

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 - BB0048

Topic:

Restrict admissions to ICF-MRs and nursing homes; increase access to community-based services

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				_____			S&L
/P1	dkennedy 11/08/2002	kfollett 11/08/2002 kfollett 11/20/2002	rschluet 11/21/2002	_____	sbasford 11/21/2002		S&L
/P2	dkennedy 01/26/2003	kfollett 01/28/2003	rschluet 01/28/2003	_____	mbarman 01/28/2003		S&L
/1	dkennedy 02/04/2003	kfollett 02/04/2003	rschluet 02/04/2003	_____	lemery 02/04/2003		S&L

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/2	dkennedy 02/06/2003	kfollett 02/06/2003	pgreensl 02/06/2003	_____	lemery 02/06/2003		

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12 kf
2/6 *2/6 ps*

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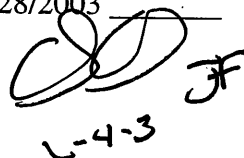
See Attached

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11 KJF
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 L-4-3 JF

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		kfollett 11/20/2002					

FE Sent For: 1/27 cmk

Handwritten signatures and initials: 1-28-3 pb <END>

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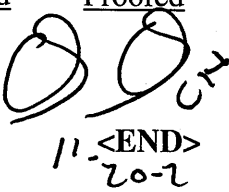
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		11 kjf + cjs 11/8					

FE Sent For:

Handwritten notes and signatures: 11 kjf + cjs, 11/8, 11-20-02, CH

DHFS

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

Downsizing Nursing Facilities and Increasing Access to Community-Based Services by Providing Counties an Institutional Services Allotment

Current Language

s. 46.278 (6) (f), s. 49.45, s. 49.46, s. 55.06

Proposed Change

1. Create and amend statutory language to restrict admissions to Intermediate Care Facilities for the Mentally Retarded (ICF-MRs) and nursing homes for individuals whose costs are paid under Medicaid (MA) and who are seeking specialized services.
2. Counties would be required to develop a plan for providing specialized services in a community setting for individuals with a developmental disability seeking an institutional admission.
3. Counties would also be required to pay for institutional services for individuals with a developmental disability.

Effect of the Change

These changes will allow the Department to restrict admissions to ICF-MRs for individuals seeking specialized services.

Rationale for the Change

The Department has a strong interest in reducing the amount of services provided in an institutional setting to individuals with developmental disabilities. Many individuals who have a developmental disability and are served in an institutional setting could be served in the community and receive the same or better quality of services frequently at a lower cost. Services provided in a community setting are generally less expensive than those provided in an institutional setting. In addition, the Department has a policy objective, consistent with federal Olmstead-related guidelines, to provide services to individuals with developmental disabilities in the least restrictive setting.

To increase community-based services provided to individuals with a developmental disability, the Department has proposed to provide additional MA funding to counties to pay for community-based services. In addition, the Department would impose restrictions on admissions to ICF-MRs. For admissions after January 1, 2004, the effective date of the proposal, ICF-MR services would be paid under MA only if the individual seeking the ICF-MR services was offered services in a community setting and refused them in favor of services provided in an institution. An individual could not be admitted to an ICF-MR who had not first been offered services in a community setting. With additional funding available for community-based services under the Department's proposal, individuals with a developmental disability should not have to seek services in an institutional setting.

To comply with federal Medicaid law, specialized services in a community setting would be offered to individuals seeking ICF-MR services on a timely basis ensuring, if an individual refuses the community-based services, that ICF-MR services are provided with reasonable promptness.

See attached statutory language draft.

Desired Effective Date: January 1, 2004
Agency: DHFS
Agency Contact: Anne Miller
Phone: 266-5422

ICF/MR DOWNSIZING LEGISLATION

Section 46.278 (6) (f) of the Statutes is repealed.

Section 46.279 of the Statutes is created to read:

46.279. Admissions to Certain Facilities.

(1) DEFINITIONS. In this section:

(a) "Intermediate facility" means intermediate care facility for the mentally retarded, as defined in s. 46.278 (1m) (am), other than a facility under s. 51.06.

(b) "Nursing facility" has the meaning given under 42 USC 1396r (a).

(2) INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED. (a) Except as provided in sub. (4), on or after [effective date], a person, court or agency otherwise authorized to place an individual in an intermediate facility may not do so, and an intermediate facility may not admit an individual, unless prior to the placement or admission a community care plan developed under par. (b) was rejected by or on behalf of the individual.

(b) The county department participating in the program under s. 46.278, within 90 days of receiving written notice of a prospective admission of a resident of that county to an intermediate facility, shall develop a plan for providing home or community-based care to the individual in a noninstitutional community setting.

(c) In the case of an individual under a protective placement order under ch. 55, the court shall consider a plan under par. (b) on the individual's behalf. The court may reject the plan on the individual's behalf only if the court determines after hearing and based on facts of record that it would not be in the individual's best interests for the individual to receive home or community-based care in a noninstitutional community setting in accordance with the plan.

(3) NURSING FACILITIES. (a) Except as provided in sub. (4), on or after [effective date], a person, court or agency otherwise authorized to place an individual in a nursing facility may not do so, and a nursing facility may not admit an individual, if it is determined in a screening under s. 49.45(6c)(b) that the individual requires active treatment for developmental disability, unless it is determined in the screening that the individual's need for facility care could not be met in an intermediate facility or under a plan under sub. (2)(b).

(4) EXCEPTION. Subsections (2)(a) and (3)(a) do not apply to an emergency placement under s. 55.06(11)(a) or to a temporary placement under s. 55.06(11)(c).

Section 49.45(6c)(b) of the Statutes is amended to read:

49.45(6c)(b) Preadmission screening. Except as provided in par. (e), beginning on August 9, 1989, every individual who applies for admission to a facility or to an institution for mental diseases shall be screened to determine if the individual has developmental disability or mental illness. Beginning on August 9, 1989, the department or an entity to which the department has delegated authority shall screen every individual who has been identified as having a developmental disability or mental illness to determine if the individual needs facility care. If the individual is determined to need facility care, the department or an entity to which the department has delegated authority shall also assess the individual to determine if he or she requires active treatment for developmental disability or active treatment for mental illness and, if it is determined he or she requires active treatment for developmental disability, whether the individual's need for facility care could be met in an intermediate care facility for the mentally retarded as defined or in s. 46.278 (1m) (am), other than a facility under s. 51.06, or under a plan for providing home or community-based care to the individual in a noninstitutional community setting developed under s. 46.279.

Section 49.45(6c)(c)3. of the Statutes is amended to read:

49.45(6c)(c) Resident review. Except as provided in par. (e), the department or an entity to which the department has delegated authority shall review every resident of a facility or institution for mental diseases who has a developmental disability or mental illness and who has experienced a significant change in his or her physical or mental condition to determine all if any of the following applies:

1. Whether the ~~The~~ resident needs facility care.
2. Whether the ~~The~~ resident requires active treatment for developmental disability or active treatment for mental illness.
3. If it is determined under subs. 1 and 2 that the resident needs facility care and requires active treatment for developmental disability, whether the resident's need for facility care could be met in an intermediate care facility for the mentally retarded as defined or in s. 46.278 (1m)

(am), other than a facility under s. 51.06, or under a plan for providing home or community-based care to the individual in a noninstitutional community setting developed under s. 46.279.

Section 49.45(30m) of the Statutes is renumbered 49.45(30m)(a) and amended to read:
49.45(30m). **Certain services for developmentally disabled.**

(a) A county shall provide the portion of payment for the following services under s. 51.06 (1m)(d) to individuals who are eligible for medical assistance that is not provided by the federal government:

1. Services under s. 51.06 (1m) (d).

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

3. Services provided to an individual who has a developmental disability in a facility, within the meaning of 42 USC 1396r(a), for which payment is permitted under sub. (6c)(d)2.

Section 49.45(30m)(b) and (c) of the Statutes are created to read:

(b) On or after [effective date], no payment under this section may be made for services under par. (a) unless the individual who receives the services meets one of the following:

1. The individual is protectively placed at the facility under s. 55.06(9)(a).

2. The individual is placed at the facility pursuant to an emergency placement under s. 55.06(11)(a).

3. The individual is placed at the facility pursuant to a temporary placement under s. 55.06(11)(c).

(c)1. No payment under this section may be made for services under par. (a) 2. or 3. that are provided to an individual who was placed in or admitted to the facility on or after [effective date] unless the placement or admission complied with the requirements of s. 46.279.

2. No payment under this section may be made for services under par. (a) 2. or 3. that are provided to an individual who was placed in or admitted to the facility at any time unless any annual review conducted pursuant to s. 55.06(10)(a) on or after [effective date] complies with the requirements of s. 55.06(10)(a)2.

Section 49.46(2)(a) 4.c. of the Statutes is amended to read:

49.46(2)(a)4.c. Subject to the limitations under s. 49.45(30m)(b) and (c), skilled Skilled nursing home services other than in an institution for mental diseases, except as limited under s. 49.45 (6c).

Section 49.46(2)(b)6.a. of the Statutes is amended to read:

49.46(2)(b)6.a. Subject to the limitations under s. 49.45(30m)(b) and (c), intermediate ~~Intermediate~~ care facility services other than in an institution for mental diseases.

Section 55.06(5) of the Statutes is amended to read:

55.06(5). Notice of a petition for placement shall be served upon the person sought to be placed by personal service at least 10 days prior to the time set for a hearing. Upon service of the notice the person sought to be protected shall be informed of the complete contents of the notice. The person serving the notice shall return a certificate to the circuit judge verifying that the petition has been delivered and notice given. The notice shall include the names of all petitioners. Notice shall also be served personally or by mail upon the person's guardian ad litem, legal counsel, guardian, if any, presumptive adult heirs, and upon other persons who have physical custody of the person to be protected whose names and addresses are known to the petitioner or can with reasonable diligence be ascertained, to any governmental or private body or group from whom the person to be protected is known to be receiving aid and to such other persons or entities as the court may require. Notice shall also be served personally or by mail upon the department at least 10 days prior to the time set for hearing if the person sought to be protected may be placed in a center for the developmentally disabled. The department shall be allowed to submit oral or written testimony regarding such a placement at the hearing. Notice shall also be served personally or by mail upon the county department participating in the program under s. 46.278 for the county of residence of the person sought to be protected at least 10 days prior to the time set for hearing if the person may be placed in an intermediate care facility for the mentally retarded, as defined in s. 46.278 (1m) (am), other than a center for the developmentally disabled, or if the person has a developmental disability and may be placed in a nursing facility as defined in 42 USC 1396r (a). The county department participating in the

program under s. 46.278 for the county of residence shall be allowed to submit oral or written testimony regarding such a placement at the hearing. The incompetent or proposed incompetent is presumed able to attend the hearing unless, after a personal interview, the guardian ad litem certifies to the court that the person is unable to attend.

