 46.278 (6) (am) From the appropriation under s. 20.435 (4) (w), the department
 14 may provide reimbursement to a county for activities by the county to relocate a
 15 nursing home resident under sub. (4) (c).

16 SECTION 11. 46.278 (6) (bm) of the statutes is created to read:

17 46.278 (6) (bm) 1. Funding to a county for an individual who is relocated from
 18 a nursing home under this section shall equal the per-person, per-day payment rate
 19 for the nursing home under s. 49.45 (6m), indexed annually by the percentage of any
 20 annual nursing home average rate increase under s. 49.45 (6m), minus the amount
 21 that is obtained by subtracting the average annual costs for allowable charges under
 22 s. 49.46 (2) (a) and (b) payable on behalf of individuals in nursing homes from the
 23 average annual costs for the identical allowable charges payable on behalf of
 24 individuals who are relocated into communities from nursing homes.

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1 2. If a county department fails to complete a feasibility assessment and offer
 2 home or community-based services under this section to a nursing home resident
 3 within the time period specified in sub. (3) (E), the county shall pay the nonfederal
 4 share of ^Mmedical ^Aassistance for his or her nursing home care unless the nursing home
 5 resident refused participation or the feasibility assessment determined that
 6 participation was not feasible.

7 **SECTION 9424. Effective dates; health and family services.**

8 (1) NURSING HOME RESIDENT RELOCATION; FUNDING. The treatment of sections
 9 20.435 (4) (w), 46.277 (5) (am) and (bm) 1, ^{and} 46.278 (6) (a) and (bm) 1. of the statutes
 10 take ^{effect} effect on January 1, 2004.

11 (2) NURSING HOME RESIDENT RELOCATION; REQUIREMENTS. The treatment of
 12 sections 46.277 (1m) (ak), (3) (d) and (e), and (5) (bm) 2. and 46.278 (1m) (bg), (4) (c)
 13 and (d) and (6) (bm) 2. of the statutes take effect on June 1, 2004.

14 (END)

D-NOTE

Section #. 20.435 (4) (w) of the statutes, as affected by 2003 Wisconsin Act 2001 Wisconsin Act 16, section 717b, is amended to read:

20.435 (4) (w) ~~Medical assistance trust fund. From the medical assistance trust fund, biennially, the amounts in the schedule for meeting costs of medical assistance administered under ss. 46.27, 46.275 (5), 46.278 (6), 46.283 (5), 46.284 (5), 49.45, and 49.472 (6) and for administrative costs associated with augmenting the amount of federal moneys received under 42 CFR 433.51. The department may transfer from this appropriation to the appropriation account under par. (x) moneys in the amount and for the purpose specified in 2001 Wisconsin Act 16, section 9123 (8e).~~

NOTE: Par. (w) is amended eff. 7-1-03 by 2001 Wis. Act 16 to read:

~~Medical assistance trust fund. From the medical assistance trust fund, biennially, the amounts in the schedule for meeting costs of medical assistance administered under ss. 46.27, 46.275 (5), 46.278 (6), 46.283 (5), 46.284 (5), 49.45, and 49.472 (6) and for administrative costs associated with augmenting the amount of federal moneys received under 42 CFR 433.51.~~

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and for administrative relocation activities specified under ss. 46.277 (5) (am) and

46.278 (6) (am)

History: 1971 c. 125 ss. 138 to 155, 522 (1); 1971 c. 211, 215, 302, 307, 322; 1973 c. 90, 198, 243; 1973 c. 284 s. 32; 1973 c. 308, 321, 322, 333, 336; 1975 c. 39 ss. 153 to 173, 732 (1), (2); 1975 c. 41 s. 52; 1975 c. 82, 224, 292; 1975 c. 413 s. 18; 1975 c. 422, 423; 1975 c. 430 ss. 1, 2, 80; 1977 c. 29 ss. 236 to 273, 1657 (18); 1977 c. 112; 1977 c. 203 s. 106; 1977 c. 213, 233, 327; 1977 c. 354 s. 101; 1977 c. 359; 1977 c. 418 ss. 129 to 137, 924 (18) (d), 929 (55); 1977 c. 428 s. 115; 1977 c. 447; 1979 c. 32 s. 92 (11); 1979 c. 34, 48; 1979 c. 102 s. 237; 1979 c. 111, 175, 177; 1979 c. 221 ss. 118g to 133, 2202 (20); 1979 c. 238, 300, 331, 361; 1981 c. 20 ss. 301 to 356b, 2202 (20) (b), (d), (g); 1981 c. 93 ss. 3 to 8, 186; 1981 c. 298, 314, 317, 359, 390; 1983 a. 27 ss. 318 to 410, 2202 (20); 1983 a. 192, 199, 245; 1983 a. 333 s. 6; 1983 a. 363, 398, 410, 427; 1983 a. 435 ss. 2, 3, 7; 1983 a. 538; 1985 a. 24, 29, 56, 73, 120, 154, 176, 255, 281, 285, 332; 1987 a. 27, 339, 368, 398, 399, 402; 1987 a. 403 ss. 25, 256; 1987 a. 413; 1989 a. 31, 53; 1989 a. 56 ss. 13, 259; 1989 a. 102; 1989 a. 107 ss. 11, 13, 17 to 37; 1989 a. 120, 122, 173, 199, 202, 318, 336, 359; 1991 a. 6, 39, 189, 269, 275, 290, 315, 322; 1993 a. 16, 27, 76, 98, 99, 168, 183, 377, 437, 445, 446, 450, 469, 479, 490, 491; 1995 a. 27 ss. 806 to 961r, 9126 (19); 1995 a. 77, 98; 1995 a. 216 ss. 26, 27; 1995 a. 266, 276, 289, 303, 404, 417, 440, 448, 464, 468; 1997 a. 27 ss. 211, 214, 216, 217, 527 to 609; 1997 a. 35, 105, 231, 237, 280, 293; 1999 a. 5, 9, 32, 52, 84, 103, 109, 113, 133, 185, 186; 2001 a. 16, 69, 103, 105.

