



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-0208/22

DAK:kmg:oph

SOON - In edit 01/15

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

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 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. 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.

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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 perform a needs and costs-based assessment for nursing home residents who are eligible for but not receiving services under the program; who have resided in the nursing home for the longer of 90 continuous days on a period in which the cost of nursing home care has been paid for under MA for at least 30 days; and who prefer services in the community, rather than in the nursing home. 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. The county department must initiate the needs and costs-based 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 needs and costs-based 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 for services to the nursing home residents who are relocated to communities. 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.

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

1 federal moneys received under 42 CFR 433.51, and for administrative relocation
2 activities specified under ss. 46.277 (5) (am) and 46.278 (6) (am).

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

4 46.277 (1m) (ak) “Nursing home” means a nursing home, as defined in s. 50.01
5 (3), that is certified as a provider of medical assistance, other than an intermediate
6 care facility for the mentally retarded, as defined in s. 46.278 (1m) (am).

7 **SECTION 3.** 46.277 (2) (b) of the statutes is amended to read:

8 46.277 (2) (b) Fund Except as provided in subs. (3r) and (5) (bm), fund home
9 or community-based services provided by any county that meet the requirements of
10 this section.

11 **SECTION 4.** 46.277 (3) (c) of the statutes is amended to read:

12 46.277 (3) (c) Beginning on January 1, 1996, from the annual allocation to the
13 county for the provision of long-term community support services under sub. (5),
14 except as provided in subs. (3r) and (5) (bm), a county department participating in
15 the program shall annually establish a maximum total amount that may be
16 encumbered in a calendar year for services for eligible individuals in
17 community-based residential facilities.

18 **SECTION 5.** 46.277 (3r) of the statutes is created to read:

19 46.277 (3r) RELOCATION OF NURSING HOME RESIDENTS. (a) In a county that is
20 participating in the program, for each nursing home resident who has applied for
21 participation and has been found eligible under sub. (4), but is not participating in
22 the program and who indicates that he or she prefers to receive services in the
23 community, rather than in the nursing home, the participating county department
24 shall initiate a needs and costs-based assessment before the resident has resided in
25 the nursing home for 90 continuous days or before the cost of the resident’s nursing

1 home care has been paid under Medical Assistance for 30 days, whichever is longer.
2 The county department shall complete the needs and costs-based assessment within
3 90 days after initiating it.

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

6 (c) 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, are equal to or less than the amount specified under sub.

9 (5) (bm) 1., the county department shall offer and, if accepted, provide home or
10 community-based services under this section to the nursing home resident.

11 (d) If the department determines that costs for home or community-based
12 services for the nursing home resident, as determined under the needs and
13 costs-based assessment, exceed the amount specified under sub. (5) (bm) 1., the
14 department may ascertain whether additional funding, as specified under sub. (5)

15 (bm) 2., is available. If additional funding is available, the county department shall
16 offer and, if accepted, provide home or community-based services under this section
17 to the nursing home resident.

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

19 46.277 (5) (am) From the appropriation under s. 20.435 (4) (w), the department
20 may provide reimbursement to a county for administrative activities by the county
21 to relocate a nursing home resident under sub. (3r).

22 SECTION 7. 46.277 (5) (b) of the statutes is amended to read:

23 46.277 (5) (b) Total Except as provided in subs. (3r) and (5) (bm), funding to
24 counties under the program may not exceed the amount approved in the waiver
25 received under sub. (2).

if the cost of the resident's nursing home care has been paid under Medical Assistance for at least 30 days

and if the cost of the resident's nursing home care has been paid under Medical Assistance for at least 30 days

1 **SECTION 8.** 46.277 (5) (bm) of the statutes is created to read:

2 46.277 (5) (bm) 1. Funding to a county for an individual who is relocated from
3 a nursing home under sub. (3r) shall be no more than the per-person, per-day
4 payment rate at the individual's level-of-care requirement for the nursing home
5 under s. 49.45 (6m), indexed annually by the percentage of any annual nursing home
6 average rate increase under s. 49.45 (6m), minus the amount that is obtained by
7 subtracting the average annual costs for allowable charges under s. 49.46 (2) (a) and
8 (b) payable on behalf of individuals in nursing homes from the average annual costs
9 per medical assistance recipient for the allowable charges payable on behalf of
10 individuals who are relocated into communities from nursing homes.