Section 55.06(8) of the Statutes is amended to read:

55.06(8). Before ordering the protective placement of any individual, the court shall direct a comprehensive evaluation of the person in need of placement, if such an evaluation has not already been made. The court may utilize available multidisciplinary resources in the community in determining the need for placement. The board designated under s. 55.02 or an agency designated by it shall cooperate with the court in securing available resources. Where applicable by reason of the particular disability, the appropriate board designated under s. 55.02 or an agency designated by it having responsibility for the place of legal residence of the individual as provided in s. 49.001 (6) shall make a recommendation for placement. If the court is considering placement of the individual in a center for the developmentally disabled, the court shall request a statement from the department regarding whether the placement is appropriate for the person's needs and whether it is consistent with the purpose of the center under s. 51.06 (1) unless testimony was provided by the department under sub. (5). If the court is considering placement of the individual in an intermediate care facility for the mentally retarded, as defined in s. 46.278 (1m) (am), other than a center for the developmentally disabled, or if the individual has a developmental disability and the court is considering placement of the individual in a nursing facility as defined in 42 USC 1396r (a), the court shall request a statement from the county department participating in the program under s. 46.278 for the individual's county of residence regarding whether the individual's needs could be met in a noninstitutional setting, unless testimony was provided by that county department under sub. (5). A copy of the comprehensive evaluation shall be provided to the guardian, the guardian ad litem, and to the individual or attorney at least 96 hours in advance of the hearing to determine placement. The court or the cooperating agency obtaining the evaluation shall request appropriate information which shall include at least the following:

Section 55.06(9)(a) of the Statutes is amended to read:

55.06(9)(a) The court may order protective services under s. 55.05 (2) (d) as an alternative to placement. When ordering placement, the court, on the basis of the evaluation and other relevant evidence shall order the appropriate board specified under s. 55.02 or an agency designated by it to protectively place the individual. Placement by the appropriate board or designated agency is subject to s. 46.279 and shall be made in the least restrictive environment consistent with the needs of the person to be placed and with the placement resources of the appropriate board specified under s. 55.02. Factors to be considered in making protective placement shall include the needs of the person to be protected for health, social or rehabilitative services; the level of supervision needed; the reasonableness of the placement given the cost and the actual benefits in the level of functioning to be realized by the individual; the limits of available state and federal funds and of county funds required to be appropriated to match state funds; and the reasonableness of the placement given the number or projected number of individuals who will need protective placement and given the limited funds available. The county may not be required to provide funding, in addition to its funds that are required to be appropriated to match state funds, in order to protectively place an individual. Placement under this section does not replace commitment of a person in need of acute psychiatric treatment under s. 51.20 or 51.45 (13). Subject to s. 46.279, placement Placement may be made to such facilities as nursing homes, public medical institutions, centers for the developmentally disabled under the requirements of s. 51.06 (3), foster care services and other home placements, or to other appropriate facilities but may not be made to units for the acutely mentally ill. If the appropriate board or designated agency proposes to place an individual with developmental disabilities in an intermediate care facility for the mentally retarded as defined in s. 46.278 (1m) (am), other than a facility under s. 51.06, or in a nursing facility as defined in 42 USC 1396r (a) pursuant to an order under this subsection, the board or agency shall send written notice to the county department participating in the program under s. 46.278. The prohibition of placements in units for the acutely mentally ill does not prevent placement by a court for short-term diagnostic procedures under par. (d). Placement in a locked unit shall require a specific finding of the court as to the need for such action. A placement facility may transfer a patient from a locked unit to a less restrictive environment without court approval.

Section 55.06(11)(c) of the Statutes is amended to read:

55.06(11)(c) Upon a finding of probable cause under par. (b), the court may order temporary placement up to 30 days pending the hearing for a permanent placement, or the court may order such protective services as may be required. If an individual with developmental disabilities is placed in an intermediate care facility for the mentally retarded, as defined in s. 46.278 (1m) (am), or in a nursing facility, as defined in 42 USC 1396r (a), pursuant to an order under this paragraph, and the court after hearing orders that the individual be protectively placed, the court may extend the temporary placement order not more than 60 days if necessary for the county department participating in the program under s. 46.278 to develop a plan for providing home or community-based care to the individual in a noninstitutional community setting, as required under s. 46.279(2)(b).

Section 55.06(9)(b) of the Statutes is amended to read:

55.06(9)(b). Subject to s. 46.279, transfer ~~Transfer~~ may be made between placement units or from a placement unit to a medical facility other than those specified in pars. (c) to (e) by a guardian or placement facility without approval by a court. When transfer is made by a placement facility, 24 hours' prior written notice of the transfer shall be provided to the guardian, when feasible. If it is not feasible to notify the guardian in advance, written notice shall be provided immediately upon transfer, and notice shall also be provided to the court and to the board designated under s. 55.02 or an agency designated by it within a reasonable time, not to exceed 48 hours from the time of the transfer. Upon petition to a court by a guardian, ward, or attorney, or other interested person specifying objections to a transfer, the court shall order a hearing, within 96 hours after filing of the petition, to determine whether there is probable cause to believe that the transfer is consistent with the requirements specified in par. (a) and is necessary for the best interests of the ward. The court shall notify the ward, guardian and petitioner of the time and place of the hearing, and a guardian ad litem shall be appointed to represent the ward. If the person is an adult who is indigent, the county of legal settlement shall be liable for guardian ad litem fees. If the person is a child, the person's parents or the county of legal settlement shall be liable for guardian ad litem fees as provided in s. 48.235 (8). The

petitioner, ward and guardian shall have the right to attend, and to present and cross-examine witnesses.

Section 55.06(9)(c) of the Statutes is amended to read:

55.06(9)(c). Subject to s. 46.279, transfer ~~Transfer~~ to a more restrictive placement, including a locked unit, may be made with notice to the guardian, the court and appropriate board designated under s. 55.02 or an agency designated by it in the manner prescribed in par. (b). Upon petition by a guardian, ward or attorney, or other interested person specifying objections to the transfer, the court shall order a hearing as provided in par. (b).

Section 55.06(10)(a) of the Statutes is renumbered 55.06(10)(a)1.

Section 55.06(10)(a)2. of the Statutes is created to read:

55.06(10)(a)2. If the person is placed in an intermediate care facility for the mentally retarded, as defined in s. 46.278 (1m) (am), other than a facility under s. 51.06, or if the person has a developmental disability and is placed in a nursing facility as defined in 42 USC 1396r (a), the agency which is responsible for the protective placement shall notify in writing the county department participating in the program under s. 46.278 for the person's county of residence of the review under this paragraph at least 90 days prior to the review. The county department participating in the program under s. 46.278 shall develop a plan for providing home or community-based care to the person in a noninstitutional community setting, that plan shall be furnished to the court that ordered the placement and to the person's guardian along with the results of the review under subd. 1. The court shall order that the person be transferred to the noninstitutional community setting in accordance with the plan unless the court finds that to do so would not be in the person's best interests.

Section 55.06(12) of the Statutes is amended to read:

55.06(12). Subject to s. 46.279, when ~~When~~ a ward lives with the guardian, the guardian may make temporary placement of the ward. Placement may be made to provide the guardian with a vacation or to temporarily release the guardian for a family emergency. Such placement

may be made for not more than 30 days but the court may upon application grant an additional period not to exceed 60 days in all. The application shall include such information as the court may reasonably deem necessary. When reviewing the application, the court shall provide the least restrictive placement which is consistent with the needs of the ward.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0209/P1dn

DAK: *kyf*
+cjs

Date

To Robert Blaine and Anne Miller:

1. The DHFS proposal repeals s. 46.278 (6) (f), stats. I am puzzled by this, since that provision requires delicensing of county-owned ICFMR beds for persons who are relocated to the community, and since the stated rationale for the proposal as a whole is a restriction on admission to ICFMRs. S

2. I have largely reworked s. 46.279, as proposed, with the following changes: X

a. I have made separate subsections for definitions, placements, and admissions to intermediate facilities, admissions to nursing facilities, development of plans for home or community-based care, and exceptions. ✓

b. Because s. 46.279 (2) (c), as proposed, was both redundant to and in conflict with the amendment to s. 55.06 (9) (a), stats., and the creation of s. 55.06 (10) (a) 2. and because this provision more appropriately belongs as a directive to the court under ch. 55, stats., I eliminated it and incorporated it into s. 55.06 (9) (a) and (10) (a) 2., stats. See also Drafter's Note No. 6. ✓

c. Section 46.279 (2) under this draft permits an individual to reject a plan developed under s. 46.279 (2). I have added that option to s. 55.06 (9) (a) and (10) (a) 2., stats. I also added the individual's guardian as a person who may reject on behalf of the individual. Please review. ✓

d. As proposed and drafted, s. 46.289 (4) requires a county department to develop a plan for providing home or community-based care within 90 days after receiving written notice of a prospective admission to an intermediate facility. I have tied this language to the notice required to be provided under s. 55.06 (5). Should the intermediate facility also be required to provide notice to the county department if a person applies for admission, or would the board or agency under s. 55.06 (9) (a) always be involved? X

e. What happens if the county department develops a plan under s. 46.279 (4), but there are no available providers? Conversely, what happens if the county department is unable to develop a plan because there are no available providers? ✓

f. Are s. 46.279 (2) and (4) in the draft supposed to apply only to individuals with developmental disabilities or to any individuals? ✓

Seems to

if he or she were to receive

as to whether

3. The language proposed for the amendment to s. 49.45 (6c) (b) and the creation of s. 49.45 (6c) (c) ^{3.} created a logical problem: if the department or entity determines that the individual who is screened requires *facility care*, that decision logically precludes consideration of whether or not the individual should be treated at home or in the community. I changed the wording to require a determination ~~that~~ the individual would require facility care ~~but for the provision of services in an intermediate facility or under a plan.~~ This language echoes the federal medical assistance waiver language under 42 USC 1396n (c) and eliminates the logical problem. In addition, I could not tell from the language proposed whether the department's or entity's determination about where the individual's need for care may be met was supposed to take place before or after consideration of a plan developed under s. 46.279 (4); if it is the latter, a cross-reference under s. 46.279 (4) to s. 49.45 (6c) (b) should be drafted and the department or entity should be required to provide the required notice. Please clarify.