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

LRB-0208/P1dn
DAK...*Kiff* & *Kung*

Date

To Robert Blaine and Anne Miller:

Please review this draft very carefully; it is complex. In the course of drafting, the following issues arose:

1. In s. 46.277 (5) (bm) and 46.278 (6) (bm), was it intended that I refer to *average* annual costs for allowable charges?
2. Should this draft be dealing exclusively with nursing homes? Are the definitions in ss. 46.277 (1m) (ak) and 46.278 (1m) (bg) adequate for your purposes?
3. The DHFS "Proposed Change No. 2., for this request implies that all funding under ss. 46.277 and 46.278, stats., should be under the formula that is specified in this draft under ss. 46.277 (5) (bm) 1. and 46.278 (6) (bm) 2. However, that formula is linked only to nursing home relocations and not to other persons who meet eligibility requirements for provision of home or community-based care under those waiver programs. Therefore, I have not applied the formula to *all* funding. Please review.
4. Note that I added ss. 46.277 (3) (d) 5. and 46.278 (4) (c) 5. It seems to me that the cost of care (as addressed in ss. 46.277 (3) (d) 4. and 46.278 (4) (c) 4.) might not be the only reason for a determination of infeasibility. ^{emdash} what about a lack of appropriate care providers in a county?
5. I have not repealed s. 46.278 (6) (f), stats., as requested. In order to do so, it would be necessary to make s. 46.278 (4) (b) 1., stats., inapplicable to county-owned institutions and ICFMRs. I do not have information as yet on whether this change would comport with the waiver language for s. 46.278, stats.
6. I have not specified in s. 46.277, stats., that relocation of an individual from a nursing home does not require delicensure of the nursing home bed because I have not yet received information that indicates that doing so does not violate the terms of the waiver under that section. Note that s. 46.277 (1), (2) (intro.), (3) (a) and (b) 1. and 2., (4) (a) and (b), and (5g) (a), stats., would be affected.
7. Do I need to amend s. 46.277 (5) (b), stats., in some way because of the effect of s. 46.277 (5) (am) or (bm) 1.? Do I need to amend s. 46.278 (6) (b), stats., in some way because of the effect of s. 46.278 (6) (am) or (bm) 1.? Do these funding augmentations comport with any waiver funding limitations?

Debora A. Kennedy
Managing Attorney
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E-mail: debora.kennedy@legis.state.wi.us

X
X
1
X
X

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0208/P1dn
DAK:kjf&kmg:rs

November 27, 2002

To Robert Blaine and Anne Miller:

Please review this draft very carefully; it is complex. In the course of drafting, the following issues arose:

1. In s. 46.277 (5) (bm) and 46.278 (6) (bm), was it intended that I refer to *average* annual costs for allowable charges?
2. Should this draft be dealing exclusively with nursing homes? Are the definitions in ss. 46.277 (1m) (ak) and 46.278 (1m) (bg) adequate for your purposes?
3. The DHFS "Proposed Change," No. 2., for this request implies that all funding under ss. 46.277 and 46.278, stats., should be under the formula that is specified in this draft under ss. 46.277 (5) (bm) 1. and 46.278 (6) (bm) 1. However, that formula is linked only to nursing home relocations and not to other persons who meet eligibility requirements for provision of home or community-based care under those waiver programs. Therefore, I have not applied the formula to *all* funding. Please review.
4. Note that I added ss. 46.277 (3) (d) 5. and 46.278 (4) (c) 5. It seems to me that the cost of care (as addressed in ss. 46.277 (3) (d) 4. and 46.278 (4) (c) 4.) might not be the only reason for a determination of infeasibility — what about a lack of appropriate care providers in a county?
5. I have not repealed s. 46.278 (6) (f), stats., as requested. In order to do so, it would be necessary to make s. 46.278 (4) (b) 1., stats., inapplicable to county-owned institutions and ICFMRs. I do not have information as yet on whether this change would comport with the waiver language for s. 46.278, stats.
6. I have not specified in s. 46.277, stats., that relocation of an individual from a nursing home does not require delicensure of the nursing home bed because I have not yet received information that indicates that doing so does not violate the terms of the waiver under that section. Note that s. 46.277 (1), (2) (intro.), (3) (a) and (b) 1. and 2., (4) (a) and (b), and (5g) (a), stats., would be affected.
7. Do I need to amend s. 46.277 (5) (b), stats., in some way because of the effect of s. 46.277 (5) (am) or (bm) 1.? Do I need to amend s. 46.278 (6) (b), stats., in some way because of the effect of s. 46.278 (6) (am) or (bm) 1.? Do these funding augmentations comport with any waiver funding limitations?

