



SOON - In edit 1/26  
State of Wisconsin  
2003 - 2004 LEGISLATURE  
D-NOTE

LRB-0209/P2  
DAK:kjf&cjs  
cmh

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

*don't get cat*

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 (MA) program payment that is not provided by the federal government for services to individuals in state centers for the developmentally disabled who are also mentally

with developmental disabilities

ill and exhibit extremely aggressive and challenging behaviors. Under one of the community integration programs, persons with developmental disabilities who are eligible for MA and who formerly resided in, or were diverted from, a state center for the developmentally disabled or other institution, 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.

with developmental disabilities

This bill, beginning January 1, 2004, places restrictions on protective placements and admissions of persons to intermediate 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 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.

or admission

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 if they were to receive services in an intermediate facility or under a plan for home or community care.

Beginning January 1, 2004, the bill prohibits payment of the federal portion of MA for services ~~would be made~~ 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 level of care that

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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:**

1 SECTION 1. 46.278 (6) (f) of the statutes is repealed.

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

3 **46.279 Restrictions on placements and admissions to intermediate**  
4 **and nursing facilities.** (1) DEFINITIONS. In this section:

INSERT 3-4

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

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

9 (2) PLACEMENTS AND ADMISSIONS TO INTERMEDIATE FACILITIES. Except as provided  
10 in sub. (5), no person may place an individual in an intermediate facility and no  
11 intermediate facility may admit <sup>such</sup> an individual unless, before the placement or  
12 admission, a ~~board or agency~~ <sup>court</sup> under s. 55.06 (9) (a) or ~~board under s. 55.08~~ <sup>91</sup> (10) (a)  
13 2. finds that placement ~~by a court~~ under a plan that was developed under sub. (4) is  
14 not in the individual's best interests ~~of the individual or the individual's guardian~~  
15 ~~rejects the plan.~~ INSERT 3-15

16 (3) PLACEMENTS AND ADMISSIONS TO NURSING FACILITIES. Except as provided in  
17 sub. (5), if the department or an entity determines from a screening under s. 49.45  
18 (6c) (b) that an individual requires active treatment for developmental disability, no

with a developmental disability

SECTION 2

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) of the placement or under (10) (a) 2. of the  
8 prospective placement of an individual who is a resident of that county in an  
9 intermediate facility, develop a plan for providing home or community-based care to  
10 the individual in a noninstitutional community setting.

IN SECT 4-10

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).

or (12)

13 SECTION 3. 49.43 (7m) of the statutes is created to read:

14 49.43 (7m) "Intermediate facility" has the meaning given in s. 46.279 (1) (a).

15 SECTION 4. 49.43 (8m) of the statutes is created to read:

16 49.43 (8m) "Nursing facility" has the meaning given in s. 46.279 (1) (b).

17 SECTION 5. 49.45 (6c) (b) of the statutes is amended to read:

↓ strike

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

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1 department has delegated authority shall also assess the individual to determine if  
 2 he or she requires active treatment for developmental disability or active treatment  
 3 for mental illness. If the department or entity determines that the individual  
 4 requires active treatment for developmental disability, the department or entity  
 5 shall determine whether the individual would require facility care if he or she were  
 6 to receive services in an intermediate facility, as defined in s. 46.279(1)(a), or under  
 7 a plan that is developed under s. 46.279 (4).

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

9 49.45 (6c) (c) *Resident review.* (intro.) Except as provided in par. (e), the  
 10 department or an entity to which the department has delegated authority shall  
 11 review every resident of a facility or institution for mental diseases who has a  
 12 developmental disability or mental illness and who has experienced a significant  
 13 change in his or her physical or mental condition to determine if ~~any~~ all of the  
 14 following applies:

15 SECTION 7. 49.45 (6c) (c) 1. of the statutes is amended to read:

16 49.45 (6c) (c) 1. The Whether the resident needs facility care.

17 SECTION 8. 49.45 (6c) (c) 2. of the statutes is amended to read:

18 49.45 (6c) (c) 2. The Whether the resident requires active treatment for  
 19 developmental disability or active treatment for mental illness.

20 SECTION 9. 49.45 (6c) (c) 3. of the statutes is created to read:

21 49.45 (6c) (c) 3. If the department or entity determines under subd. 1. that the  
 22 resident needs facility care and under subd. 2. that the resident requires active  
 23 treatment for developmental disability, whether the resident would require facility  
 24 ~~care if he or she were to receive services~~ in an intermediate facility, as defined in s.  
 25 ~~46.279(1)(a),~~ or under a plan that is developed under s. 46.279 (4).

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1 SECTION 10. 49.45 (30m) of the statutes is renumbered 49.45 (30m) (a) (intro.)  
2 and amended to read:

3 49.45 (30m) (a) (intro.) ~~CERTAIN SERVICES FOR DEVELOPMENTALLY DISABLED.~~ <sup>91</sup> A  
4 county shall provide the portion of the payment that is not provided by the federal  
5 government for all of the following services under s. 51.06 (1m) (d) to individuals with  
6 developmental disability who are eligible for medical assistance that is not provided  
7 by the federal government.:

8 SECTION 11. 49.45 (30m) (a) 1. of the statutes is created to read:

9 49.45 (30m) (a) 1. Services under s. 51.06 (1m) (d).