4. In s. 49.45 (30m) (b), the DHFS proposed language refers to par. (a). I took that reference to be to s. 49.45 (30m) (a) 1.; is that what you intended? In addition, the proposed language refers to "no payment under this section." It is unclear what that phrase is intended to mean; read one way, it might nullify the requirements for county payment under s. 49.45 (30m) (a), and thus leave an individual who was incorrectly placed without any funding. I have inferred that it refers to payment that is provided by the federal government and have drafted accordingly. Is that correct? Lastly, s. 49.45 (3m) (a) 2., as proposed and drafted, refers to the federal definition of an ICFMR. Doesn't that include a state center for the developmentally disabled? Are you proposing that counties pay the non-federal MA portion for all persons in the state centers? If so, why would you need s. 49.45 (30m) (a) 1.? Please clarify, and review all my changes to s. 49.45 (30m) from the material proposed.

5. Note the language that I struck in s. 55.06 (5), stats.; I did this because that subsection is concerned with notice, not procedures at hearing. I added "or testimony" to s. 55.06 (8) (intro.), stats., in the fifth sentence. I also moved language about the county department's submittal of oral or written testimony that was proposed for s. 55.06 (5), stats., to s. 55.06 (8) (intro.), stats.

6. The amendment of s. 55.06 (9) (a), stats., is tied by cross-reference to s. 46.279 (4), which requires a county department to develop a plan to provide home or community-based services within 90 days after receipt of notice. Section 55.06 (9) (a), stats., has no time requirements for the period during which the board or agency would consider placing a person in an intermediate facility or nursing facility ^{conceivably}; then, the board or agency could make the placement before the county department has prepared a plan. Therefore, I required that the board or agency provide notice to the county department at least 90 days before making placement; is that what you want?

7. The DHFS proposed material makes no mention of language in chs. 51 and 55, resulting from 1995 Wisconsin Act 92, that limits expenditure of county moneys to those funds "required to be appropriated to match state funds." Since s. 49.45 (30m), as changed under this draft, requires no expenditure of *state* funds, I think it cannot be argued that the changes to s. 49.45 (30m) constitute a requirement that county moneys be appropriated to match state funds; thus, the changes in this draft are in

conflict with the language resulting from 1995 Wisconsin Act 92. In addition, the Wisconsin Supreme Court decision in *Dunn County v. Judy K.*, 254 Wis.2d 383 (2002), in interpreting that language, requires that counties make an affirmative showing of good faith, reasonable effort to find and fund appropriate placement. Left unanswered under that decision is what happens if, after a county makes such a showing, the county does not come up with funding. I think that the language, for instance, in s. 55.06 (9) (a), stats., should at least be modified to state that the county may not be required to provide funding in addition to its funds that are required to be appropriated to match state or federal funds ^{emdash} actually, that change is applicable to current law, under s. 49.45 (30m), stats. Please review and indicate whether additional changes should be made.

8. In s. 55.06 (11) (c), I changed the time in which a county would be able to develop a plan to 90, rather than 60 days, to conform to other requirements. Okay?

days →

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

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9. I have included, for now, the proposed amendments to s. 55.06 (9) (b) and (c) and (12), stats., that make transfers and temporary placements by guardians subject to s. 46.279 (c.e.) that the transfers and placements cannot take place unless the county department develops a plan, etc.) However, I don't believe that these restrictions work, because s. 46.279 (4) permits a county department 90 days to develop a community care plan; the placements and transfers are for temporary or emergency situations, many of which would not be possible to anticipate. The time limitation is unrealistic for this development. In addition, although it is a more minor problem, a mechanism for notifying the county department about the transfers or placements would have to be drafted.

10. In s. 55.06 (10) (a) 2., the language proposed required that the county department furnish a community care plan to the court, together with the results of the *Watts* review. However the agency conducting the *Watts* review may not be the county department; and the requirement to furnish the *Watts* review to the court is redundant to s. 55.006 (2) (a) (renumbered s. 55.06 (10) (a) 1.); therefore, I have eliminated the requirement.

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DOA:.....Blaine - BB0048 Restrict admissions to ICF-MRs and nursing homes; increase access to community-based services

FOR 2003-05 BUDGET - NOT READY FOR INTRODUCTION

SAV

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inserts

- 1 AN ACT ...; relating to: restricting protective placements and admissions to
- 2 intermediate and nursing facilities.

Analysis by the Legislative Reference Bureau
HEALTH AND HUMAN SERVICES
MENTAL ILLNESS AND DEVELOPMENTAL DISABILITIES

Under current law, persons who apply for admission to nursing homes, state centers for the developmentally disabled, or institutions for mental diseases, including persons who are found by a court to be in need of protective services and are protectively placed, must be screened to determine if they have developmental disability or mental illness. If so determined, they must also be screened to determine if they need facility care and active treatment for developmental disability or mental illness. Residents of these facilities who have developmental disability or mental illness and have had significant changes in their physical or mental conditions must also be screened to determine if they need facility care or active treatment. Persons who are not in need of facility care must be relocated for other care and reimbursement, depending on the severity of their disabilities and their financial resources.

Currently, counties must provide the portion of the Medical Assistance Program (MA) payment that is not provided by the federal government for services to individuals in state centers for the developmentally disabled who are also

disabilities

places restrictions on

mentally ill and exhibit extremely aggressive and challenging behaviors. Under one of the community integration programs, person with developmental disability who are eligible for MA and who formerly resided in, or were diverted from, a state center for the developmentally disabled or other institutions, are provided services in community settings that are reimbursed by state and federal funds, or by county and federal funds, under MA. Under this program, a county that owns the institution from which a person is relocated into the community must receive approval from DHFS of a plan for delicensing a bed of the institution, in order for the county to obtain reimbursement for the person's community care.

X
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This bill, beginning January 1, 2004, restricts protective placements and admissions of persons to intermediate care facilities and nursing facilities, as defined in the bill. Within 90 days after receiving written notice of the prospective placement of a person in an intermediate facility, a county department of social services, human services, developmental disabilities services, or community programs must develop a plan for providing home or community-based care to the person in a noninstitutional setting. The person may not be placed in or admitted to the intermediate facility unless a board of social services, human services, community programs, or developmental disabilities services finds that placement in the community under such a plan is not in the person's best interests, or the person or his or her guardian rejects the plan. Also, a person who has been screened and found to require active treatment for developmental disability also may not be placed in or admitted to a nursing facility unless it is determined that his or her need for care cannot be met in an intermediate facility or under a plan for home or community care.

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X

have ✓ The bill changes the screening process for residents of state centers for the developmentally disabled who have been determined to need facility care and active treatment for developmental disability to require that they be further screened to determine whether they would require facility care but for the provision of services in an intermediate facility or under a plan for home or community care.

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if they were to receive

Beginning January 1, 2004, the bill prohibits payment of the federal portion of MA for services to individuals in state centers for the developmentally disabled who are also mentally ill and exhibit extremely aggressive and challenging behaviors, unless the person receiving the services has been protectively placed in the state center or is placed there for emergency purposes or as a temporary placement. The bill requires that counties pay the portion of MA payment that is not provided by the federal government for services to persons with developmental disabilities in an intermediate care facility for the mentally retarded and, if they have been determined to need facility care, for services in a nursing facility; however, no payment of the federal portion of MA for services to these persons may be made unless the person was placed in or admitted to the facility after the placing board considered a plan for home or community care and rejected the plan or found it would not meet the person's needs.

The bill changes laws relating to protective placement of individuals who are found incompetent, to require that, for a person about to be protectively placed, the court notify the appropriate county department to develop a plan for home or community care and that the person be placed in a noninstitutional community

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setting under the plan, unless there is an affirmative finding by the court that placement for home or community care would not be in the ~~person's~~ best interests, or unless the ~~person~~ rejects the plan.

The bill eliminates the requirement that a county delicense a bed of a county-owned institution for a person who is relocated to the community, in order for the county to receive reimbursement for the person's care.

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:

SECTION 1. 46.278 (6) (f) of the statutes is repealed.

SECTION 2. 46.279 of the statutes is created to read:

46.279 Restrictions on placements and admissions to intermediate and nursing facilities. (1) DEFINITIONS. In this section:

(a) "Intermediate facility" means an intermediate care facility for the mentally retarded, as defined in 42 USC 1396d (d), other than a center for the developmentally disabled, as defined in s. 51.01 (3).

(b) "Nursing facility" has the meaning given under 42 USC 1369r (a).

(2) PLACEMENTS AND ADMISSIONS TO INTERMEDIATE CARE FACILITIES. Except as provided in sub. (5), no person may place an individual in an intermediate facility and no intermediate facility may admit an individual unless, before the placement or admission, a board or agency under s. 55.06 (9) (a) or a court under s. 55.06 (10) (a) 2. finds that placement by a court under a plan that was developed under sub. (4) is not in the individual's best interests or the individual or the individual's guardian rejects the ~~community care~~ plan.

(3) PLACEMENTS AND ADMISSIONS TO NURSING FACILITIES. Except as provided in sub. (5), if the department or an entity determines from a screening under s. 49.45

(6c) (b) that an individual requires active treatment for developmental disability, no

1 person may place the individual in a nursing facility, and no nursing facility may
 2 admit the individual, unless it is determined from the screening that the individual's
 3 need for care cannot be met in an intermediate facility or under a plan under sub.
 4 (4).

5 (4) PLAN FOR HOME OR COMMUNITY-BASED CARE. A county department that
 6 participates in the program under s. 46.278 shall, within 90 days after receiving
 7 written notice under s. 55.06 (9) (a) or (10) (a) 2. of the prospective placement of an
 8 individual who is a resident of that county in an intermediate facility, develop a plan
 9 for providing home or community-based care to the individual in a noninstitutional
 10 community setting.

11 (5) EXCEPTIONS. Subsections (2) and (3) do not apply to an emergency placement
 12 under s. 55.06 (11) (a) or to a temporary placement under s. 55.06. (11) (c).

13 **SECTION 3.** 49.45 (6c) (b) of the statutes is amended to read:

14 49.45 (6c) (b) *Preadmission screening.* Except as provided in par. (e), beginning
 15 on August 9, 1989, every individual who applies for admission to a facility or to an
 16 institution for mental diseases shall be screened to determine if the individual has
 17 developmental disability or mental illness. Beginning on August 9, 1989, the
 18 department or an entity to which the department has delegated authority shall
 19 screen every individual who has been identified as having a developmental disability
 20 or mental illness to determine if the individual needs facility care. If the individual
 21 is determined to need facility care, the department or an entity to which the
 22 department has delegated authority shall also assess the individual to determine if
 23 he or she requires active treatment for developmental disability or active treatment
 24 for mental illness. If the department or entity determines that the individual
 25 requires active treatment for developmental disability, the department or entity

of the placement

under

INSERT 4-12

if he or she were to receive

- 1 shall determine whether the individual would require facility care ~~but for the~~
- 2 ~~provision of~~ services in an intermediate facility, as defined in s. 46.279 (1) (a), or
- 3 under a plan that is developed under s. 46.279 (4).