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

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

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

25 **SECTION 9.** 46.278 (1m) (bg) of the statutes is created to read:

1 46.278 (1m) (bg) “Nursing home” means a nursing home, as defined in s. 50.01
2 (3), that is certified as a provider of medical assistance, other than an intermediate
3 care facility for the mentally retarded.

4 **SECTION 10.** 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.

8 **SECTION 11.** 46.278 (4g) of the statutes is created to read:

9 46.278 (4g) RELOCATION OF NURSING HOME RESIDENTS. (a) In a county that is
10 participating in the program, for each nursing home resident who has applied for
11 participation and has been found eligible under sub. (5), but is not participating in
12 the program and who indicates that he or she prefers to receive services in the
13 community, rather than in the nursing home, the participating county department
14 shall initiate a needs and costs-based assessment before the resident has resided in
15 the nursing home for 90 continuous days or before the cost of the resident’s nursing
16 home care has been paid under Medical Assistance for 30 days, whichever is longer.
17 The county department shall complete the needs and costs-based assessment within
18 90 days after initiating the assessment.

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

21 (c) If the department determines that costs for home or community-based
22 services for the nursing home resident, as determined under the needs and
23 costs-based assessment, are equal to or less than the amount specified under sub.

24 (6) (bm) 1., the county department shall offer and, if accepted, provide home or
25 community-based services under this section to the nursing home resident.

if the cost of the resident's nursing home care has been paid
under Medical Assistance for at least 30 days

1 (d) 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, exceed the amount specified under sub. (6) (bm) 1., the
4 department may ascertain whether additional funding, as specified under sub. (6)
5 (bm) 2., is available. If additional funding is available, the county department shall
6 offer and, if accepted, provide home or community-based services under this section
7 to the nursing home resident.

*and if the cost of the resident's nursing
home care has been paid under Medical*

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

*Assistance for
at least 30 days*

9 46.278 (6) (am) From the appropriation under s. 20.435 (4) (w), the department
10 may provide reimbursement to a county for administrative activities by the county
11 to relocate a nursing home resident under sub. (4g).

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

13 46.278 (6) (b) Total Except as provided in subs. (4g) and (6) (bm), total funding
14 to counties for relocating each person under a program may not exceed the amount
15 approved in the waiver received under sub. (3).

16 **SECTION 14.** 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 sub. (4g) shall be no more than the per-person, per-day
19 payment rate at the individual's level-of-care requirement for the nursing home
20 under s. 49.45 (6m), indexed annually by the percentage of any annual nursing home
21 average rate increase under s. 49.45 (6m), minus the amount that is obtained by
22 subtracting the average annual costs for allowable charges under s. 49.46 (2) (a) and
23 (b) payable on behalf of individuals in nursing homes from the average annual costs
24 for the allowable charges payable on behalf of individuals who are relocated into
25 communities from nursing homes.

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

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

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

15 **SECTION 15.** 46.278 (6) (f) of the statutes is repealed.

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

17 (1) NURSING HOME RESIDENT RELOCATION; FUNDING. The treatment of sections
18 20.435 (4) (w), 46.277 (2) (b) and (5) (am), (b), and (bm) 1. and 2., and 46.278 (3) (b)
19 and (6) (am), (b), and (bm) 1. and 2. of the statutes takes effect on January 1, 2004.

20 (2) NURSING HOME RESIDENT RELOCATION; REQUIREMENTS. The treatment of
21 sections 46.277 (1m) (ak), (3) (c), (3r), and (5) (bm) 3. and 4. and 46.278 (1m) (bg), (4g),
22 (6) (bm) 3. and 4. and (f) of the statutes takes effect on June 1, 2004.