10 SECTION 12. 49.45 (30m) (a) 2. of the statutes is created to read:

11 49.45 (30m) (a) 2. Services in an intermediate care facility for the mentally  
12 retarded, as defined in s. 46.278 (1m) (am). *other than a state center  
for the developmentally  
disabled*

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

14 49.45 (30m) (a) 3. Services for which payment is permitted under sub. (6c) (d)  
15 2. that are provided in a nursing facility, ~~as defined in s. 46.279 (1m).~~

16 SECTION 14. 49.45 (30m) (b) of the statutes is created to read:

17 49.45 (30m) (b) No payment under this section may be made for services  
18 specified under par. (a) <sup>ei</sup> unless the individual who receives the services is  
19 protectively placed under s. 55.06 (9) (a) or is placed under an emergency placement  
20 under s. 55.06 (11) (a) or a temporary placement under s. 55.06 (11) (c).

21 SECTION 15. 49.45 (30m) (c) of the statutes is created to read:

22 49.45 (30m) (c) No payment that is provided by the federal government under  
23 this section may be made for services specified under par. (a) 2. or 3. that are provided  
24 to an individual who was placed in or admitted to an intermediate facility or nursing  
25 facility unless one of the following applies:

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

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

5 **SECTION 16.** 49.46 (2) (a) 4. c. of the statutes is amended to read:

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

8 **SECTION 17.** 49.46 (2) (b) 6. a. of the statutes is amended to read:

9 49.46 (2) (b) 6. a. Intermediate care facility services other than in an institution  
10 for mental diseases, except as limited under s. 49.45 (30m) (b) and (c).

INSERT 7-10

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

12 55.01 (4g) “Intermediate facility” has the meaning given in s. 46.279 (1) (a).

13 **SECTION 19.** 55.01 (4t) of the statutes is created to read:

14 55.01 (4t) “Nursing facility” has the meaning given in s. 46.279 (1) (b).

INSERT 7-14

15 **SECTION 20.** 55.06 (5) of the statutes is amended to read:

16 55.06 (5) Notice of a petition for placement shall be served upon the person  
17 sought to be placed, by personal service, at least 10 days prior to the time set for a  
18 hearing. Upon service of the notice, the person sought to be protected shall be  
19 informed of the complete contents of the notice. The person serving the notice shall  
20 return a certificate to the circuit judge verifying that the petition has been delivered  
21 and notice given. The notice shall include the names of all petitioners. Notice shall  
22 also be served personally or by mail upon the person’s guardian ad litem, legal  
23 counsel, guardian, if any, presumptive adult heirs, and upon other persons who have  
24 physical custody of the person to be protected whose names and addresses are known  
25 to the petitioner or can with reasonable diligence be ascertained, to any

1 governmental or private body or group from whom the person to be protected is  
2 known to be receiving aid, and to such other persons or entities as the court may  
3 require. Notice shall also be served personally or by mail upon the department at  
4 least 10 days prior to the time set for hearing if the person sought to be protected may  
5 be placed in a center for the developmentally disabled. ~~The department shall be~~  
6 ~~allowed to submit oral or written testimony regarding such a placement at the~~  
7 ~~hearing.~~ Notice shall also be served personally or by mail, at least 10 days before the  
8 time set for hearing, upon the county department that is participating in the  
9 program under s. 46.278 of the county of residence of the person sought to be  
10 protected, if the person <sup>has a developmental disability and</sup> may be placed in an intermediate facility or ~~if the person is~~  
11 ~~developmentally disabled person and may be placed~~ a nursing facility. The  
12 incompetent or proposed incompetent is presumed able to attend the hearing unless,  
13 after a personal interview, the guardian ad litem certifies to the court that the person  
14 is unable to attend.

15 SECTION 21. 55.06 (8) (intro.) of the statutes is amended to read:

16 55.06 (8) (intro.) Before ordering the protective placement of any individual,  
17 the court shall direct a comprehensive evaluation of the person in need of placement,  
18 if such an evaluation has not already been made. The court may utilize available  
19 multidisciplinary resources in the community in determining the need for  
20 placement. The board designated under s. 55.02 or an agency designated by it shall  
21 cooperate with the court in securing available resources. Where applicable by reason  
22 of the particular disability, the appropriate board designated under s. 55.02 or an  
23 agency designated by it having responsibility for the place of legal residence of the  
24 individual as provided in s. 49.001 (6) shall make a recommendation for placement.  
25 If the court is considering placement of the individual in a center for the