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137
E-mail: debora.kennedy@legis.state.wi.us

Kennedy, Debora

From: Miller, Anne
Sent: Wednesday, December 18, 2002 5:11 PM
To: Blaine, Robert
Cc: Kennedy, Debora; Lund, C. David; Kelly, Lisa; McDowell, Donna; Bove, Fredi-Ellen; Forsaith, Andrew; Gebhart, Neil; Megna, Richard
Subject: Responses to Drafter's Questions on LRB 0208/P1 Nursing Home Downsizing



NH Downsizing Stat
Draft Respo...

Hi Robert!

Attached are responses to the drafter's questions on LRB 0208/P1 Nursing Home Downsizing. I hope they are helpful.

As you know, this is a complicated proposal. To be sensitive to you time constraints we have forwarded you these responses. As usual more time would have been helpful, but I fully understand your time constraints.

Thanks for giving us a chance to review the draft. We look forward to seeing the second draft. And please feel free to contact me with any questions.

- Anne

Comments on Nursing Home Downsizing Statutory Language Draft LRB 0208/P1

General comment:

This draft is very good and kudos to Debora for doing such an excellent and comprehensive job!

Responses to LRB's questions:

- ✓ 1) When discussing this question we determined that changes should be made that are more involved than possibly initially anticipated.

The key to these changes is that we want to be able to average community-based care costs statewide for relocating individuals as long as costs stay below the sum of the available nursing homes funding for relocated individuals (the nursing home per person, perday payment minus the difference in the average of MA card costs). This is to help smaller counties average costs of relocating individuals to the community.

To accomplish this, we thought that counties could first be required to develop a plan including costs for providing community-based services, then counties would be required to contact the Department for available funding. For any individual's relocation plan that costs an amount at or below the perperson perday nursing home payment by level of care to the individual's nursing home (this underlined section is an addition to what's currently drafted) minus the difference in the average MA card costs, the county would automatically be required to relocate that person. If costs for relocating an individual exceeded that amount, then the Department would have the option to determine if additional funding to cover the additional costs could be provided to the county. The Department could not provide funding to ~~any county~~ above the sum of all relocated individuals' perperson perday nursing home payment by level of care minus the difference in the average MA card costs under this proposal. If the Department determined additional funding could be provided to the county, then the county would be required to relocate the individual. *all counties*

assess needs + cost

To draft the above changes, s.46.277 (3) (d) 4., s. 46.277 (3) (d) 5., s. 46.277 (5) (bm) 1., s. 46.278 (4) (c) 4., s. 46.278 (4) (c) 5., and s. 46.278 (6) (bm) 1. should be modified (in the current draft).

- ✓ 2) Also, s. 46.277 (5) (bm) 1. specifically line 17 and s. 46.278 (6)(bm) 1. specifically line 18 should be modified to reflect that the types of services paid with the MA card are different (and not "identical") for residents of a nursing home than for community residents. A portion of the nursing home funding must remain in the fee-for-service budget and not transfer to the waiver budget to cover the generally greater number of services paid with the MA card for a person relocated to the community.

- ✓ 2) Yes, this proposal deals exclusively with nursing homes and excludes ICF-MRs. However, s. 50.01(3) does not exclude ICF-MRs. Neil suggests the following:

To fix this problem, the language could be changed to something like "nursing home under s. 50.01(3) but not including an ICF-MR within the meaning of s. 46.278(1m)(am)." As an alternative, there are a number of statutes that distinguish between ICF-MR and "skilled nursing facility" (see, e.g., ss. 46.266, 46.275, 46.277, 49.45 and 49.46), and so the latter term could be substituted in this draft for "nursing home." However, the term "skilled nursing facility" is not defined in the WI stats and is no longer used in federal law (the term is now simply "nursing facility"). Perhaps the best approach is simply to back "ICF-MR" out of the definition.

- ✓ 3) The funding for the current CIP and COP programs should not be affected by this proposal. I think the way you have it drafted is fine. The funding available for relocations under this proposal is currently in the nursing home budget, as you have it drafted, and will be administered separately from other waiver programs. However, because this proposal does not permanently create waiver "slots" and funding follows the person, funding would have to be transferred back to the nursing home budget if the person returns to the nursing home or lapses if the person dies. Do you think the statutory language needs to

reflect that the funding to serve a relocated person under this proposal is available to the county only as long as the person is using community-based services? *yes*

- ✓ 4) We discussed the issue of feasibility. We think that financial feasibility is the key feasibility issue. Counties should relocate any one as long as the funding needed to serve that person in the community does not exceed the available funding (please see the response to question 1). We assume (as with the ICF-MR proposal) that providers will always be available (at a price).