History: 1971 c. 40 s. 93; 1971 c. 42, 125; 1971 c. 213 s. 5; 1971 c. 215, 217, 307; 1973 c. 62, 90, 147; 1973 c. 333 ss. 106g, 106h, 106j, 201w; 1975 c. 39; 1975 c. 223 s. 28; 1975 c. 224 ss. 54h, 56 to 59m; 1975 c. 383 s. 4; 1975 c. 411; 1977 c. 29, 418; 1979 c. 34 ss. 837f to 838, 2102 (20) (a); 1979 c. 102, 177, 221, 355; 1981 c. 20 ss. 839 to 854, 2202 (20) (r); 1981 c. 93, 317; 1983 a. 27 ss. 1046 to 1062m, 2200 (42); 1983 a. 245, 447, 527; 1985 a. 29 ss. 1026m to 1031d, 3200 (23), (56), 3202 (27); 1985 a. 120, 176, 269; 1985 a. 332 ss. 91, 251 (5), 253; 1985 a. 340; 1987 a. 27 ss. 989r to 1000s, 2247, 3202 (24); 1987 a. 186, 307, 339, 399; 1987 a. 403 s. 256; 1987 a. 413; 1989 a. 6; 1989 a. 31 ss. 1402 to 1452g, 2909g, 2909i; 1989 a. 107, 173, 310, 336, 351, 359; 1991 a. 22, 39, 80, 250, 269, 315, 316; 1993 a. 16 ss. 1362g to 1403, 3883; 1993 a. 27, 107, 112, 183, 212, 246, 269, 335, 356, 437, 446, 469; 1995 a. 20; 1995 a. 27 ss. 2947 to 3002r, 7299, 9126 (19), 9130 (4), 9145 (1); 1995 a. 191, 216, 225, 289, 303, 398, 417, 457; 1997 a. 3, 13, 27, 114, 175, 191, 237, 252, 293; 1999 a. 9, 63, 103, 180, 185; 2001 a. 13, 16, 35, 38, 57, 67, 104, 109.

4 **SECTION 4. 49.45 (6c) (c) (intro.)** of the statutes is amended to read:

5 **49.45 (6c) (c) Resident review.** (intro.) Except as provided in par. (e), the

6 department or an entity to which the department has delegated authority shall

7 review every resident of a facility or institution for mental diseases who has a

8 developmental disability or mental illness and who has experienced a significant

9 change in his or her physical or mental condition to determine if any all of the

10 following applies:

History: 1971 c. 40 s. 93; 1971 c. 42, 125; 1971 c. 213 s. 5; 1971 c. 215, 217, 307; 1973 c. 62, 90, 147; 1973 c. 333 ss. 106g, 106h, 106j, 201w; 1975 c. 39; 1975 c. 223 s. 28; 1975 c. 224 ss. 54h, 56 to 59m; 1975 c. 383 s. 4; 1975 c. 411; 1977 c. 29, 418; 1979 c. 34 ss. 837f to 838, 2102 (20) (a); 1979 c. 102, 177, 221, 355; 1981 c. 20 ss. 839 to 854, 2202 (20) (r); 1981 c. 93, 317; 1983 a. 27 ss. 1046 to 1062m, 2200 (42); 1983 a. 245, 447, 527; 1985 a. 29 ss. 1026m to 1031d, 3200 (23), (56), 3202 (27); 1985 a. 120, 176, 269; 1985 a. 332 ss. 91, 251 (5), 253; 1985 a. 340; 1987 a. 27 ss. 989r to 1000s, 2247, 3202 (24); 1987 a. 186, 307, 339, 399; 1987 a. 403 s. 256; 1987 a. 413; 1989 a. 6; 1989 a. 31 ss. 1402 to 1452g, 2909g, 2909i; 1989 a. 107, 173, 310, 336, 351, 359; 1991 a. 22, 39, 80, 250, 269, 315, 316; 1993 a. 16 ss. 1362g to 1403, 3883; 1993 a. 27, 107, 112, 183, 212, 246, 269, 335, 356, 437, 446, 469; 1995 a. 20; 1995 a. 27 ss. 2947 to 3002r, 7299, 9126 (19), 9130 (4), 9145 (1); 1995 a. 191, 216, 225, 289, 303, 398, 417, 457; 1997 a. 3, 13, 27, 114, 175, 191, 237, 252, 293; 1999 a. 9, 63, 103, 180, 185; 2001 a. 13, 16, 35, 38, 57, 67, 104, 109.

11 **SECTION 5. 49.45 (6c) (c) 1.** of the statutes is amended to read:

12 **49.45 (6c) (c) 1. The Whether the resident needs facility care:**

History: 1971 c. 40 s. 93; 1971 c. 42, 125; 1971 c. 213 s. 5; 1971 c. 215, 217, 307; 1973 c. 62, 90, 147; 1973 c. 333 ss. 106g, 106h, 106j, 201w; 1975 c. 39; 1975 c. 223 s. 28; 1975 c. 224 ss. 54h, 56 to 59m; 1975 c. 383 s. 4; 1975 c. 411; 1977 c. 29, 418; 1979 c. 34 ss. 837f to 838, 2102 (20) (a); 1979 c. 102, 177, 221, 355; 1981 c. 20 ss. 839 to 854, 2202 (20) (r); 1981 c. 93, 317; 1983 a. 27 ss. 1046 to 1062m, 2200 (42); 1983 a. 245, 447, 527; 1985 a. 29 ss. 1026m to 1031d, 3200 (23), (56), 3202 (27); 1985 a. 120, 176, 269; 1985 a. 332 ss. 91, 251 (5), 253; 1985 a. 340; 1987 a. 27 ss. 989r to 1000s, 2247, 3202 (24); 1987 a. 186, 307, 339, 399; 1987 a. 403 s. 256; 1987 a. 413; 1989 a. 6; 1989 a. 31 ss. 1402 to 1452g, 2909g, 2909i; 1989 a. 107, 173, 310, 336, 351, 359; 1991 a. 22, 39, 80, 250, 269, 315, 316; 1993 a. 16 ss. 1362g to 1403, 3883; 1993 a. 27, 107, 112, 183, 212, 246, 269, 335, 356, 437, 446, 469; 1995 a. 20; 1995 a. 27 ss. 2947 to 3002r, 7299, 9126 (19), 9130 (4), 9145 (1); 1995 a. 191, 216, 225, 289, 303, 398, 417, 457; 1997 a. 3, 13, 27, 114, 175, 191, 237, 252, 293; 1999 a. 9, 63, 103, 180, 185; 2001 a. 13, 16, 35, 38, 57, 67, 104, 109.

13 **SECTION 6. 49.45 (6c) (c) 2.** of the statutes is amended to read:

14 **49.45 (6c) (c) 2. The Whether the resident requires active treatment for**

15 **developmental disability or active treatment for mental illness.**

History: 1971 c. 40 s. 93; 1971 c. 42, 125; 1971 c. 213 s. 5; 1971 c. 215, 217, 307; 1973 c. 62, 90, 147; 1973 c. 333 ss. 106g, 106h, 106j, 201w; 1975 c. 39; 1975 c. 223 s. 28; 1975 c. 224 ss. 54h, 56 to 59m; 1975 c. 383 s. 4; 1975 c. 411; 1977 c. 29, 418; 1979 c. 34 ss. 837f to 838, 2102 (20) (a); 1979 c. 102, 177, 221, 355; 1981 c. 20 ss. 839 to 854, 2202 (20) (r); 1981 c. 93, 317; 1983 a. 27 ss. 1046 to 1062m, 2200 (42); 1983 a. 245, 447, 527; 1985 a. 29 ss. 1026m to 1031d, 3200 (23), (56), 3202 (27); 1985 a. 120, 176, 269; 1985 a. 332 ss. 91, 251 (5), 253; 1985 a. 340; 1987 a. 27 ss. 989r to 1000s, 2247, 3202 (24); 1987 a. 186, 307, 339, 399; 1987 a. 403 s. 256; 1987 a. 413; 1989 a. 6; 1989 a. 31 ss. 1402 to 1452g, 2909g, 2909i; 1989 a. 107, 173, 310, 336, 351, 359; 1991 a. 22, 39, 80, 250, 269, 315, 316; 1993 a. 16 ss. 1362g to 1403, 3883; 1993 a. 27, 107, 112, 183, 212, 246, 269, 335, 356, 437, 446, 469; 1995 a. 20; 1995 a. 27 ss. 2947 to 3002r, 7299, 9126 (19), 9130 (4), 9145 (1); 1995 a. 191, 216, 225, 289, 303, 398, 417, 457; 1997 a. 3, 13, 27, 114, 175, 191, 237, 252, 293; 1999 a. 9, 63, 103, 180, 185; 2001 a. 13, 16, 35, 38, 57, 67, 104, 109.

16 **SECTION 7. 49.45 (6c) (c) 3.** of the statutes is created to read:

if he or she were to receive

1 49.45 (6c) (c) 3. If the department or entity determines under subd. 1. that the
 2 resident needs facility care and and under subd. 2. that the resident requires active
 3 treatment for developmental disability, whether the resident would require facility
 4 care ~~but for the provision of~~ services in an intermediate facility, as defined in s. 46.279
 5 (1) (a), or under a plan that is developed under s. 46.279 (4).