individual has a developmental  
disability and the

1 developmentally disabled, the court shall request a statement or testimony from the  
2 department regarding whether the placement is appropriate for the person's needs  
3 and whether it is consistent with the purpose of the center under s. 51.06 (1) ~~unless~~  
4 ~~testimony was provided by the department under sub. (5).~~ If the court is considering  
5 ~~placement of the individual in an intermediate facility or if the individual is a~~  
6 ~~developmentally disabled person and the court is considering placement of the~~  
7 ~~individual in~~ a nursing facility, the court shall request a statement or testimony from  
8 the county department of the individual's county of residence that is participating  
9 in the program under s. 46.278 as to whether the individual's needs could be met in  
10 a noninstitutional setting. A copy of the comprehensive evaluation shall be provided  
11 to the guardian, the guardian ad litem, and to the individual or attorney at least 96  
12 hours in advance of the hearing to determine placement. The court or the  
13 cooperating agency obtaining the evaluation shall request appropriate information  
14 which shall include at least the following:

15 SECTION 22. 55.06 (9) (a) of the statutes is amended to read:

16 55.06 (9) (a) The court may order protective services under s. 55.05 (2) (d) as  
17 an alternative to placement. When ordering placement, the court, on the basis of the  
18 evaluation and other relevant evidence, shall order the appropriate board specified  
19 under s. 55.02 or an agency designated by it to protectively place the individual.  
20 Placement by the appropriate board or designated agency is subject to s. 46.279 and  
21 shall be made in the least restrictive environment consistent with the needs of the  
22 person to be placed and with the placement resources of the appropriate board  
23 specified under s. 55.02. Factors to be considered in making protective placement  
24 shall include the needs of the person to be protected for health, social, or  
25 rehabilitative services; the level of supervision needed; the reasonableness of the

SECTION 22

Except as provided in s. 49.45(30m), the

individual's

1 placement given the cost and the actual benefits in the level of functioning to be  
 2 realized by the individual; the limits of available state and federal funds and of  
 3 county funds required to be appropriated to match state funds; and the  
 4 reasonableness of the placement given the number or projected number of  
 5 individuals who will need protective placement and given the limited funds  
 6 available. ~~The~~ county may not be required to provide funding, in addition to its funds  
 7 that are required to be appropriated to match state funds, in order to protectively  
 8 place an individual. Placement under this section does not replace commitment of  
 9 a person in need of acute psychiatric treatment under s. 51.20 or 51.45 (13).  
 10 Placement Subject to s. 46.279, placement may be made to such facilities as nursing  
 11 homes, public medical institutions, centers for the developmentally disabled under  
 12 the requirements of s. 51.06 (3), foster care services and other home placements, or  
 13 to other appropriate facilities but may not be made to units for the acutely mentally  
 14 ill. If the appropriate board or designated agency proposes to place an individual who  
 15 has a developmental disability in an intermediate facility or a nursing  
 16 facility under an order under this paragraph, the board or agency shall provide  
 17 written notice to the county department of the individual's county of residence that  
 18 is participating in the program under s. 46.278, at least 90 days before the placement  
 19 is made. The county department so notified shall develop a plan under s. 46.279 (4)  
 20 and furnish the plan to the board or agency and to the individual's guardian. The  
 21 board or agency shall place the individual in a noninstitutional community setting  
 22 in accord with the plan unless the board or agency finds that to do so is not in the  
 23 individual's best interests unless the individual or the individual's guardian  
 24 rejects the plan. The prohibition of placements in units for the acutely mentally ill  
 25 does not prevent placement by a court for short-term diagnostic procedures under

, the court shall take the rejection into consideration in determining whether or not the placement is in the person's best interests

RESTORE TO PLAIN TEXT

1 par. (d). Placement in a locked unit shall require a specific finding of the court as to  
2 the need for such action. A placement facility may transfer a patient from a locked  
3 unit to a less restrictive environment without court approval

or if the person is transferred to an intermediate facility or to a nursing facility

4 SECTION 23. 55.06 (9) (b) of the statutes is amended to read:

5 55.06 (9) (b) Transfer ~~Subject to s. 48.279 transfer~~ may be made between

6 placement units or from a placement unit to a medical facility other than those  
7 specified in pars. (c) to (e) by a guardian or placement facility without approval by  
8 a court. When transfer is made by a placement facility, 24 hours' prior written notice  
9 of the transfer shall be provided to the guardian, when feasible. If it is not feasible  
10 to notify the guardian in advance, written notice shall be provided immediately upon  
11 transfer, and notice shall also be provided to the court and to the board designated  
12 under s. 55.02 or an agency designated by it within a reasonable time, not to exceed  
13 48 hours from the time of the transfer. Upon petition to a court by a guardian, ward,  
14 or attorney, or other interested person specifying objections to a transfer, the court  
15 shall order a hearing, within 96 hours after filing of the petition, to determine  
16 whether there is probable cause to believe that the transfer is consistent with the  
17 requirements specified in par. (a) and is necessary for the best interests of the ward.  
18 The court shall notify the ward, guardian, and petitioner of the time and place of the  
19 hearing, and a guardian ad litem shall be appointed to represent the ward. If the  
20 person is an adult who is indigent, the county of legal settlement shall be liable for  
21 guardian ad litem fees. If the person is a child, the person's parents or the county  
22 of legal settlement shall be liable for guardian ad litem fees as provided in s. 48.235  
23 (8). The petitioner, ward, and guardian shall have the right to attend, and to present  
24 and cross-examine witnesses.