On the same general topic, should we try to call this feasibility assessment something else? I don't want it to be confused with the Community Options Program's feasibility assessment that is something different and non-fiscal. Although, I don't know what else it could be called. . .

*needs
and
costs-based*

- ✓ 5) & 6) The Department believes that there is a sufficient difference between the current number of slots and delicensed beds to implement this proposal without requiring delicensure of beds. Your question seems to imply that we will have to specify that under this proposal delicensure is not required. However, we believe the language does not have to expressly specify that delicensure is not required. There is no general principle that when a person vacates a bed it must be delicensed. If the draft were to state that delicensure is not required when a person vacates a bed under this particular program, it will create an inference that under other circumstances delicensure would be required.

As for eliminating s. 46.278 (6) (f), this was also proposed in our ICF-MR downsizing proposal. I don't know if that helps. This provision tends to hinder relocations, but it is possible also to just amend the language to not apply to relocations under this proposal.

- 7) I think that s. 46.277 (2) (b), s. 46.277 (3) (c), s. 46.277 (5) (b), s. 46.278 (3) (b), and 46.278 (6) (b) could be amended to exclude this new proposal. The proposed stat language for the proposal includes language specifying the funding available. However, it's not clear that excluding the new proposal from the current language is necessary.

TELEPHONE DRAFTING INSTRUCTIONS

Drafting instructions received by Debora Kennedy.

DATE: 12/30/02
CONVERSATION WITH: Anne Miller
OF: DHFS
TELEPHONE NO: 266-5422
REGARDING LRB # OR DRAFT TOPIC: -0208/PI redraft

INSTRUCTIONS:

- ① Use "needs and cost-based" assessment, rather than "feasibility" assessment
- ② Delete language in s. 46.277 (3)(d)4 about relocating more than one n. h. resident in a co. at a time
- ③ In redraft instructions, change "any" to all in 3d par. of # 1.

SOON - Inedit 01/06

Stays → RMR
LRB-0208/P2
DAK: [initials] kmg:rs
e

2003 - 2004 LEGISLATURE

D-NOTE

DOA:.....Blaine – BB0047 Increase access to community-based long-term care for nursing home residents

FOR 2003-05 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT ^{Don't GEN. CAT.} relating to: relocation of nursing home residents to communities
2 under community integration programs and making an appropriation.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

MEDICAL ASSISTANCE

MA
= =

Under current law, several community integration programs in DHFS provide reimbursement under Medical Assistance (MA) for the relocation or diversion from institutions into communities of ~~medical assistance~~ recipients. Services provided under these programs are permitted MA reimbursement under waivers of federal MA laws. The number of persons served is not to exceed the number of nursing home beds that are delicensed. One of these programs, commonly known as "CIP II," provides home or community-based care to persons who are relocated from institutions other than the state centers for the developmentally disabled and to persons who meet MA level-of-care requirements in nursing homes. Another program, commonly known as "CIP IB," provides home or community-based care to persons with developmental disabilities who are relocated from institutions other than the state centers for the developmentally disabled and to persons who meet MA level-of-care requirements in intermediate care facilities for the mentally retarded or brain injury facilities. INSERT A1 ✓

Beginning on June 1, 2004, this bill requires a county department of human services, developmental disabilities services, or community programs of a county

that participates in CIP II or CIP IB to ~~offer home or community-based services under CIP II or CIP IB to~~ nursing home residents. ~~The nursing home residents to whom the services are offered must be~~ eligible for but not receiving services under the program; ~~must~~ have resided in the nursing home for the longer of 90 continuous days or a period in which the cost of ~~his or her~~ nursing home care has been paid for under MA for at least 30 days; ~~must indicate that he or she prefers~~ services in the community, rather than in the nursing home; ~~must require~~ services, the costs of which are below limits ascertained under a formula specified in the bill; and ~~must have had a feasibility assessment that determined that the relocation was feasible.~~

The county department must initiate the ~~feasibility~~ assessment before the person has resided in the nursing home for 90 days or before the cost of the resident's nursing home care has been paid for under MA for 30 days, whichever is longer, and must complete the assessment within 90 days. A county department that fails to meet these requirements and offer home or community-based care to the resident must pay the nonfederal share of the resident's MA nursing home care, unless the resident refused to participate or the ~~feasibility~~ assessment determined that relocation was not feasible. Beginning on January 1, 2004, DHFS is authorized to provide funding to counties from the MA trust fund, to conduct these relocation activities and to provide increased funding, ~~under a formula specified in the bill,~~ for services to the nursing home residents who are relocated to communities. INSERT A 3