6 SECTION 8. 49.45 (30m) of the statutes is renumbered 49.45 (30m) (a) (intro.)
 7 and amended to read:

8 49.45 (30m) (a) (intro.) CERTAIN SERVICES FOR DEVELOPMENTALLY DISABLED. A
 9 county shall provide the portion of the payment that is not provided by the federal
 10 government for all of the following services under s. 51.06 (1m) (d) to individuals with
 11 developmental disability who are eligible for medical assistance that is not provided
 12 by the federal government.:

History: 1971 c. 40 s. 93; 1971 c. 42, 125; 1971 c. 213 s. 5; 1971 c. 215, 217, 307; 1973 c. 62, 90, 147; 1973 c. 333 ss. 106g, 106h, 106j, 201w; 1975 c. 39; 1975 c. 223 s. 28; 1975 c. 224 ss. 54h, 56 to 59m; 1975 c. 383 s. 4; 1975 c. 411; 1977 c. 29, 418; 1979 c. 34 ss. 837f to 838, 2102 (20) (a); 1979 c. 102, 177, 221, 355; 1981 c. 20 ss. 839 to 854, 2202 (20) (r); 1981 c. 93, 317; 1983 a. 27 ss. 1046 to 1062m, 2200 (42); 1983 a. 245, 447, 527; 1985 a. 29 ss. 1026m to 1031d, 3200 (23), (56), 3202 (27); 1985 a. 120, 176, 269; 1985 a. 332 ss. 91, 251 (5), 253; 1985 a. 340; 1987 a. 27 ss. 989r to 1000s, 2247, 3202 (24); 1987 a. 186, 307, 339, 399; 1987 a. 403 s. 256; 1987 a. 413; 1989 a. 6, 1989 a. 31 ss. 1402 to 1452g, 2909g, 2909i; 1989 a. 107, 173, 310, 336, 351, 359; 1991 a. 22, 39, 80, 250, 269, 315, 316; 1993 a. 16 ss. 1362g to 1403, 3883; 1993 a. 27, 107, 112, 183, 212, 246, 269, 335, 356, 437, 446, 469; 1995 a. 20; 1995 a. 27 ss. 2947 to 3002r, 7299, 9126 (19), 9130 (4), 9145 (1); 1995 a. 191, 216, 225, 289, 303, 398, 417, 457; 1997 a. 3, 13, 27, 114, 175, 191, 237, 252, 293; 1999 a. 9, 63, 103, 180, 185; 2001 a. 13, 16, 35, 38, 57, 67, 104, 109.

13 SECTION 9. 49.45 (30m) (a) 1. of the statutes is created to read:
 14 49.45 (30m) (a) 1. Services under s. 51.06 (1m) (d).

15 SECTION 10. 49.45 (30m) (a) 2. of the statutes is created to read:
 16 49.45 (30m) (a) 2. Services in an intermediate care facility for the mentally
 17 retarded, as defined in s. 46.278 (1m) (am).

18 SECTION 11. 49.45 (30m) (a) 3. of the statutes is created to read:
 19 49.45 (30m) (a) 3. Services for which payment is permitted under sub. (6c) (d)
 20 2. that are provided in a nursing facility, as defined in s. 46.279 (2) (b).

21 SECTION 12. 49.45 (30m) (b) of the statutes is created to read:
 22 49.45 (30m) (b) No payment under this section may be made for services
 23 specified under par. (a) 1. unless the individual who receives the services is

1 protectively placed under s. 55.06 (9) (a) or is placed under an emergency placement
2 under s. 55.06 (11) (a) or a temporary placement under s. 55.06 (11) (c).

3 SECTION 13. 49.45 (30m) (c) of the statutes is created to read:

4 49.45 (30m) (c) No payment that is provided by the federal government under
5 this section may be made for services specified under par. (a) 2. or 3. that are provided
6 to an individual who was placed in or admitted to the intermediate facility or nursing
7 facility unless one of the following applies: ar

8 1. The placement or admission complied with the requirements of s. 46.279.

9 2. For an individual who was protectively placed under ch. 55 at any time,
10 ~~unless~~ any annual review that is conducted under s. 55.06 (10) (a) 1. after December
11 31, 2003, complies with the requirements of s. 55.06 (10) (a) 2.

12 SECTION 14. 49.46 (2) (a) 4. c. of the statutes is amended to read:

13 49.46 (2) (a) 4. c. Skilled nursing home services other than in an institution for
14 mental diseases, except as limited under s. 49.45 (6c) and (30m) (b) and (c).

History: 1971 c. 125, 211, 215; 1973 c. 90, 147; 1975 c. 39; 1977 c. 29 ss. 592m, 1656 (18); 1977 c. 389, 418; 1979 c. 34, 221; 1981 c. 20, 93, 317; 1983 a. 27; 1983 a. 189
s. 329 (5); 1983 a. 245 ss. 10, 15; 1983 a. 538; 1985 a. 29, 120, 176, 253; 1987 a. 27, 307, 339, 399, 413; 1989 a. 9; 1989 a. 31 ss. 1454d to 1460 and 2909g, 2909i; 1989 a. 122,
173, 333, 336, 351; 1991 a. 39, 178, 269, 316; 1993 a. 16, 99, 269, 277, 446, 450, 491; 1995 a. 27, 77, 164, 289, 303, 457; 1997 a. 27, 35, 105, 237; 1999 a. 9; 2001 a. 16.

15 SECTION 15. 49.46 (2) (b) 6. a of the statutes is amended to read:

16 49.46 (2) (b) 6. a. Intermediate care facility services other than in an institution
17 for mental diseases, except as limited under s. 49.45 (30m) (b) and (c).

History: 1971 c. 125, 211, 215; 1973 c. 90, 147; 1975 c. 39; 1977 c. 29 ss. 592m, 1656 (18); 1977 c. 389, 418; 1979 c. 34, 221; 1981 c. 20, 93, 317; 1983 a. 27; 1983 a. 189
s. 329 (5); 1983 a. 245 ss. 10, 15; 1983 a. 538; 1985 a. 29, 120, 176, 253; 1987 a. 27, 307, 339, 399, 413; 1989 a. 9; 1989 a. 31 ss. 1454d to 1460 and 2909g, 2909i; 1989 a. 122,
173, 333, 336, 351; 1991 a. 39, 178, 269, 316; 1993 a. 16, 99, 269, 277, 446, 450, 491; 1995 a. 27, 77, 164, 289, 303, 457; 1997 a. 27, 35, 105, 237; 1999 a. 9; 2001 a. 16.

18 SECTION 16. 55.01 (4g) of the statutes is created to read:

19 55.01 (4g) "Intermediate facility" has the meaning given in s. 46.279 (1) (a). Λ

20 SECTION 17. 55.01 (4t) of the statutes is created to read:

21 55.01 (4t) "Nursing facility" has the meaning given in s. 46.279 (1) (b). Λ

22 SECTION 18. 55.06 (5) of the statutes is amended to read:

1 55.06 (5) Notice of a petition for placement shall be served upon the person
2 sought to be placed, by personal service, at least 10 days prior to the time set for a
3 hearing. Upon service of the notice, the person sought to be protected shall be
4 informed of the complete contents of the notice. The person serving the notice shall
5 return a certificate to the circuit judge verifying that the petition has been delivered
6 and notice given. The notice shall include the names of all petitioners. Notice shall
7 also be served personally or by mail upon the person's guardian ad litem, legal
8 counsel, guardian, if any, presumptive adult heirs, and upon other persons who have
9 physical custody of the person to be protected whose names and addresses are known
10 to the petitioner or can with reasonable diligence be ascertained, to any
11 governmental or private body or group from whom the person to be protected is
12 known to be receiving aid, and to such other persons or entities as the court may
13 require. Notice shall also be served personally or by mail upon the department at
14 least 10 days prior to the time set for hearing if the person sought to be protected may
15 be placed in a center for the developmentally disabled. ~~The department shall be~~
16 ~~allowed to submit oral or written testimony regarding such a placement at the~~
17 ~~hearing.~~ Notice shall also be served personally or by mail, at least 10 days before the
18 time set for hearing, upon the county department that is participating in the
19 program under s. 46.278 of the county of residence of the person sought to be
20 protected, if the person may be placed in an intermediate facility or if the person has
21 a developmental disability and may be placed in a nursing facility. The incompetent
22 or proposed incompetent is presumed able to attend the hearing unless, after a

is a developmentally disabled person

1 personal interview, the guardian ad litem certifies to the court that the person is
2 unable to attend.

History: 1973 c. 284; 1975 c. 41; 1975 c. 94 s. 3; 1975 c. 189 s. 99 (2); 1975 c. 393, 421, 422; 1975 c. 430 ss. 67 to 71, 80; 1977 c. 26, 299, 428; 1977 c. 449 s. 497; 1979 c. 32 s. 92 (1); 1979 c. 110 s. 60 (1); 1979 c. 221; 1981 c. 314 s. 146; 1981 c. 379; 1983 a. 27; 1983 a. 189 s. 329 (19); 1983 a. 219; 1985 a. 29 ss. 1143, 3202 (23); 1987 a. 366; 1989 a. 31, 359; 1991 a. 269; 1993 a. 187, 451; 1995 a. 27, 92; 1997 a. 237, 283; 2001 a. 109.

3 **SECTION 19. 55.06 (8) (intro.)** of the statutes is amended to read:

4 **55.06 (8) (intro.)** Before ordering the protective placement of any individual,
5 the court shall direct a comprehensive evaluation of the person in need of placement,
6 if such an evaluation has not already been made. The court may utilize available
7 multidisciplinary resources in the community in determining the need for
8 placement. The board designated under s. 55.02 or an agency designated by it shall
9 cooperate with the court in securing available resources. Where applicable by reason
10 of the particular disability, the appropriate board designated under s. 55.02 or an
11 agency designated by it having responsibility for the place of legal residence of the
12 individual as provided in s. 49.001 (6) shall make a recommendation for placement.
13 If the court is considering placement of the individual in a center for the
14 developmentally disabled, the court shall request a statement or testimony from the
15 department regarding whether the placement is appropriate for the person's needs
16 and whether it is consistent with the purpose of the center under s. 51.06 (1) ~~unless~~
17 ~~testimony was provided by the department under sub. (5).~~ If the court is considering
18 placement of the individual in an intermediate facility or if the individual ~~has a~~
19 ~~developmental disability~~ and the court is considering placement of the individual in
20 a nursing facility, the court shall request a statement or testimony from the county
21 department of the individual's county of residence that is participating in the
22 program under s. 46.278 as to whether the individual's needs could be met in a
23 noninstitutional setting. A copy of the comprehensive evaluation shall be provided
24 to the guardian, the guardian ad litem, and to the individual or attorney at least 96

is a developmentally disabled person

1 hours in advance of the hearing to determine placement. The court or the
2 cooperating agency obtaining the evaluation shall request appropriate information
3 which shall include at least the following:

History: 1973 c. 284; 1975 c. 41; 1975 c. 94 s. 3; 1975 c. 189 s. 99 (2); 1975 c. 393, 421, 422; 1975 c. 430 ss. 67 to 71, 80; 1977 c. 26, 299, 428; 1977 c. 449 s. 497; 1979 c. 32 s. 92 (1); 1979 c. 110 s. 60 (1); 1979 c. 221; 1981 c. 314 s. 146; 1981 c. 379; 1983 a. 27; 1983 a. 189 s. 329 (19); 1983 a. 219; 1985 a. 29 ss. 1143, 3202 (23); 1987 a. 366; 1989 a. 31, 359; 1991 a. 269; 1993 a. 187, 451; 1995 a. 27, 92; 1997 a. 237, 283; 2001 a. 109.