\*\*\*NOTE. How can this work in time frame?

or, if the person is transferred to an intermediate facility or a nursing facility, within 96 hours after the transfer to

has a developmental disability and

1 SECTION 24. 55.06 (9) (c) of the statutes is amended to read:

2 55.06 (9) (c) ~~Transfer~~ Subject to s. 46.279, transfer to a more restrictive  
3 placement, including a locked unit, may be made with notice to the guardian, the  
4 court and appropriate board designated under s. 55.02 or an agency designated by  
5 it in the manner prescribed in par. (b). Upon petition by a guardian, ward or attorney,  
6 or other interested person specifying objections to the transfer, the court shall order  
7 a hearing as provided in par. (b).

or if the person is transferred to an  
intermediate facility or a nursing  
facility

8 SECTION 25. 55.06 (10) (a) of the statutes is renumbered 55.06 (10) (a) 1.

9 SECTION 26. 55.06 (10) (a) 2. of the statutes is created to read:

has a developmental disability and

10 55.06 (10) (a) 2. If the person is placed in an intermediate facility or ~~a~~  
11 ~~developmentally disabled person and is placed in~~ a nursing facility, the agency that  
12 is responsible for the protective placement shall notify in writing the county  
13 department of the county of residence of the person that is participating in the  
14 program under s. 46.278, at least 90 days before the review. The county department  
15 so notified shall develop a plan under s. 46.279 (4) and furnish the plan to the court  
16 that ordered the placement and to the person's guardian. The court shall order that  
17 the person be transferred to the noninstitutional community setting in accordance  
18 with the plan unless the court finds that to do so is not in the person's best interests.

19 ~~unless~~ <sup>2b</sup> the person or the person's guardian rejects the transfer.

the court shall  
take the rejection  
into consideration  
in determining  
whether  
or not  
the  
transfer  
is in  
the  
person's  
best  
interests

20 SECTION 27. 55.06 (11) (c) of the statutes is amended to read:

21 55.06 (11) (c) Upon a finding of probable cause under par. (b), the court may  
22 order temporary placement up to 30 days pending the hearing for a permanent  
23 placement, or the court may order such protective services as may be required. If an  
24 individual who ~~is~~ <sup>has</sup> a developmentally disabled person <sup>disability</sup> is ordered, under this  
25 paragraph, to be temporarily placed in an intermediate facility or in a nursing

60

1 facility, and if at the hearing for permanent placement the court orders that the  
2 individual be protectively placed, the court may, before permanent placement,  
3 extend the temporary placement order for not more than 60 days if necessary for the  
4 county department that is participating in the program under s. 46.278 to develop  
5 the plan required under s. 46.279 (4).

~~\*\*\*Note: Does this work?~~

6 SECTION 28. 55.06 (12) of the statutes is amended to read:

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

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

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

55.001,

55.045,

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

55.045,

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

5 (1) PLACEMENTS AND ADMISSIONS TO INTERMEDIATE AND NURSING FACILITIES. The  
6 treatment of sections 46.278 (6) (f), 46.279, 49.45 (6c) (b) and (c) (intro.), 1., 2., and  
7 3., 49.46 (2) (a) 4. c. and (b) 6. a., 55.01 (4g) and (4t), and 55.06 (5), (8) (intro.), (9) (a),  
8 (b), and (c), <sup>and</sup> (11) (c), ~~and (11) (c)~~ of the statutes, the renumbering of section 55.06 (10) (a)  
9 of the statutes, the renumbering and amendment of section 49.45 (30m) of the  
10 statutes, and the creation of sections 49.45 (30m) (a) 1., 2., and 3., (b), and (c) and  
11 55.06 (10) (a) 2. of the statutes take effect on January 1, 2004.

12 (END)

55.001,

D - NOTE

INSERT 3-4

1 (a) "Developmental disability" has the meaning given in s. 51.01 (5) (a). ✓

INSERT 3-15

2 *NOA* An intermediate facility to which an individual who has a developmental  
3 disability applies for admission shall, within 5 days after receiving the application,  
4 notify the county department that is participating in the program under s. 46.278 of  
5 the county of residence of the individual who is seeking admission concerning the  
6 application.

INSERT 4-10

7 (4) PLAN FOR HOME OR COMMUNITY-BASED CARE. A county department that  
8 participates in the program under s. 46.278 shall develop a plan for providing home  
9 or community-based care to an individual in a noninstitutional community setting  
10 under any of the following circumstances:

11 (a) Within 90 days after any determination made under s. 49.45 (6c) (c) 3. that  
12 the level of care required by a resident that is provided by a facility could be provided  
13 in an intermediate facility or under a plan under this subsection.