23 (END)

D-NOTE

D - NOTE

To Robert Blaine:

The changes I have made in this redraft
are to ss. 46.277 (3r) (c) and (d) and 46.278
(4g) (c) and (d).

DAK

Kennedy, Debora

From: Kennedy, Debora
Sent: Tuesday, January 14, 2003 4:34 PM
To: Blaine, Robert
Subject: RE: FW: LRB Draft: 03-0208/P2 BB0047 Increase access to community-based long-term care for nursing

Yes, I think that to make a 30-day MA eligibility as a condition of eligibility for relocation, ss. 46.277 (3r) (c) and 46.278 (4g) (c) need to be changed to require the MA eligibility at that point. If, instead, either s. 46.277 (3r) (a) or 46.278 (4g) (a) is changed to require the 30-day eligibility, I think it becomes very confusing in relationship to the requirements under those paragraphs for initiating the needs and costs-based assessment.

-----Original Message-----

From: Blaine, Robert
Sent: Tuesday, January 14, 2003 3:53 PM
To: Kennedy, Debora
Subject: RE: FW: LRB Draft: 03-0208/P2 BB0047 Increase access to community-based long-term care for nursing

I hate to admit it, but I think they have a point. I'm sorry I didn't catch this earlier.

-----Original Message-----

From: Miller, Anne
Sent: Tuesday, January 14, 2003 3:28 PM
To: Blaine, Robert
Cc: Kennedy, Debora; Lund, C. David; Updike, Lyle; Anderson, Irene; Kelly, Lisa; McDowell, Donna; Smith, Janice; Gebhart, Neil; Megna, Richard
Subject: Re: FW: LRB Draft: 03-0208/P2 BB0047 Increase access to community-based long-term care for nursing

Robert!

I know it's Tuesday, and not Monday, but this draft looks really good and we have just one (possible) change to this draft.

The language needs to be clear that a nursing home resident is not eligible to be relocated under this proposal unless MA has paid for at least 30 days of nursing home care, i.e. the residents must be MA recipients before becoming eligible for this proposal. I'm not sure if the language under 46.277 (3r) and 46.278 (4g) makes this clear. I don't know if the 90 days description under these sections reflects that at least 30 of the 90 days have to be MA paid days.

All other issues with the draft have been resolved internally.

If you could please let Debora know we appreciate all of the work she's done on this draft.

Also, please let her know that I did confirm that the federal waiver for CIP and COP does not require bed closures, only the state statute requires bed closures.

- Anne

>>> Blaine, Robert 01/09/03 08:00AM >>>

Redraft! I know that you are swamped, as am I. I would really, if at all possible, like to have this draft finalized by the 15th of January. If it looks like there may be another redraft needed, I would like to know by

Monday. I don't need details by Monday, but just send out a red flag saying "there are problems we gotta fix, details to follow". Then we can figure out a reasonable schedule to get further direction to LRB.

I know this is a compressed schedule. You can tell the program staff that I said this needs to be a top priority.

-----Original Message-----

From: Haskett, Christian

Sent: Wednesday, January 08, 2003 3:53 PM

To: Blaine, Robert

Cc: Johnston, James; Schaeffer, Carole; Hanaman, Cathlene; Haugen, Caroline

Subject: LRB Draft: 03-0208/P2 BB0047 Increase access to community-based long-term care for nursing home residents

Following is the PDF version of draft 03-0208/P2.

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

LRB-0208/1dn
DAK:kmg:pg

January 15, 2003

To Robert Blaine:

The changes I have made in this redraft are to ss. 46.277 (3r) (c) and (d) and 46.278 (4g) (c) and (d).