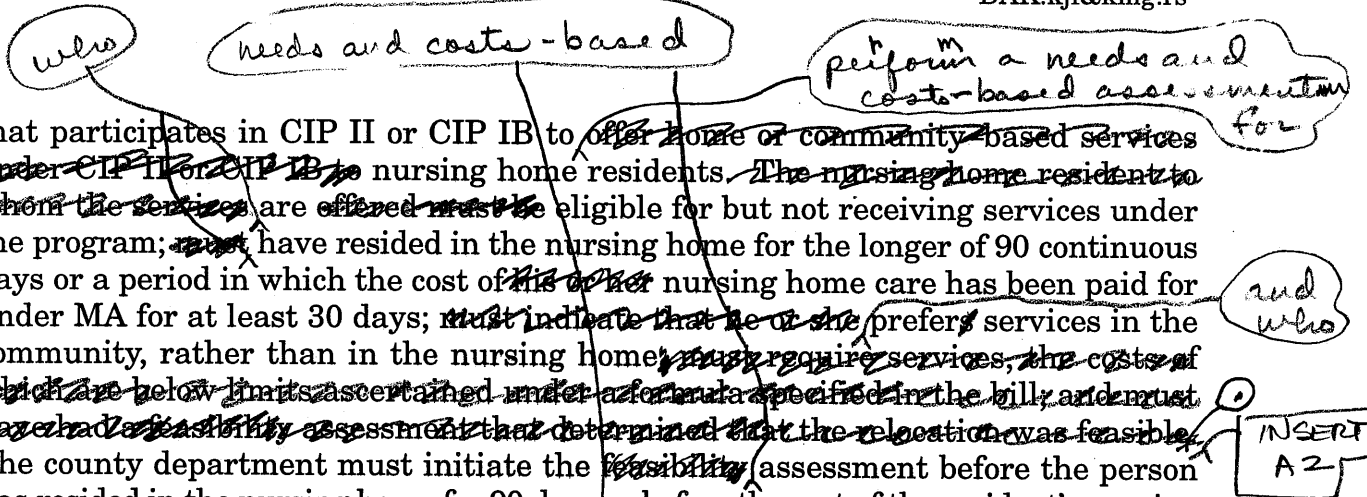
For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 SECTION 1. 20.435 (4) (w) of the statutes, as affected by 2001 Wisconsin Act 16,
2 section 717b, is amended to read:

3 20.435 (4) (w) *Medical assistance trust fund.* From the medical assistance trust
4 fund, biennially, the amounts in the schedule for meeting costs of medical assistance
5 administered under ss. 46.27, 46.275 (5), 46.278 (6), 46.283 (5), 46.284 (5), 49.45, and
6 49.472 (6) and, for administrative costs associated with augmenting the amount of
7 federal moneys received under 42 CFR 433.51, and for administrative relocation
8 activities specified under ss. 46.277 (5) (am) and 46.278 (6) (am).

9 SECTION 2. 46.277 (1m) (ak) of the statutes is created to read:



INSERT
8-2

46.277 (1m) (ak) "Nursing home" means a nursing home, as defined in s. 50.01

(3), that is certified as a provider of medical assistance.

other than an intermediate care facility for the mentally retarded, as defined in s. 46.278 (1m) (am)

SECTION 3. 46.277 (3) (d) of the statutes is created to read:

46.277 (3) (d) Each county department participating in the program shall offer and, if accepted, provide home or community-based services under this section to any nursing home resident to whom all of the following apply:

1. The nursing home resident has applied for participation and has been found eligible under sub. (4), but is not participating in the program.

2. The nursing home resident has resided in the nursing home for the longer of 90 continuous days or a period in which the cost of his or her nursing home care has been paid under Medical Assistance for at least 30 days.

3. The nursing home resident indicates that he or she prefers to receive services in the community, rather than in the nursing home.

needs and costs-based

4. Costs for home or community-based services for the nursing home resident, as determined under ^{the} ~~feasibility~~ assessment conducted under par. (4), are equal to or less than the available funding specified in sub. (5) (bm). ~~The feasibility assessment shall consider if the relocation of more than one nursing home resident in the county within the same time period would reduce costs to the limit specified in this subdivision.~~

5. The nursing home resident's ~~feasibility~~ assessment under subd. 4. determines that the relocation of the nursing home resident is feasible.

SECTION 4. 46.277 ~~(3)(d)~~ ^(3r) of the statutes is created to read:

46.277 ~~(3)(d)~~ ^(3r) For each nursing home resident ~~in a county~~ who has applied for participation and has been found eligible under sub. (4), but is not participating in the program, the county department shall initiate a ~~feasibility~~ ^{needs and costs-based} assessment before the

RESIDENTS (a)

In a county that is participating in the program,

participating

and who indicates that he or she prefers to receive

needs and costs-based

services in the community, rather than in the nursing home.

needs and costs-based

for

(1) resident has resided in the nursing home 90 continuous days or before the cost of the
 2 resident's nursing home care has been paid under Medical Assistance for 30 days,
 3 whichever is longer. The county department shall complete the ~~feasibility~~
 4 assessment ~~and offer services, as specified under par. (a), to the nursing home~~
 5 resident within 90 days after initiating the assessment. *it*

INSERT 4-5

SECTION 5. 46.277 (5) (am) of the statutes is created to read:

7 46.277 (5) (am) From the appropriation under s. 20.435 (4) (w), the department
 8 may provide reimbursement to a county for ^{administrative} activities by the county to relocate a
 9 nursing home resident under ~~sub. (3r)~~ *sub. (3r)* *per-person*

INSERT 4-9

SECTION 6. 46.277 (5) (bm) of the statutes is created to read:

11 46.277 (5) (bm) 1. Funding to a county for an individual who is relocated from
 12 a nursing home under ~~this section~~ *sub. (3r)* shall equal the *per-person* *per-day* payment rate
 13 for the nursing home under s. 49.45 (6m), indexed annually by the percentage of any *at the individual's level of care requirement*
 14 annual nursing home average rate increase under s. 49.45 (6m), minus the amount *be no more than*
 15 that is obtained by subtracting the average annual costs for allowable charges under
 16 s. 49.46 (2) (a) and (b) payable on behalf of individuals in nursing homes from the
 17 average annual costs per medical assistance recipient for the ~~identical~~ allowable
 18 charges payable on behalf of individuals who are relocated into communities from
 19 nursing homes.