14 (b) Within 90 days after receiving written notice under sub. (2) of an  
15 application.

16 (c) Within 90 days after a proposal is made under s. 55.06 (9) (a) to place the  
17 individual in an intermediate facility or a nursing facility.

18 (d) Within 90 days after receiving written notice under s. 55.06 (10) (a) 2. of the  
19 placement of the individual in a nursing facility or an intermediate facility.

20 (e) Within 60 days after extension of a temporary placement order by the court  
21 under s. 55.06 (11) (c).

*end of insert*

**INSERT 7-10**

**SECTION 1.** 55.001 of the statutes is amended to read:

**55.001 Declaration of policy.** The legislature recognizes that many citizens of the state, because of the infirmities of aging, chronic mental illness, mental retardation, other developmental disabilities or like incapacities incurred at any age, are in need of protective services. These services should, to the maximum degree of feasibility under programs, services and resources that the county board of supervisors is reasonably able to provide within the limits of available state and federal funds and, except as provided in s. 49.45 (30m), of county funds required to be appropriated to match state funds, allow the individual the same rights as other citizens, and at the same time protect the individual from exploitation, abuse and degrading treatment. This chapter is designed to establish those services and assure their availability to all persons when in need of them, and to place the least possible restriction on personal liberty and exercise of constitutional rights consistent with due process and protection from abuse, exploitation and neglect.

History: 1973 c. 284; 1979 c. 221; 1995 a. 92.

**INSERT 7-14**

**SECTION 2.** 55.045 of the statutes is amended to read:

**55.045 Funding.** The appropriate county department designated under s. 55.02 shall, except as provided in s. 49.45 (30m), within the limits of available state and federal funds and of county funds required to be appropriated to match state funds, provide for the reasonable program needs of persons who are protectively placed or who receive protective services under this chapter, including reasonable expenses for the evaluations required by s. 55.06 (8). Payment and collections for protective placement or protective services provided in public facilities specified in s. 46.10 shall be governed in accordance with s. 46.10. The department may require



1 that a person who is protectively placed or receives protective services under this  
2 chapter provide reimbursement for services or care and custody received, based on  
3 the ability of the person to pay for such costs.

History: 1995 a. 92; 1999 a. 32.

*end of  
inserts*

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

LRB-0209/P2dn

DAK:kjff&js:rs

*ent*

*date*

To Robert Blaine:

1. Please review this draft very carefully; in particular, does s. 55.06 (9) (b), stats., as drafted, do what you intend? ✓
2. I spoke with Neil Gebhart and we agreed to amend the "shield law" under s. 55.06 (9) (a), stats. Please also review my amendments to ss. 55.001 and 55.045, stats., which I feel are also necessary. ✓
3. Please check the difference between s. 49.45 (30m) (a) 2., which refers to an ICFMR, other than a state center for the developmentally disabled, and s. 49.45 (30m) (c), which refers to an intermediate facility (as defined in s. 49.43 (7m)); are the distinctions valid and what you intend? ) (parentheses)
4. Throughout this draft, in accordance with the change to s. 46.279 (2) that restricts placement of a person *with a developmental disability* in an intermediate facility, I have changed references to include this circumstance; see, for example s. 55.06 (5) and (8) (intro.), stats. Okay?

Debora 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/P2dn  
DAK:cmh:rs

January 28, 2003

To Robert Blaine:

1. Please review this draft very carefully; in particular, does s. 55.06 (9) (b), stats., as drafted, do what you intend?
2. I spoke with Neil Gebhart and we agreed to amend the "shield law" under s. 55.06 (9) (a), stats. Please also review my amendments to ss. 55.001 and 55.045, stats., which I feel are also necessary.
3. Please check the difference between s. 49.45 (30m) (a) 2., which refers to an ICFMR, other than a state center for the developmentally disabled, and s. 49.45 (30m) (c), which refers to an intermediate facility (as defined in s. 49.43 (7m)); are the distinctions valid and what you intend?
4. Throughout this draft, in accordance with the change to s. 46.279 (2) that restricts placement of a person *with a developmental disability* in an intermediate facility, I have changed references to include this circumstance; see, for example s. 55.06 (5) and (8) (intro.), stats. Okay?

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

0209

**Kennedy, Debora**

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**From:** Miller, Anne  
**Sent:** Monday, February 03, 2003 10:51 AM  
**To:** Kennedy, Debora  
**Cc:** Blaine, Robert; Lund, C. David; Jones, Sue; Gebhart, Neil; Megna, Richard  
**Subject:** Comments on Restrict Admissions to ICF-MRs Draft 0209/P2

Dear Debora:

Below are comments from Sue Jones and Neil Gebhart on draft 0209/P2, Restrict Admissions to ICF-MRs. Neil may have more comments, but he knows time is of the essence, and he forwarded what he had so far. He'll try to complete the review of the draft and provide any additional comments by this afternoon. Please feel free to contact me with any questions. Thanks for all of your hard work on this daft!