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

Kennedy, Debora

From: Blaine, Robert
Sent: Sunday, January 19, 2003 1:06 PM
To: Kennedy, Debora
Cc: Miller, Anne
Subject: RE: FW: LRB Draft: 03-0208/P2 BB0047 Increase access to community-based long-term care for nursing

Hmm ... I think this raises a question we need DHFS to weigh in on -- at what point are the counties required to do an assessment. On the one hand, I see your point that the counties should do the assessment after the conditions of 46.277(3r)(a) & 46.278(4g)(a) are met. Anne's comment does seem to suggest that we will do the assessments for everyone, but persons only qualify for relocations when MA has paid for 30 days of care or more. I am concerned, though, that this could result in counties doing a significant amount of placement assessments for people who ultimately never qualify because MA has not been paying for their care. This would seem to be a burden on the counties, but may this will be so infrequent it's not an issue.

Let's redraft as you suggest under s. 49.277(3r)(c) and s. 49.278(4g)(c), unless we hear from Anne otherwise.

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2003 - 2004 LEGISLATURE

LRB-0208/12

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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 perform a needs and costs-based assessment for nursing home residents who are eligible for but not receiving services under the program; who have received MA coverage for their nursing home care for at least 30 days; and who prefer services in the community, rather than in the nursing home. 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. The county department must initiate the needs and costs-based 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 needs and costs-based 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 for services to the nursing home residents who are relocated to communities. 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.

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AUTOREF A
p. 8

PLAINTEXT

DO NOT STRIKE

DO NOT STRIKE

PLAIN TEXT

, and 51.421 (3), for providing distributions under s. 49.45 (6tt),

✓
INSERT 3-1

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15 department may ascertain whether additional funding, as specified under sub. (5)
16 (bm) 2., is available. If additional funding is available and if the cost of the resident's
17 nursing home care has been paid under Medical Assistance for at least 30 days, the
18 county department shall offer and, if accepted, provide home or community-based
19 services under this section to the nursing home resident.

20 **SECTION 6.** 46.277 (5) (am) of the statutes is created to read:

21 46.277 (5) (am) From the appropriation under s. 20.435 (4) (w), the department
22 may provide reimbursement to a county for administrative activities by the county
23 to relocate a nursing home resident under sub. (3r).

24 **SECTION 7.** 46.277 (5) (b) of the statutes is amended to read:

1 46.277 (5) (b) ~~Total~~ Except as provided in subs. (3r) and (5) (bm), funding to
2 counties under the program may not exceed the amount approved in the waiver
3 received under sub. (2).

4 **SECTION 8.** 46.277 (5) (bm) of the statutes is created to read:

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

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

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

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

3 **SECTION 9.** 46.278 (1m) (bg) of the statutes is created to read:

4 46.278 (1m) (bg) “Nursing home” means a nursing home, as defined in s. 50.01
5 (3), that is certified as a provider of medical assistance, other than an intermediate
6 care facility for the mentally retarded.

7 **SECTION 10.** 46.278 (3) (b) of the statutes is amended to read:

8 46.278 (3) (b) ~~Fund~~ Except as provided in subs. (4g) and (6) (bm), fund home
9 or community-based services provided by any county that meet the requirements of
10 this section.

11 **SECTION 11.** 46.278 (4g) of the statutes is created to read:

12 46.278 (4g) **RELOCATION OF NURSING HOME RESIDENTS.** (a) In a county that is
13 participating in the program, for each nursing home resident who has applied for
14 participation and has been found eligible under sub. (5), but is not participating in
15 the program and who indicates that he or she prefers to receive services in the
16 community, rather than in the nursing home, the participating county department
17 shall initiate a needs and costs-based assessment before the resident has resided in
18 the nursing home for 90 continuous days or before the cost of the resident’s nursing
19 home care has been paid under Medical Assistance for 30 days, whichever is longer.
20 The county department shall complete the needs and costs-based assessment within
21 90 days after initiating the assessment.

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

24 (c) If the department determines that costs for home or community-based
25 services for the nursing home resident, as determined under the needs and

1 costs-based assessment, are equal to or less than the amount specified under sub.
2 (6) (bm) 1., the county department shall offer and, if accepted, provide home or
3 community-based services under this section to the nursing home resident, if the
4 cost of the resident's nursing home care has been paid under Medical Assistance for
5 at least 30 days.