4 **SECTION 20.** 55.06 (9) (a) of the statutes is amended to read:

5 55.06 (9) (a) The court may order protective services under s. 55.05 (2) (d) as
6 an alternative to placement. When ordering placement, the court, on the basis of the
7 evaluation and other relevant evidence, shall order the appropriate board specified
8 under s. 55.02 or an agency designated by it to protectively place the individual.
9 Placement by the appropriate board or designated agency is subject to s. 46.279 and
10 shall be made in the least restrictive environment consistent with the needs of the
11 person to be placed and with the placement resources of the appropriate board
12 specified under s. 55.02. Factors to be considered in making protective placement
13 shall include the needs of the person to be protected for health, social, or
14 rehabilitative services; the level of supervision needed; the reasonableness of the
15 placement given the cost and the actual benefits in the level of functioning to be
16 realized by the individual; the limits of available state and federal funds and of
17 county funds required to be appropriated to match state funds; and the
18 reasonableness of the placement given the number or projected number of
19 individuals who will need protective placement and given the limited funds
20 available. The county may not be required to provide funding, in addition to its funds
21 that are required to be appropriated to match state funds, in order to protectively
22 place an individual. Placement under this section does not replace commitment of
23 a person in need of acute psychiatric treatment under s. 51.20 or 51.45 (13).
24 Placement Subject to s. 46.279, placement may be made to such facilities as nursing

who is a developmentally disabled person

1 homes, public medical institutions, centers for the developmentally disabled under
 2 the requirements of s. 51.06 (3), foster care services and other home placements, or
 3 to other appropriate facilities but may not be made to units for the acutely mentally
 4 ill. If the appropriate board or designated agency proposes to place ~~an individual~~
 5 ~~with a developmental disability~~ in an intermediate facility or in a nursing facility
 6 under an order under this paragraph, the board or agency shall provide written
 7 notice to the county department of the individual's county of residence that is
 8 participating in the program under s. 46.278, at least 90 days before the placement
 9 is made. The county department so notified shall develop a plan under s. 46.279 (4)
 10 and furnish the plan to the board or agency and to the individual's guardian. The
 11 board or agency shall place the individual in a noninstitutional community setting
 12 in accord with the plan unless the board or agency finds that to do so is not in the
 13 individual's best interests or unless the individual or the individual's guardian
 14 rejects the plan. The prohibition of placements in units for the acutely mentally ill
 15 does not prevent placement by a court for short-term diagnostic procedures under
 16 par. (d). Placement in a locked unit shall require a specific finding of the court as to
 17 the need for such action. A placement facility may transfer a patient from a locked
 18 unit to a less restrictive environment without court approval.

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History: 1973 c. 284; 1975 c. 41; 1975 c. 94 s. 3; 1975 c. 189 s. 99 (2); 1975 c. 393, 421, 422; 1975 c. 430 ss. 67 to 71, 80; 1977 c. 26, 299, 428; 1977 c. 449 s. 497; 1979 c. 32 s. 92 (1); 1979 c. 110 s. 60 (1); 1979 c. 221; 1981 c. 314 s. 146; 1981 c. 379; 1983 a. 27; 1983 a. 189 s. 329 (19); 1983 a. 219; 1985 a. 29 ss. 1143, 3202 (23); 1987 a. 366; 1989 a. 31, 359; 1991 a. 269; 1993 a. 187, 451; 1995 a. 27, 92; 1997 a. 237, 283; 2001 a. 109.(c) If an individual is under a protective placement order under ch. 55, the court shall consider a plan under par. (b) on the individual's behalf. The court may reject the plan only if the court determines, after a hearing, that it is not in the individual's best interests to receive home or community-based care in a noninstitutional community setting in accordance with the plan.

19 **SECTION 21.** 55.06 (9) (b) of the statutes is amended to read:
 20 55.06 (9) (b) Transfer Subject to s. 46.279, transfer may be made between
 21 placement units or from a placement unit to a medical facility other than those
 22 specified in pars. (c) to (e) by a guardian or placement facility without approval by
 23 a court. When transfer is made by a placement facility, 24 hours' prior written notice

1 of the transfer shall be provided to the guardian, when feasible. If it is not feasible
 2 to notify the guardian in advance, written notice shall be provided immediately upon
 3 transfer, and notice shall also be provided to the court and to the board designated
 4 under s. 55.02 or an agency designated by it within a reasonable time, not to exceed
 5 48 hours from the time of the transfer. Upon petition to a court by a guardian, ward,
 6 or attorney, or other interested person specifying objections to a transfer, the court
 7 shall order a hearing, within 96 hours after filing of the petition, to determine
 8 whether there is probable cause to believe that the transfer is consistent with the
 9 requirements specified in par. (a) and is necessary for the best interests of the ward.

10 The court shall notify the ward, guardian, and petitioner of the time and place of the
 11 hearing, and a guardian ad litem shall be appointed to represent the ward. If the
 12 person is an adult who is indigent, the county of legal settlement shall be liable for
 13 guardian ad litem fees. If the person is a child, the person's parents or the county
 14 of legal settlement shall be liable for guardian ad litem fees as provided in s. 48.235

15 (8). The petitioner, ward, and guardian shall have the right to attend, and to present
 16 and cross-examine witnesses.

History: 1973 c. 284; 1975 c. 41; 1975 c. 94 s. 3; 1975 c. 189 s. 99 (2); 1975 c. 393, 421, 422; 1975 c. 430 ss. 67 to 71, 80; 1977 c. 26, 299, 428; 1977 c. 449 s. 497; 1979 c. 32 s. 92 (1); 1979 c. 110 s. 60 (1); 1979 c. 221; 1981 c. 314 s. 146; 1981 c. 379; 1983 a. 27; 1983 a. 189 s. 329 (19); 1983 a. 219; 1985 a. 29 ss. 1143, 3202 (23); 1987 a. 366; 1989 a. 31, 359; 1991 a. 269; 1993 a. 187, 451; 1995 a. 27, 92; 1997 a. 237, 283; 2001 a. 109.

~~***Note: How can this work in time frame?***~~

17 SECTION 22. 55.06 (9) (c) of the statutes is amended to read:

18 55.06 (9) (c) Transfer Subject to s. 46.279, transfer to a more restrictive
 19 placement, including a locked unit, may be made with notice to the guardian, the
 20 court and appropriate board designated under s. 55.02 or an agency designated by
 21 it in the manner prescribed in par. (b). Upon petition by a guardian, ward or attorney,

1 or other interested person specifying objections to the transfer, the court shall order
2 a hearing as provided in par. (b).

is a developmentally disabled person

History: 1973 c. 284; 1975 c. 41; 1975 c. 94 s. 3; 1975 c. 189 s. 99 (2); 1975 c. 393, 421, 422; 1975 c. 430 ss. 67 to 71, 80; 1977 c. 26, 299, 428; 1977 c. 449 s. 497; 1979 c. 32 s. 92 (1); 1979 c. 110 s. 60 (1); 1979 c. 221; 1981 c. 314 s. 146; 1981 c. 379; 1983 a. 27; 1983 a. 189 s. 329 (19); 1983 a. 219; 1985 a. 29 ss. 1143, 3202 (23); 1987 a. 366; 1989 a. 31, 359; 1991 a. 269; 1993 a. 187, 451; 1995 a. 27, 92; 1997 a. 287, 283; 2001 a. 109.

3 **SECTION 23.** 55.06 (10) (a) of the statutes is renumbered 55.06 (10) (a) 1.

4 **SECTION 24.** 55.06 (10) (a) 2. of the statutes is created to read:

5 55.06 (10) (a) 2. If the person is placed in an intermediate facility or ~~the~~

6 ~~person has a developmental disability~~ and is placed in a nursing facility, the agency

7 that is responsible for the protective placement shall notify in writing the county

8 department of the county of residence of the person that is participating in the

9 program under s. 46.278, at least 90 days before the review. The county department

10 so notified shall develop a plan under s. 46.279 (4) and furnish the plan to the court

11 that ordered the placement and to the person's guardian, ~~together with the results~~

12 ~~of the review under subd. 1.~~ The court shall order that the person be transferred to

13 the noninstitutional community setting in accordance with the plan unless the court

14 finds that to do so is not in the person's best interests or unless the person or the

15 person's guardian rejects the transfer.

16 **SECTION 25.** 55.06 (11) (c) of the statutes is amended to read:

17 55.06 (11) (c) Upon a finding of probable cause under par. (b), the court may

18 order temporary placement up to 30 days pending the hearing for a permanent

19 placement, or the court may order such protective services as may be required. If an

20 individual with developmental disability is, under this paragraph, ordered to be

21 temporarily placed in an intermediate facility or in a nursing facility, and if at the

22 hearing for permanent placement the court orders that the individual be protectively

23 placed, the court may, before permanent placement, extend the temporary placement

24 order for not more than 90 days if necessary for the county department that is

who is a developmentally disabled person

1 participating in the program under s. 46.278 to develop the plan required under s.
2 46.279 (4).

History: 1973 c. 284; 1975 c. 41; 1975 c. 94 s. 3; 1975 c. 189 s. 99 (2); 1975 c. 393, 421, 422; 1975 c. 430 ss. 67 to 71, 80; 1977 c. 26, 299, 428; 1977 c. 449 s. 497; 1979 c. 32 s. 92 (1); 1979 c. 110 s. 60 (1); 1979 c. 221; 1981 c. 314 s. 146; 1981 c. 379; 1983 a. 27; 1983 a. 189 s. 329 (19); 1983 a. 219; 1985 a. 29 ss. 1143, 3202 (23); 1987 a. 366; 1989 a. 31, 359; 1991 a. 269; 1993 a. 187, 451; 1995 a. 27, 92; 1997 a. 237, 283; 2001 a. 109.

***NOTE: Does this work?

3 SECTION 26. 55.06 (12) of the statutes is amended to read:

4 55.06 (12) When Subject to s. 46.279, if a ward lives with the his or her
5 guardian, the guardian may make temporary placement of the ward. ~~Placement may~~
6 ~~be made,~~ to provide the guardian with a vacation or to temporarily release the
7 guardian for a family emergency. ~~Such~~ The placement may be made for not more
8 than 30 days, but the court may, upon application, grant an additional period not to
9 exceed 60 days in all. The application shall include such information as the court
10 may reasonably ~~deem~~ determine is necessary. ~~When reviewing the application~~ If the
11 court grants the application, the court shall provide the least restrictive placement
12 ~~which that~~ is consistent with the needs of the ward.