Anne Miller  
DHFS/OSF  
6-5422

Sue Jones' Comments:

The Department prefers the term "individual" be used as often as possible as in place of "resident."

Sue's other comment is that the language on page 4, paragraph (3) may not be clear enough to limit counties from using the nursing home as an ICF-MR substitute. Nursing home placement of individuals regardless of a diagnosis of a developmental disability should be based on only the need for nursing home services.

Neil's Comments:

p 3 line 15 to p 4 line 2 -

"An intermediate facility to which an individual who has a developmental disability applies for admission shall, within 5 days after receiving the application, notify the county department that is participating in the program under s. 46.278 of the county of residence of the individual who is seeking admission concerning the application."

Does this language make any sense in relation to how people wind up in ICF/MRs in reality? An individual doesn't really "apply for" or "seek" admission, since ch 55 requires a court order for placement in an ICF/MR, right? (I didn't check the language of the dept's last draft in this regard, so I don't know whether this simply reiterates what we said.)

p 4 line 4

Does "entity" need to be defined?

p 4 lines 5 to 6

"...no person may place the individual in a nursing facility ..."

I know the LRB likes to avoid the passive voice (don't we all), but I think it would be preferable to make an exception here and say "no individual may be placed in a nursing facility" or "the individual may not be placed in a nursing facility." A court is not a "person" and so the language as is could be interpreted to mean that an individual could be placed in a NH by a court even if the person needs active treatment and the AT needs can be met in an ICF/MR or the community.

p 4 lines 7 to 9

"unless it is determined from the screening that the individual's need for care cannot be met in an intermediate facility or under a plan under sub. (4)."

Perhaps it would be clearer to say:

"unless it is determined from the screening that any part of the individual's need for care cannot be met in an intermediate facility or under a plan under sub. (4)."

or

"unless it is determined from the screening that the individual's need for care cannot be met fully in an intermediate facility or under a plan under sub. (4)."

p 4 lines 17 - 18

"Within 90 days after receiving written notice under sub. (2) of an application."

See comment re p 3 line 15 to p 4 line 2, above.

p 5 lines 4 and 6

49.43 (7m) "Intermediate facility" has the meaning given in s. 46.279 (1) (a).

49.43 (8m) "Nursing facility" has the meaning given in s. 46.279 (1) (b).

Definitions in s 49.43 apply to all MA statutes. I think different terms may be used for either or both of these kinds of facilities in several provisions throughout the MA statutes. I'm not sure whether this is a problem from a drafting viewpoint, but if it is perhaps these definitions could be moved to the substantive provisions to which they pertain.

p 7 lines 13-14

"No payment that is provided by the federal government under this section may be made for services ..."

This language suggests that a county could pay for 100% of the cost of care for a person placed in an ICF/MR or NH where the county failed to do a community care plan. The only prohibition is against using federal funds for such a placement. Yet other provisions of the bill seem prohibit such a placement altogether. Perhaps this provision instead should read "no payment under this section may be made for services... ," consistent with proposed s. 49.45 (30m) (b) [p 7 line 8].

p 7 lines 16 - 20

" ... unless one of the following applies:

1. The placement or admission complied with the requirements of s. 46.279.
2. For an individual who was protectively placed under ch. 55 at any time, any annual review that is conducted under s. 55.06 (10) (a) 1. after December 31, 2003, complies with the requirements of s. 55.06 (10) (a) 2."

If I understand this language correctly, MA would pay for a ICF/MR placement made after the effective date of the legislation, even if the county did not do a community care plan before the placement (i.e., did not comply with s. 46.279), provided that the county does a community care plan at the time of the person's annual Watts review (i.e., complied with s. 55.06 (10) (a) 2). If this interpretation is correct, I don't think that's the result we want. As I understand our intent, for all ICF/MR placements made on or after the effective date of the legislation, we want to require the county to do a community care plan before the placement. To accurately reflect the dept's

intent in this regard, perhaps this passage should be revised as follows:

" ... unless one of the following applies:

1. For an individual placed in or admitted to such a facility after December 31, 2003, the placement or admission complied with the requirements of s. 46.279.
2. For an individual who was protectively placed under ch. 55 at any time, any annual review that is conducted under s. 55.06 (10) (a) 1. after December 31, 2003, complies with the requirements of s. 55.06 (10) (a) 2."

p 8 lines 7 to 13:

"These services should, to the maximum degree of feasibility under programs, services and resources that the county board of supervisors is reasonably able to provide within the limits of available state and federal funds and, except as provided in s. 49.45 (30m), of county funds required to be appropriated to match state funds, allow the individual the same rights as other citizens, and at the same time protect the individual from exploitation, abuse and degrading treatment."