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. (6) (bm) 1., the
9 department may ascertain whether additional funding, as specified under sub. (6)
10 (bm) 2., is available. If additional funding is available and if the cost of the resident's
11 nursing home care has been paid under Medical Assistance for at least 30 days, the
12 county department shall offer and, if accepted, provide home or community-based
13 services under this section to the nursing home resident.

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

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

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

19 46.278 (6) (b) ~~Total~~ Except as provided in subs. (4g) and (6) (bm), total funding
20 to counties for relocating each person under a program may not exceed the amount
21 approved in the waiver received under sub. (3).

22 **SECTION 14.** 46.278 (6) (bm) of the statutes is created to read:

23 46.278 (6) (bm) 1. Funding to a county for an individual who is relocated from
24 a nursing home under sub. (4g) shall be no more than the per-person, per-day
25 payment rate at the individual's level-of-care requirement for the nursing home

1 under s. 49.45 (6m), indexed annually by the percentage of any annual nursing home
2 average rate increase under s. 49.45 (6m), minus the amount that is obtained by
3 subtracting the average annual costs for allowable charges under s. 49.46 (2) (a) and
4 (b) payable on behalf of individuals in nursing homes from the average annual costs
5 for the allowable charges payable on behalf of individuals who are relocated into
6 communities from nursing homes.

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

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

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

21 SECTION 15. 46.278 (6) (f) of the statutes is repealed.

22 SECTION 9424. Effective dates; health and family services.

23 (1) NURSING HOME RESIDENT RELOCATION; FUNDING. The treatment of sections

24 20.435 (4) (w), 46.277 (2) (b) and (5) (am), (b), and (bm) 1. and 2., and 46.278 (3) (b)
25 and (6) (am), (b), and (bm) 1. and 2. of the statutes takes effect on January 1, 2004.

(by SECTION 45) AUTOREF X see p. 2

1

(2) NURSING HOME RESIDENT RELOCATION; REQUIREMENTS. The treatment of

2

sections 46.277 (1m) (ak), (3) (c), (3r), and (5) (bm) 3. and 4. and 46.278 (1m) (bg), (4g), ^{and}

3

(6) (bm) 3. and 4. ~~and~~ of the statutes takes effect on June 1, 2004.

4

(END)

D - NOTE

INSERT 3-1 ✓

**** This is reconciled s. 20.435(4)(w).

This section has been affected by drafts
with the following LRB#s: (-0194/8 and
-0208/1)

D NOTE

To Robert Blaine:

This draft changes s. 20.435(4)(w) to
reconcile its treatment by LRB-0194/8 and
LRB-0208/1. It changes the effective date for the
treatment of s. 46.278
(6)(f), to reconcile with LRB-0209/1, ~~which also~~
and make^s it effective 1/1/04. LRB-0208,
-0209, and -0194 should all continue to
appear in the compiled bill.

DAK

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

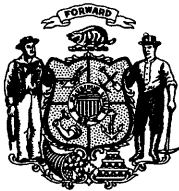
LRB-0208/2dn
DAK:kmg:cph

February 6, 2003

To Robert Blaine:

This draft changes s. 20.435 (4) (w) to reconcile its treatment by LRB-0194/8 and LRB-0208/1. It changes the effective date for the treatment of s. 46.278 (6) (f), to reconcile with LRB-0209/1, and makes it effective 1/1/04. LRB-0208, -0209, and -0194 should all continue to appear in the compiled bill.

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State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-0208/2
DAK:kmg:cph

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 ...; 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

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 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. 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.

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 perform a needs and costs-based assessment for nursing home residents who are eligible for but not receiving services under the program; who have received MA coverage for their nursing home care for at least 30 days; and who prefer services in the community, rather than in the nursing home. 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. The county department must initiate the needs and costs-based 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 needs and costs-based 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 for services to the nursing home residents who are relocated to communities. 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.