INSERT 4-19

(20) ³ If a county department fails to complete a ~~feasibility~~ assessment and offer
 21 home or community-based services under this section to a nursing home resident
 22 within the time period specified in sub. ~~(3r)~~ *(3r)(a)*, the county shall pay the nonfederal
 23 share of Medical Assistance for his or her nursing home care unless the nursing home
 24 resident refused participation or the ~~feasibility~~ assessment determined that
 25 participation was not feasible.

INSERT 4-25

needs and costs-based

level of care

1 SECTION 7. 46.278 (1m) (bg) of the statutes is created to read:

2 46.278 (1m) (bg) "Nursing home" means a nursing home, as defined in s. 50.01

INSERT
5-3

3 (3), that is certified as a provider of medical assistance.

other than an
intermediate care
facility for the
mentally retarded

4 SECTION 8. 46.278 (4) (c) of the statutes is created to read:

5 46.278 (4) (c) Each county department participating in the program shall offer
6 and, if accepted, provide home or community-based services under this section to
7 any nursing home resident to whom all of the following apply:

8 1. The nursing home resident has applied for participation and has been found
9 eligible under sub. (5), but is not participating in the program.

10 2. The nursing home resident has resided in the nursing home for the longer
11 of 90 continuous days or a period in which the cost of his or her nursing home care
12 has been paid under Medical Assistance for at least 30 days.

13 3. The nursing home resident indicates that he or she prefers to receive services
14 in the community, rather than in the nursing home.

15 4. Costs for home or community-based services for the nursing home resident,
16 as determined under a feasibility assessment conducted under par. (d), are equal to
17 or less than the available funding specified in sub. (6) (bm). The feasibility

18 assessment shall consider if the relocation of more than one nursing home resident
19 in the county within the same time period would reduce costs to the limit specified
20 in this subdivision.

21 5. The nursing home resident's ~~feasibility~~ assessment under subd. 4.
22 determines that the relocation of the nursing home resident is feasible.

23 SECTION 9. 46.278 ~~(4)(d)~~ ^(4g) of the statutes is created to read:

24 46.278 ~~(4)(d)~~ ^(4g) For each nursing home resident in a county who has applied for
25 participation and has been found eligible under sub. (5), but is not participating in

(4g) (4c)

RELOCATION OF NURSING HOME RESIDENTS

NOT (a) In a county that is participating in the program,

and who indicates that he or she prefers to receive services in the community, rather than in the nursing home

needs and costs-based

(1) the program, the county department shall initiate a ~~feasibility~~ ^{participating} assessment before the resident has resided in the nursing home ^{for} 90 continuous days or before the cost of the resident's nursing home care has been paid under Medical Assistance for 30 days, whichever is longer. The county department shall complete the ~~feasibility~~ assessment ~~and offer services as specified under par. (c), to the nursing home resident~~ within 90 days after initiating the assessment.

administrative

INSERT 6-6

SECTION 10. 46.278 (6) (am) of the statutes is created to read:

(49)

INSERT 6-10

46.278 (6) (am) From the appropriation under s. 20.435 (4) (w), the department may provide reimbursement to a county for activities by the county to relocate a nursing home resident under sub. (4) ³ ~~3~~.

per-person

per-day

SECTION 11. 46.278 (6) (bm) of the statutes is created to read:

(13)

46.278 (6) (bm) 1. Funding to a county for an individual who is relocated from a nursing home under ~~this section~~ ^{sub. (49)} shall ~~equal~~ ^{be no more than} the ~~per-person, per-day~~ ^{per-person} payment rate for the nursing home under s. 49.45 (6m), indexed annually by the percentage of any annual nursing home average rate increase under s. 49.45 (6m), minus the amount that is obtained by subtracting the average annual costs for allowable charges under s. 49.46 (2) (a) and (b) payable on behalf of individuals in nursing homes from the average annual costs for the ~~identical~~ allowable charges payable on behalf of individuals who are relocated into communities from nursing homes.

at the individual's level of care requirement

INSERT 6-19

(49) (22)

1. If a county department fails to complete a ~~feasibility~~ ³ assessment and offer home or community-based services under this section to a nursing home resident within the time period specified in sub. (4) ³ ~~(a)~~ ^a, the county shall pay the nonfederal share of Medical Assistance for his or her nursing home care unless the nursing home resident refused participation or the ~~feasibility~~ assessment determined that participation was not feasible.

needs and costs-based

INSERT 6-25

(2)(b) and

(3)(b) and

1
2
3
4
5
6
7
8

SECTION 9424. Effective dates; health and family services.