I think the exception clause should be moved such that it applies to the entire sentence in which it appears rather than just the clause it proceeds. This is because 49.45(30m) has to do with county funds matching federal funds, whereas the clause modified by the amendment has to do with county funds matching state funds. Here are two possible alternatives:

>>> "Except as provided in s. 49.45 (30m), these These services should, to the maximum degree of feasibility under programs, services and resources that the county board of supervisors is reasonably able to provide within the limits of available state and federal funds and, of county funds required to be appropriated to match state funds, allow the individual the same rights as other citizens, and at the same time protect the individual from exploitation, abuse and degrading treatment."

>>> "These services should, to the maximum degree of feasibility under programs, services and resources that the county board of supervisors is reasonably able to provide, except as provided in s. 49.45 (30m), within the limits of available state and federal funds and of county funds required to be appropriated to match state funds, allow the individual the same rights as other citizens, and at the same time protect the individual from exploitation, abuse and degrading treatment."

**Kennedy, Debora**

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**From:** Miller, Anne  
**Sent:** Monday, February 03, 2003 1:23 PM  
**To:** Kennedy, Debora  
**Cc:** Blaine, Robert; Gebhart, Neil; Megna, Richard  
**Subject:** The second set of Neil's comments on 0209/P2

Dear Debora,

Following are Neil's second set of comments on Restricting Admissions to ICF-MRs Draft 0209/P2. I feel I should forward these to you. However, I suspect you have reached your limit with our comments. Please feel free to contact me with any questions.

Thank you again and again for your work on these proposals.

Anne Miller  
DHFS/OSF  
6-5422

From Neil :

p 8 lines 17 to 20

Definitions of "intermediate facility" and "nursing facility" are created for ch 55. Because these terms are used only in s. 55.06, it might be a good idea to move the definitions to 55.06 and make them applicable only to that section rather than to all of ch 55. I think this may avoid some confusion down the road.

p 8 line 21 through p 9 line 7

I think the exception clause may be misplaced. See comment re p 8 lines 7 to 13 in my previous email.

p 9 lines 23 to 25

The draft would delete the current language "[t]he department shall be allowed to submit oral or written testimony regarding such a placement at the hearing." This has to do with prospective placements in DD Centers. I assume the drafter proposes to delete this language because it is unnecessary in light of other statutory changes in the draft, which it probably is. However, I'm concerned that if this language is deleted somewhere down the road someone will point to this amendment as legislative intent that the dept is not allowed to submit, or may be barred from submitting, testimony on a potential placement in a Center. For this reason I would request that the current language be retained.

*See  
addit.  
to s.  
55.06  
(8)(intro.)*

p 12 lines 9 to 11

"The board or agency shall place the individual in a noninstitutional community setting in accord with the plan unless the board or agency finds that to do so is not in the individual's best interests."

This language would allow the county protective services agency to place an individual in an ICF/MR regardless of the county community services plan if the protective services agency finds that placement in the community under the plan is not in the individual's best interests. The most recent dept draft of this legislation that I could find reserves to the court the exclusive right to make the "best interests" determination in this regard. I don't think we intend that the protective services agency should be able to veto a proposed community placement under the CIP agency's community plan based only on the protective services agency's own determination as to what is in the

individual's "best interests."

p 14 lines 16 to 17

"If an individual who has a developmental disability person is ordered ... "

The word "person" should be deleted.

p 15 lines 10 to 17

The effective date section provides that all sections of the draft take effect 1/1/04, except for the creation of ss. 49.43(7m) and (8m), which create definitions of "intermediate facility" and "nursing facility" for purposes of the MA statutes. Unless these provisions are added to the list of sections that take effect 1/1/04, they will take effect the day after publication of the budget bill. These sections were probably omitted from the list of sections that take effect 1/1/04 due to oversight, as it would make no sense to create these new definitions before the substantive provisions to which they relate take effect. Thus, the creation of s. 49.43(7m) and s. 49.43(8m) should be added to the list of provisions that take effect 1/1/04.

p 8 lines 10 and 23 to 24 and p 11 line 22 (Sorry this is out of order - I just ran across it)

I think the language "except as provided in s. 49.45 (30m)" should be changed to read "except as provided in s. 49.45 (30m)(a)." Pars. (b) and (c) of s. 49.45(30m) have nothing to do with county payment liability - they simply say that no MA payment will be made for certain placements. I'm concerned that maintaining this exception language as is would suggest that the placements referred to in pars. (b) and (c) of s. 49.45(30m) are ok if paid for with county funds. [The types of placements in question are: (30m)(b) - placement in an ICF/MR or placement of a person w/ DD in a NF in violation of a screen; (30m)(c) - placement in an ICF/MR or placement of a person w/ DD in a NF without following the new requirement that the county develop a community placement plan.]