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, and 2003 Wisconsin Act ... (this act), is amended to read:

3 20.435 (4) (w) *Medical assistance trust fund.* From the Medical Assistance
4 trust fund, biennially, the amounts in the schedule for meeting costs of medical
5 assistance administered under ss. 46.27, 46.275 (5), 46.278 (6), 46.283 (5), 46.284 (5),
6 49.45, 49.472 (6), and 51.421 (3), for providing distributions under s. 49.45 (6tt), and
7 for administrative costs associated with augmenting the amount of federal moneys

1 received under 42 CFR 433.51, and for administrative relocation activities specified
2 under ss. 46.277 (5) (am) and 46.278 (6) (am).

***NOTE: This is reconciled s. 20.435 (4) (w). This SECTION has been affected by
drafts with the following LRB numbers: LRB-0194/8 and LRB-0208/1.

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

4 46.277 (1m) (ak) “Nursing home” means a nursing home, as defined in s. 50.01
5 (3), that is certified as a provider of medical assistance, other than an intermediate
6 care facility for the mentally retarded, as defined in s. 46.278 (1m) (am).

7 **SECTION 3.** 46.277 (2) (b) of the statutes is amended to read:

8 46.277 (2) (b) Fund Except as provided in subs. (3r) and (5) (bm), fund home
9 or community-based services provided by any county that meet the requirements of
10 this section.

11 **SECTION 4.** 46.277 (3) (c) of the statutes is amended to read:

12 46.277 (3) (c) Beginning on January 1, 1996, from the annual allocation to the
13 county for the provision of long-term community support services under sub. (5),
14 except as provided in subs. (3r) and (5) (bm), a county department participating in
15 the program shall annually establish a maximum total amount that may be
16 encumbered in a calendar year for services for eligible individuals in
17 community-based residential facilities.

18 **SECTION 5.** 46.277 (3r) of the statutes is created to read:

19 46.277 (3r) RELOCATION OF NURSING HOME RESIDENTS. (a) In a county that is
20 participating in the program, for each nursing home resident who has applied for
21 participation and has been found eligible under sub. (4), but is not participating in
22 the program and who indicates that he or she prefers to receive services in the
23 community, rather than in the nursing home, the participating county department

1 shall initiate a needs and costs-based assessment before the resident has resided in
2 the nursing home for 90 continuous days or before the cost of the resident's nursing
3 home care has been paid under Medical Assistance for 30 days, whichever is longer.
4 The county department shall complete the needs and costs-based assessment within
5 90 days after initiating it.

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

8 (c) If the department determines that costs for home or community-based
9 services for the nursing home resident, as determined under the needs and
10 costs-based assessment, are equal to or less than the amount specified under sub.
11 (5) (bm) 1., the county department shall offer and, if accepted, provide home or
12 community-based services under this section to the nursing home resident, if the
13 cost of the resident's nursing home care has been paid under Medical Assistance for
14 at least 30 days.

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. (5) (bm) 1., the
18 department may ascertain whether additional funding, as specified under sub. (5)
19 (bm) 2., is available. If additional funding is available and if the cost of the resident's
20 nursing home care has been paid under Medical Assistance for at least 30 days, the
21 county department shall offer and, if accepted, provide home or community-based
22 services under this section to the nursing home resident.

23 **SECTION 6.** 46.277 (5) (am) of the statutes is created to read:

1 46.277 (5) (am) From the appropriation under s. 20.435 (4) (w), the department
2 may provide reimbursement to a county for administrative activities by the county
3 to relocate a nursing home resident under sub. (3r).

4 **SECTION 7.** 46.277 (5) (b) of the statutes is amended to read:

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

8 **SECTION 8.** 46.277 (5) (bm) of the statutes is created to read:

9 46.277 (5) (bm) 1. Funding to a county for an individual who is relocated from
10 a nursing home under sub. (3r) shall be no more than the per–person, per–day
11 payment rate at the individual’s level–of–care requirement for the nursing home
12 under s. 49.45 (6m), indexed annually by the percentage of any annual nursing home
13 average rate increase under s. 49.45 (6m), minus the amount that is obtained by
14 subtracting the average annual costs for allowable charges under s. 49.46 (2) (a) and
15 (b) payable on behalf of individuals in nursing homes from the average annual costs
16 per medical assistance recipient for the allowable charges payable on behalf of
17 individuals who are relocated into communities from nursing homes.