History: 1973 c. 284; 1975 c. 41; 1975 c. 94 s. 3; 1975 c. 189 s. 99 (2); 1975 c. 393, 421, 422; 1975 c. 430 ss. 67 to 71, 80; 1977 c. 26, 299, 428; 1977 c. 449 s. 497; 1979 c. 32 s. 92 (1); 1979 c. 110 s. 60 (1); 1979 c. 221; 1981 c. 314 s. 146; 1981 c. 379; 1983 a. 27; 1983 a. 189 s. 329 (19); 1983 a. 219; 1985 a. 29 ss. 1143, 3202 (23); 1987 a. 366; 1989 a. 31, 359; 1991 a. 269; 1993 a. 187, 451; 1995 a. 27, 92; 1997 a. 237, 283; 2001 a. 109.

13 SECTION 9324. Initial applicability; health and family services.

14 (1) PLACEMENTS AND ADMISSIONS TO INTERMEDIATE AND NURSING FACILITIES. The
15 treatment of sections 46.279, 55.01 (4g) and (4t), 55.06 (5), (8) (intro.), (9) (a), (b), and
16 (c), ~~(10) (a) and (b)~~ (11) (c), and (12) of the statutes first apply to protective
17 placements initiated and admissions to intermediate and nursing facilities sought the renumbering of section
18 on January 1, 2004. SS. 06 (10) (a) of the statutes, and the creation of section 55.06 (10) (a) 2. of the statutes

19 (2) PREADMISSION SCREENING AND RESIDENT REVIEW. The treatment of sections
20 49.45 (6c) (b) (c) (intro.), 1., 2., and 3. of the statutes first and applies to a screening or
21 resident review performed on January 1, 2004.

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

1 (1) PLACEMENTS AND ADMISSIONS TO INTERMEDIATE AND NURSING FACILITIES. The
 2 treatment of sections 46.278 (6) (f), 46.279, 49.45 (6c) (b) ^{and} (c) (intro.), 1., 2., and 3. ~~and~~
 3 ~~(30m) (a) (intro.), 1., 2., and 3., (b), and (c)~~ 49.46 (2) (a) 4. c. and (b) 6. a., 55.01 (4g)
 4 and (4t), 55.06 (5), (8) (intro.), (9) (a), (b), and (c), ~~(10) (a) and (a) (2)~~ (11) (c), and (12)
 5 ^{and} of the statutes takes effect on January 1, 2004.

(END)

D-NOTE

, the renumbering of section ~~49.45 (30m)~~ and 55.06 (10)(a)
 of the statutes, and the creation of sections
 49.45 (30m) (a) 1., 2., ^{and} 3., (b), and (c) and
 55.06 (10) (a) 2. of the statutes

the renumbering and amendment
 of section 49.45 (30m) of the
 statutes;



2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0209/P1ins
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- 1 SECTION 1. 49.43 (7m) of the statutes is created to read:
- 2 49.43 (7m) "Intermediate facility" has the meaning given in s. 46.279 (1) (a). ✓
- 3 SECTION 2. 49.43 (8m) of the statutes is created to read:
- 4 49.43 (8m) "Nursing facility" has the meaning given in s. 46.279 (1) (b). ✓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0209/P1dn
DAK:kjf&cjs:rs

November 20, 2002

To Robert Blaine and Anne Miller:

1. The DHFS proposal repeals s. 46.278 (6) (f), stats. I am puzzled by this, since that provision requires delicensing of county-owned ICFMR beds for persons who are relocated to the community, and since the stated rationale for the proposal as a whole is a restriction on admission to ICFMRs.
2. I have largely reworked s. 46.279, as proposed, with the following changes:
 - a. I have made separate subsections for definitions, placements, and admissions to intermediate facilities, admissions to nursing facilities, development of plans for home or community-based care, and exceptions.
 - b. Because s. 46.279 (2) (c), as proposed, was both redundant to and in conflict with the amendment to s. 55.06 (9) (a), stats., and the creation of s. 55.06 (10) (a) 2. and because this provision more appropriately belongs as a directive to the court under ch. 55, stats., I eliminated it and incorporated it into s. 55.06 (9) (a) and (10) (a) 2., stats. See also Drafter's Note No. 6.
 - c. Section 46.279 (2) under this draft permits an individual to reject a plan developed under s. 46.279 (2). I have added that option to s. 55.06 (9) (a) and (10) (a) 2., stats. I also added the individual's guardian as a person who may reject on behalf of the individual. Please review.
 - d. As proposed and drafted, s. 46.279 (4) requires a county department to develop a plan for providing home or community-based care within 90 days after receiving written notice of a prospective admission to an intermediate facility. I have tied this language to the notice required to be provided under s. 55.06 (5). Should the intermediate facility also be required to provide notice to the county department if a person applies for admission, or would the board or agency under s. 55.06 (9) (a) always be involved?
 - e. What happens if the county department develops a plan under s. 46.279 (4), but there are no available providers? Conversely, what happens if the county department is unable to develop a plan because there are no available providers?
 - f. Are s. 46.279 (2) and (4) in the draft supposed to apply only to individuals with developmental disabilities or to any individuals?

3. The language proposed for the amendment to s. 49.45 (6c) (b) and the creation of s. 49.45 (6c) (c) 3. created a logical problem: if the department or entity determines that the individual who is screened requires *facility* care, that decision logically precludes consideration of whether or not the individual should be treated at home or in the community. I changed the wording to require a determination as to whether the individual would require facility care if he or she were to receive services in an intermediate facility or under a plan. This language seems to eliminate the logical problem. In addition, I could not tell from the language proposed whether the department's or entity's determination about where the individual's need for care may be met was supposed to take place before or after consideration of a plan developed under s. 46.279 (4); if it is the latter, a cross-reference under s. 46.279 (4) to s. 49.45 (6c) (b) should be drafted and the department or entity should be required to provide the required notice. Please clarify.

4. In s. 49.45 (30m) (b), the DHFS proposed language refers to par. (a). I took that reference to be to s. 49.45 (30m) (a) 1.; is that what you intended? In addition, the proposed language refers to "no payment under this section." It is unclear what that phrase is intended to mean; read one way, it might nullify the requirements for county payment under s. 49.45 (30m) (a), and thus leave an individual who was incorrectly placed without any funding. I have inferred that it refers to payment that is provided by the federal government and have drafted accordingly. Is that correct? Lastly, s. 49.45 (3m) (a) 2., as proposed and drafted, refers to the federal definition of an ICFMR. Doesn't that include a state center for the developmentally disabled? Are you proposing that counties pay the nonfederal MA portion for all persons in the state centers? If so, why would you need s. 49.45 (30m) (a) 1.? Please clarify, and review all my changes to s. 49.45 (30m) from the material proposed.

5. Note the language that I struck in s. 55.06 (5), stats.; I did this because that subsection is concerned with notice, not procedures at hearing. I added "or testimony" to s. 55.06 (8) (intro.), stats., in the fifth sentence. I also moved language about the county department's submittal of oral or written testimony that was proposed for s. 55.06 (5), stats., to s. 55.06 (8) (intro.), stats.

6. The amendment of s. 55.06 (9) (a), stats., is tied by cross-reference to s. 46.279 (4), which requires a county department to develop a plan to provide home or community-based services within 90 days after receipt of notice. Section 55.06 (9) (a), stats., has no time requirements for the period during which the board or agency would consider placing a person in an intermediate facility or nursing facility — conceivably, then, the board or agency could make the placement before the county department has prepared a plan. Therefore, I required that the board or agency provide notice to the county department at least 90 days before making placement; is that what you want?

7. The DHFS proposed material makes no mention of language in chs. 51 and 55, resulting from 1995 Wisconsin Act 92, that limits expenditure of county moneys to those funds "required to be appropriated to match state funds." Since s. 49.45 (30m), as changed under this draft, requires no expenditure of *state* funds, I think it cannot be argued that the changes to s. 49.45 (30m) constitute a requirement that county moneys be appropriated to match state funds; thus, the changes in this draft are in

conflict with the language resulting from 1995 Wisconsin Act 92. In addition, the Wisconsin Supreme Court decision in *Dunn County v. Judy K.*, 254 Wis. 2d 383 (2002), in interpreting that language, requires that counties make an affirmative showing of good faith, reasonable effort to find and fund appropriate placement. Left unanswered under that decision is what happens if, after a county makes such a showing, the county does not come up with funding. I think that the language, for instance, in s. 55.06 (9) (a), stats., should at least be modified to state that the county may not be required to provide funding in addition to its funds that are required to be appropriated to match state or federal funds — actually, that change is applicable to current law, under s. 49.45 (30m), stats. Please review and indicate whether additional changes should be made.

8. In s. 55.06 (11) (c), I changed the time in which a county would be able to develop a plan to 90 days, rather than 60 days, to conform to other requirements. Okay?

9. I have included, for now, the proposed amendments to s. 55.06 (9) (b) and (c) and (12), stats., that make transfers and temporary placements by guardians subject to s. 46.279 (so that the transfers and placements cannot take place unless the county department develops a plan, etc.) However, I don't believe that these restrictions work, because s. 46.279 (4) permits a county department 90 days to develop a community care plan; the placements and transfers are for temporary or emergency situations, many of which would not be possible to anticipate. The time limitation is unrealistic for this development. In addition, although it is a more minor problem, a mechanism for notifying the county department about the transfers or placements would have to be drafted.

10. In s. 55.06 (10) (a) 2., the language proposed required that the county department furnish a community care plan to the court, together with the results of the *Watts* review. However, the agency conducting the *Watts* review may not be the county department; and the requirement to furnish the *Watts* review to the court is redundant to s. 55.06 (10) (a) (renumbered s. 55.06 (10) (a) 1.); therefore, I have eliminated the requirement.