(1) NURSING HOME RESIDENT RELOCATION; FUNDING. The treatment of sections 20.435 (4) (w), 46.277 (5) (am) and (b) 1, and 46.278 (6) (am) and (b) 1 of the statutes takes effect on January 1, 2004.

(2) NURSING HOME RESIDENT RELOCATION; REQUIREMENTS. The treatment of sections 46.277 (1m) (ak), ~~(ad) and (e)~~, and (5) (bm) ~~2~~ and 46.278 (1m) (bg), ~~(bd) and (6) (bm) 2~~ of the statutes takes effect on June 1, 2004.

(END)

(4g),

3. and 4. and (f) f

(3) (c), (3r)

D-NOTE

no #
INSERT A1 ✓

Under CIP IB, if a county owns the institution from which an individual is relocated to the community, the county must submit a plan for delicensing a bed of the institution in order to receive CIP IB funding.

no #
INSERT A2 ✓

the After completing the assessment, the county department must contact DHFS; if DHFS determines that costs for services for the nursing home resident are below ~~the~~ limit under a formula specified in the bill, or if DHFS determines that additional funding is available for above-limit costs, the county department must offer the home or community-based services to the nursing home resident.

no #
INSERT A3 ✓

The bill also eliminates the provision requiring a county to submit a plan for delicensing a bed of a county-owned institution from which an individual is relocated to the community.

INSERT 3-2 ✓

1 **SECTION 1.** 46.277 (2) (b) of the statutes is amended to read:
2 46.277 (2) (b) Fund Except as provided in subs. (3r) and (5) (bm), fund home
3 or community-based services provided by any county that meet the requirements of
4 this section.

History: 1983 a. 27; 1985 a. 29 ss. 896nc to 896u, 3202 (23); 1985 a. 176; 1987 a. 27, 186, 399; 1989 a. 31; 1991 a. 39; 1993 a. 16; 1995 a. 27; 1997 a. 13, 27, 114; 1999 a. 9; 2001 a. 16.

5 **SECTION 2.** 46.277 (3) (c) of the statutes is amended to read:
6 46.277 (3) (c) Beginning on January 1, 1996, from the annual allocation to the
7 county for the provision of long-term community support services under sub. (5),
8 except as provided in sub. (3r) and (5) (bm), a county department participating in the
9 program shall annually establish a maximum total amount that may be encumbered
10 in a calendar year for services for eligible individuals in community-based
11 residential facilities.

History: 1983 a. 27; 1985 a. 29 ss. 896nc to 896u, 3202 (23); 1985 a. 176; 1987 a. 27, 186, 399; 1989 a. 31; 1991 a. 39; 1993 a. 16; 1995 a. 27; 1997 a. 13, 27, 114; 1999 a. 9; 2001 a. 16.

INSERT 4-5 ✓

12 (b) After completion of the needs and costs-based assessment, the county
13 department shall contact the department regarding available funding.

1 (c) If the department determines that costs for home or community-based
 2 services for the nursing home resident, as determined under the needs and
 3 costs-based assessment, are equal to or less than the amount specified under sub.
 4 (5) (bm) 1., the county department shall offer and, if accepted, provide home or
 5 community-based services under this section to the nursing home resident.

6 (d) If the department determines that costs for home or community-based
 7 services for the nursing home resident, as determined under the needs and
 8 costs-based assessment, exceed the amount specified under sub. (5) (bm) 1., the
 9 department may ascertain ^{whether} additional funding, as specified under sub. (5) (bm) 2.,
 10 is available. If ~~the~~ additional funding is available, the county department shall offer
 11 and, if accepted, provide home or community-based services under this section to the
 12 nursing home resident.

INSERT 4-9

13 SECTION 3. 46.277 (5) (b) of the statutes is amended to read:

14 46.277 (5) (b) ~~Total~~ Except as provided in subs. (3r) and (5) (bm), funding to
 15 counties under the program may not exceed the amount approved in the waiver
 16 received under sub. (2).

History: 1983 a. 27; 1985 a. 29 ss. 896nc to 896u, 3202 (23); 1985 a. 176; 1987 a. 27, 186, 399; 1989 a. 31; 1991 a. 39; 1993 a. 16; 1995 a. 27; 1997 a. 13, 27, 114; 1999 a. 9; 2001 a. 16.

INSERT 4-19

17 2. Notwithstanding the limitation on payment to a county under subd. 1.,
 18 funding to a county for an individual who is relocated from a nursing home under
 19 sub. (3r) may include, in addition to the amount specified in subd. 1., an amount not
 20 to exceed the sum obtained by subtracting the total of all payments made for home
 21 or community-based services for nursing home residents relocated under sub. (3r)
 22 (c) from the amount available under subd. 1.

INSERT 4-25

Handwritten notes:
✓
Subd. 1. or 2.

1 4. Funding to a county is available under this section only during the
2 period in which a relocated individual continues to receive home or
3 community-based care.

INSERT 5-3

4 **SECTION 4.** 46.278 (3) (b) of the statutes is amended to read:
5 46.278 (3) (b) Fund Except as provided in subs. (4g) and (6) (bm), fund home
6 or community-based services provided by any county that meet the requirements of
7 this section.