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

24 3. If a county department fails to complete a needs and costs–based assessment
25 and offer home or community–based services under this section to a nursing home

1 resident within the time period specified in sub. (3r) (a), the county shall pay the
2 nonfederal share of Medical Assistance for his or her nursing home care unless the
3 nursing home resident refused participation or the needs and costs-based
4 assessment determined that participation was not feasible.

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

7 **SECTION 9.** 46.278 (1m) (bg) of the statutes is created to read:

8 46.278 (1m) (bg) “Nursing home” means a nursing home, as defined in s. 50.01
9 (3), that is certified as a provider of medical assistance, other than an intermediate
10 care facility for the mentally retarded.

11 **SECTION 10.** 46.278 (3) (b) of the statutes is amended to read:

12 46.278 (3) (b) Fund Except as provided in subs. (4g) and (6) (bm), fund home
13 or community-based services provided by any county that meet the requirements of
14 this section.

15 **SECTION 11.** 46.278 (4g) of the statutes is created to read:

16 46.278 (4g) RELOCATION OF NURSING HOME RESIDENTS. (a) In a county that is
17 participating in the program, for each nursing home resident who has applied for
18 participation and has been found eligible under sub. (5), but is not participating in
19 the program and who indicates that he or she prefers to receive services in the
20 community, rather than in the nursing home, the participating county department
21 shall initiate a needs and costs-based assessment before the resident has resided in
22 the nursing home for 90 continuous days or before the cost of the resident’s nursing
23 home care has been paid under Medical Assistance for 30 days, whichever is longer.
24 The county department shall complete the needs and costs-based assessment within
25 90 days after initiating the assessment.

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

3 (c) If the department determines that costs for home or community-based
4 services for the nursing home resident, as determined under the needs and
5 costs-based assessment, are equal to or less than the amount specified under sub.
6 (6) (bm) 1., the county department shall offer and, if accepted, provide home or
7 community-based services under this section to the nursing home resident, if the
8 cost of the resident's nursing home care has been paid under Medical Assistance for
9 at least 30 days.

10 (d) 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, exceed the amount specified under sub. (6) (bm) 1., the
13 department may ascertain whether additional funding, as specified under sub. (6)
14 (bm) 2., is available. If additional funding is available and if the cost of the resident's
15 nursing home care has been paid under Medical Assistance for at least 30 days, the
16 county department shall offer and, if accepted, provide home or community-based
17 services under this section to the nursing home resident.

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

19 46.278 (6) (am) From the appropriation under s. 20.435 (4) (w), the department
20 may provide reimbursement to a county for administrative activities by the county
21 to relocate a nursing home resident under sub. (4g).

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

23 46.278 (6) (b) Total Except as provided in subs. (4g) and (6) (bm), total funding
24 to counties for relocating each person under a program may not exceed the amount
25 approved in the waiver received under sub. (3).

1 **SECTION 14.** 46.278 (6) (bm) of the statutes is created to read:

2 46.278 (6) (bm) 1. Funding to a county for an individual who is relocated from
3 a nursing home under sub. (4g) shall be no more than the per-person, per-day
4 payment rate at the individual's level-of-care requirement for the nursing home
5 under s. 49.45 (6m), indexed annually by the percentage of any annual nursing home
6 average rate increase under s. 49.45 (6m), minus the amount that is obtained by
7 subtracting the average annual costs for allowable charges under s. 49.46 (2) (a) and
8 (b) payable on behalf of individuals in nursing homes from the average annual costs
9 for the allowable charges payable on behalf of individuals who are relocated into
10 communities from nursing homes.

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

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

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

25 **SECTION 15.** 46.278 (6) (f) of the statutes is repealed.