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0209/P1dn
DAK:kjf&cjs:rs

November 20, 2002

To Robert Blaine and Anne Miller:

- ok as is*
1. The DHFS proposal repeals s. 46.278 (6) (f), stats. I am puzzled by this, since that provision requires delicensing of county-owned ICFMR beds for persons who are relocated to the community, and since the stated rationale for the proposal as a whole is a restriction on admission to ICFMRs.
 2. I have largely reworked s. 46.279, as proposed, with the following changes:
 - ok as is* ✓ a. I have made separate subsections for definitions, placements, and admissions to intermediate facilities, admissions to nursing facilities, development of plans for home or community-based care, and exceptions.
 - ✓ b. Because s. 46.279 (2) (c), as proposed, was both redundant to and in conflict with the amendment to s. 55.06 (9) (a), stats., and the creation of s. 55.06 (10) (a) 2. and because this provision more appropriately belongs as a directive to the court under ch. 55, stats., I eliminated it and incorporated it into s. 55.06 (9) (a) and (10) (a) 2., stats. See also Drafter's Note No. 6.
 - ✓ c. Section 46.279 (2) under this draft permits an individual to reject a plan developed under s. 46.279 (2). I have added that option to s. 55.06 (9) (a) and (10) (a) 2., stats. I also added the individual's guardian as a person who may reject on behalf of the individual. Please review.
 - ✓ d. As proposed and drafted, s. 46.279 (4) requires a county department to develop a plan for providing home or community-based care within 90 days after receiving written notice of a prospective admission to an intermediate facility. I have tied this language to the notice required to be provided under s. 55.06 (5). Should the intermediate facility also be required to provide notice to the county department if a person applies for admission, or would the board or agency under s. 55.06 (9) (a) always be involved?
 - ok as is* ✓ e. What happens if the county department develops a plan under s. 46.279 (4), but there are no available providers? Conversely, what happens if the county department is unable to develop a plan because there are no available providers?
 - ✓ f. Are s. 46.279 (2) and (4) in the draft supposed to apply only to individuals with developmental disabilities or to any individuals?

✓ 3. The language proposed for the amendment to s. 49.45 (6c) (b) and the creation of s. 49.45 (6c) (c) 3. created a logical problem: if the department or entity determines that the individual who is screened requires *facility* care, that decision logically precludes consideration of whether or not the individual should be treated at home or in the community. I changed the wording to require a determination as to whether the individual would require facility care if he or she were to receive services in an intermediate facility or under a plan. This language seems to eliminate the logical problem. In addition, I could not tell from the language proposed whether the department's or entity's determination about where the individual's need for care may be met was supposed to take place before or after consideration of a plan developed under s. 46.279 (4); if it is the latter, a cross-reference under s. 46.279 (4) to s. 49.45 (6c) (b) should be drafted and the department or entity should be required to provide the required notice. Please clarify.

✓ 4. In s. 49.45 (30m) (b), the DHFS proposed language refers to par. (a). I took that reference to be to s. 49.45 (30m) (a) 1.; is that what you intended? In addition, the proposed language refers to "no payment under this section." It is unclear what that phrase is intended to mean; read one way, it might nullify the requirements for county payment under s. 49.45 (30m) (a), and thus leave an individual who was incorrectly placed without any funding. I have inferred that it refers to payment that is provided by the federal government and have drafted accordingly. Is that correct? Lastly, s. 49.45 (3m) (a) 2., as proposed and drafted, refers to the federal definition of an ICFMR. Doesn't that include a state center for the developmentally disabled? Are you proposing that counties pay the nonfederal MA portion for all persons in the state centers? If so, why would you need s. 49.45 (30m) (a) 1.? Please clarify, and review all my changes to s. 49.45 (30m) from the material proposed.

✓ 5. Note the language that I struck in s. 55.06 (5), stats.; I did this because that subsection is concerned with notice, not procedures at hearing. I added "or testimony" to s. 55.06 (8) (intro.), stats., in the fifth sentence. I also moved language about the county department's submittal of oral or written testimony that was proposed for s. 55.06 (5), stats., to s. 55.06 (8) (intro.), stats.

✓ 6. The amendment of s. 55.06 (9) (a), stats., is tied by cross-reference to s. 46.279 (4), which requires a county department to develop a plan to provide home or community-based services within 90 days after receipt of notice. Section 55.06 (9) (a), stats., has no time requirements for the period during which the board or agency would consider placing a person in an intermediate facility or nursing facility — conceivably, then, the board or agency could make the placement before the county department has prepared a plan. Therefore, I required that the board or agency provide notice to the county department at least 90 days before making placement; is that what you want?

✓ 7. The DHFS proposed material makes no mention of language in chs. 51 and 55, resulting from 1995 Wisconsin Act 92, that limits expenditure of county moneys to those funds "required to be appropriated to match state funds." Since s. 49.45 (30m), as changed under this draft, requires no expenditure of *state* funds, I think it cannot be argued that the changes to s. 49.45 (30m) constitute a requirement that county moneys be appropriated to match state funds; thus, the changes in this draft are in

55.06 (9) (a)
except
as provided

conflict with the language resulting from 1995 Wisconsin Act 92. In addition, the Wisconsin Supreme Court decision in *Dunn County v. Judy K.*, 254 Wis. 2d 383 (2002), in interpreting that language, requires that counties make an affirmative showing of good faith, reasonable effort to find and fund appropriate placement. Left unanswered under that decision is what happens if, after a county makes such a showing, the county does not come up with funding. I think that the language, for instance, in s. 55.06 (9) (a), stats., should at least be modified to state that the county may not be required to provide funding in addition to its funds that are required to be appropriated to match state or federal funds — actually, that change is applicable to current law, under s. 49.45 (30m), stats. Please review and indicate whether additional changes should be made.

change to 90 8. In s. 55.06 (11) (c), I changed the time in which a county would be able to develop a plan to 90 days, rather than 60 days, to conform to other requirements. Okay?

9. I have included, for now, the proposed amendments to s. 55.06 (9) (b) and (c) and (12), stats., that make transfers and temporary placements by guardians subject to s. 46.279 (so that the transfers and placements cannot take place unless the county department develops a plan, etc.) However, I don't believe that these restrictions work, because s. 46.279 (4) permits a county department 90 days to develop a community care plan; the placements and transfers are for temporary or emergency situations, many of which would not be possible to anticipate. The time limitation is unrealistic for this development. In addition, although it is a more minor problem, a mechanism for notifying the county department about the transfers or placements would have to be drafted.

ok 10. In s. 55.06 (10) (a) 2., the language proposed required that the county department furnish a community care plan to the court, together with the results of the *Watts* review. However, the agency conducting the *Watts* review may not be the county department; and the requirement to furnish the *Watts* review to the court is redundant to s. 55.06 (10) (a) (renumbered s. 55.06 (10) (a) 1.); therefore, I have eliminated the requirement.

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

12/10/02
-0209/P1

Sue Jones, Anne Miller, Dave Lund,
Neil Gebhart, Robert Blawie

Drafter's Note

✓ 1. 150.34 will still operate

✓ 2. ✓ a. ok

✓ b. ok

✓ c. No; if indiv. rejects, ct. must take into
consideration in deciding to reject

✓ d. Yes

✓ e. okay - problem is not avail. providers, it's funding

✓ f. Only dd

3. ✓ level of care that ~~can~~ ^{is} provided in a facility
that can be provided in community

✓ Co does assessment to determine level of
care (inst. or comm.); develop support plan
~~so~~ to determine if can safely develop
community plan; then to visit or
develop community plan [DAK: I think this means
S. 49.45(6c) 3. work as is]

✓ 4. ✓ par. (a) - p. 6, 11B

~~There should be an exception for kids that need to get back to the~~

✓ p. 6, ll. 11 + 12 - should except state dd centers

✓ ~~5~~ 7. ok

9. 55.06 (9) (b) + (c)

55.06(12) - Neil thinks Watts makes unconstit
~~it~~ may need to repeal

10. Watts review is always done by 60.

✓ 6. Notice is not necess. - is same entity

✓ 8. 60 days is ok.

1/23/03 Phone conversation w/ Neil Gebhart

✓ 6. Went through my change to 46.279(4)
re 55.06(9)(a); seems ok to him
+ 49.45(6c)(c) 3.

✓ 7. Change 55.06(9)(a) - DAK: also need to amend
55.045 + 55.001

✓ 9. Deleted and to s. 55.06(12)

Kennedy, Debora

From: Blaine, Robert
Sent: Wednesday, December 04, 2002 8:13 AM
To: Miller, Anne
Cc: Kennedy, Debora
Subject: RE: FW: LRB Draft: 03-0209/P1 Restrict admissions to ICF-MRs and nursing homes; increase access to

Yes, that would be fine. This week is bad for me. Next week is for the most part free, with the exception of Wednesday which should be avoided. Hopefully we can do it next week -- I hate to put this off any longer.

Thanks,
Robert

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

From: Miller, Anne
Sent: Wednesday, December 04, 2002 8:07 AM
To: Blaine, Robert
Subject: Re: FW: LRB Draft: 03-0209/P1 Restrict admissions to ICF-MRs and nursing homes; increase access to

Hi Robert!

You had sent this one before. I forwarded it to Neil Gebhart who did the stat language request draft. I had also suggested to him that we might want to meet on this one. Would you like me to go ahead then and set up a meeting?
- Anne

>>> Blaine, Robert 12/03/02 04:19PM >>>
Hi Anne --

I've lost track of what drafts I've sent over and which ones I haven't. Please forgive me if this is a duplicate. Again, some lengthy, detailed drafters notes . . .

If it would be easier to meet on this one, let me know and I'll coordinate something.

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

From: Schlueter, Ron
Sent: Thursday, November 21, 2002 12:20 PM
To: Blaine, Robert
Cc: Kraus, Jennifer; Uecker, Deborah; Hanaman, Cathlene; Haugen, Caroline
Subject: LRB Draft: 03-0209/P1 Restrict admissions to ICF-MRs and nursing homes; increase access to community-based services

Following is the PDF version of draft 03-0209/P1.

Kennedy, Debora

From: Miller, Anne
Sent: Tuesday, December 10, 2002 1:17 PM
To: Jones, Sue
Cc: Blaine, Robert; Kennedy, Debora; Lund, C. David; McCabe, Sinikka; Gebhart, Neil
Subject: Re: 55.06 (12)

Sue,

You had thought that temporary placements for guardian vacations were not permitted. Given Neil's determination regarding Watts, is there another mechanism that might disallow these placements?

- Anne Miller

>>> Neil Gebhart 12/10/02 01:06PM >>>

The provisions held unconstitutional by the Watts decision were s. 55.06 (9) (d) and (e), relating to involuntary hospitalization by a guardian. Section 55.06 (12), which authorizes a guardian to "make temporary placement of the ward ... to provide the guardian with a vacation or to temporarily release the guardian for a family emergency," remains good law (or at least constitutional).

Please let me know if you have any questions.

Kennedy, Debora

From: Gebhart, Neil
Sent: Tuesday, December 10, 2002 1:06 PM
To: Kennedy, Debora
Cc: Blaine, Robert; Lund, C. David; Jones, Sue; McCabe, Sinikka; Miller, Anne
Subject: 55.06 (12)

The provisions held unconstitutional by the Watts decision were s. 55.06 (9) (d) and (e), relating to involuntary hospitalization by a guardian. Section 55.06 (12), which authorizes a guardian to "make temporary placement of the ward ... to provide the guardian with a vacation or to temporarily release the guardian for a family emergency," remains good law (or at least constitutional).

Please let me know if you have any questions.