History: 1987 a. 27, 186; 1989 a. 31; 1991 a. 269; 1993 a. 16; 1995 a. 27; 1997 a. 27; 1999 a. 9; 2001 a. 16.

INSERT 6-6

8 (b) After completion of the needs and costs-based assessment, the county
9 department shall contact the department regarding available funding.

10 (c) If the department determines that costs for home or community-based
11 services for the nursing home resident, as determined under the needs and
12 costs-based assessment, are equal to or less than the amount specified under sub.
13 (6) (bm) 1., the county department shall offer and, if accepted, provide home or
14 community-based services under this section to the nursing home resident.

15 (d) If the department determines that costs for home or community-based
16 services for the nursing home resident, as determined under the needs and
17 costs-based assessment, exceed the amount specified under sub. (6) (bm) 1., the
18 department may ascertain *whether* additional funding, as specified under sub. (6) (bm) 2.,
19 is available. If *the* additional funding is available, the county department shall offer
20 and, if accepted, provide home or community-based services under this section to the
21 nursing home resident.

INSERT 6-10 ✓

1 **SECTION 5.** 46.278 (6) (b) of the statutes is amended to read:

2 46.278 (6) (b) Total Except as provided in subs. (4g) and (6) (bm), total funding
3 to counties for relocating each person under a program may not exceed the amount
4 approved in the waiver received under sub. (3).

History: 1987 a. 27, 186; 1989 a. 31; 1991 a. 269; 1993 a. 16; 1995 a. 27; 1997 a. 27; 1999 a. 9; 2001 a. 16.

INSERT 6-19 ✓

5 2. Notwithstanding the limitation on payment to a county under subd. 1.,
6 funding to a county for an individual who is relocated from a nursing home under
7 sub. (4g) may include, in addition to the amount specified in subd. 1., an amount not
8 to exceed the sum obtained by subtracting the total of all payments made for home
9 or community-based services for nursing home residents relocated under sub. (4g)
10 (c) from the amount available under subd. 1.

INSERT 6-25 ✓

11 **SECTION 6.** 46.278 (6) (f) of the statutes is repealed.

→ 4. Funding to a county is available under subd. 1. or 2. only during the period in which a relocated individual continues to receive home or community-based care.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0208/P2dn
DAK: [redacted] kmg:rs
e

To Robert Blaine:

- ✓ 1. In accord with my telephone conversation with Anne Miller on December 30, this redraft does the following:
 - ✓ a. Changes the term "feasibility assessment" to "needs and costs-based assessment."
 - ✓ b. Deletes language from ss. 46.277 (3) (d) 4. and 46.278 (4) (c) 4. that was in the first draft concerning relocation of more than one nursing home resident in a county in the same time period.
- ✓ 2. In addition to responding to the redraft instructions, the redraft does the following:
 - a. Restructures provisions formerly drafted as s. 46.277 (3) (d) and (e) as s. 46.277 (3r); the redraft makes a similar restructuring for s. 46.278 (4) (c) and (d) as s. 46.278 (4g). I have tried in these provisions to arrange actions by county departments and DHFS in chronological order.
 - b. Modifies "activities" in ss. 46.277 (5) (am) and 46.278 (6) (am) by the adjective "administrative," so as to ensure that "activities" do not include the provision of direct services to an individual and to better align these provisions with the language of s. 20.435 (4) (w).
- 3. Should ss. 46.277 (5) (bm) 2. and 46.278 (6) (bm) 2. refer to "all payments made for home or community-based services for nursing home residents relocated under sub. (3r)(c) [or sub. (4g) (c)]," or should it, instead, refer to "all payments made for home or community-based services for nursing home residents relocated under this *section*"?

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0208/P2dn
DAK:kmg:cph

January 8, 2003

To Robert Blaine:

1. In accord with my telephone conversation with Anne Miller on December 30, this redraft does the following:

- a. Changes the term "feasibility assessment" to "needs and costs-based assessment."
- b. Deletes language from ss. 46.277 (3) (d) 4. and 46.278 (4) (c) 4. that was in the first draft concerning relocation of more than one nursing home resident in a county in the same time period.

2. In addition to responding to the redraft instructions, the redraft does the following:

a. Restructures provisions formerly drafted as s. 46.277 (3) (d) and (e) as s. 46.277 (3r); the redraft makes a similar restructuring for s. 46.278 (4) (c) and (d) as s. 46.278 (4g). I have tried in these provisions to arrange actions by county departments and DHFS in chronological order.

b. Modifies "activities" in ss. 46.277 (5) (am) and 46.278 (6) (am) by the adjective "administrative," so as to ensure that "activities" do not include the provision of direct services to an individual and to better align these provisions with the language of s. 20.435 (4) (w).

3. Should ss. 46.277 (5) (bm) 2. and 46.278 (6) (bm) 2. refer to "all payments made for home or community-based services for nursing home residents relocated under sub. (3r) (c) [or sub. (4g) (c)]," or should it, instead, refer to "all payments made for home or community-based services for nursing home residents relocated under this *section*"?

no
→

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