General

Maybe I'm missing something, but it seems to me we're missing some budget/fiscal language regarding county liability and funding in the draft. The only such provisions currently in the draft state that counties are required to pay the non-federal share of MA for persons placed in ICF/MRs (other than the Centers) and for persons w/ DD placed in NFs (where permitted pursuant to a screen). The draft requires that a person be retained in the community in accord with the newly-required county community care plan, unless the court finds this would not be in the person's best interests. However, the draft does not change the "shield law" in a way that would require the county to pay for such community placements with county tax dollars, additional waiver slots, or funding provided under this proposal. Unless we include something in the draft in this respect I think the draft will create a conflict with existing "shield law" language - i.e., the new law will say that the person must be placed in the community unless the court finds this is not in the person's best interests, while the "shield law" will continue to say that the county doesn't have to pay for any placement if federal and state funds and county funds to match state funds have been exhausted. (The Judy K decision slightly alters the way the "shield law" is applied, but does not change the underlying principle that county liability for providing services is capped.)

I (Neil) may have some additional comments relating to the initial applicability language, but they will be included in a separate email this PM.



## Kennedy, Debora

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**From:** Miller, Anne  
**Sent:** Monday, February 03, 2003 2:29 PM  
**To:** Kennedy, Debora  
**Cc:** Blaine, Robert; Lund, C. David; Jones, Sue; Gebhart, Neil; Megna, Richard  
**Subject:** Re: Fwd: FW: LRB Draft: 03-0209/P2 Restrict admissions to ICF-MRs and nursing homes; increase acces



MA ICF-MR dmszng  
leg drft Intl...

Dear Debora,

In Neil's last email, he mentioned his initial applicability comments on 0290/P2 were coming. Here they are. He indicates there's more to come, but he sending these along now to get something over to you.

- Anne

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

Date: 02/03/2003 02:22 pm -0600 (Monday)  
From: Neil Gebhart  
To: Jones, Sue; Lund, C. David; Miller, Anne  
CC: Forsaith, Andrew; Megna, Richard  
Subject: Re: Fwd: FW: LRB Draft: 03-0209/P2 Restrict admissions to ICF-MRs and nursing homes; increase access to comm

Initial Applicability Language

I think 9423(1) [p 15 lines 1 to 6] requires some clarification. I'm attaching a document containing proposed language addressing some of the initial applicability questions that do not appear to be clearly resolved by the draft language. I'm not finished reviewing this area, but I thought I'd provide the attached as a start.

>>> Anne Miller 01/30/03 05:35PM >>>

Dear Dave, Sue and Neil,

Attached for your review is revised draft stat language for the ICF-MR Downsizing proposal. If possible, please review ASAP. Unfortunately we have very little time to get comments to LRB. A lot of other proposals got priority over this proposal in the rush of work LRB got from DOA, and LRB has only just now been able to get us this draft.

Thanks in advance for your time and your continued work on this groundbreaking proposal!

- Anne

Robert asked that I identify the requested changes I think the dept can't live without and those that won't kill us. I am reprinting all of my earlier emails below with the "can't live without" changes in **bold**. Please let me know if you have any questions.

\* \* \*

p 3 line 15 to p 4 line 2 -

"An intermediate facility to which an individual who has a developmental disability applies for admission shall, within 5 days after receiving the application, notify the county department that is participating in the program under s. 46.278 of the county of residence of the individual who is seeking admission concerning the application."

Does this language make any sense in relation to how people wind up in ICF/MRs in reality? An individual doesn't really "apply for" or "seek" admission, since ch 55 requires a court order for placement in an ICF/MR, right? (I didn't check the language of the dept's last draft in this regard, so I don't know whether this simply reiterates what we said.)

p 4 line 4

Does "entity" need to be defined?

p 4 lines 5 to 6

✓ "...no person may place the individual in a nursing facility ..."

I know the LRB likes to avoid the passive voice (don't we all), but I think it would be preferable to make an exception here and say "no individual may be placed in a nursing facility" or "the individual may not be placed in a nursing facility." A court is not a "person" and so the language as is could be interpreted to mean that an individual could be placed in a NH by a court even if the person needs active treatment and the AT needs can be met in an ICF/MR or the community.

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"unless it is determined from the screening that the individual's need for care cannot be met in an intermediate facility or under a plan under sub. (4)."

Perhaps it would be clearer to say:

"unless it is determined from the screening that any part of the individual's need for care cannot be met in an intermediate facility or under a plan under sub. (4)."

or

✓ "unless it is determined from the screening that the individual's need for care cannot be met fully in an intermediate facility or under a plan under sub. (4)."

p 4 lines 17 - 18

"Within 90 days after receiving written notice under sub. (2) of an application."

See comment re p 3 line 15 to p 4 line 2, above.

✓ p 5 lines 4 and 6

49.43 (7m) "Intermediate facility" has the meaning given in s. 46.279 (1) (a).

49.43 (8m) "Nursing facility" has the meaning given in s. 46.279 (1) (b).

Definitions in s 49.43 apply to all MA statutes. I think different terms may be used for either or both of these kinds of facilities in several provisions throughout the MA statutes. I'm not sure whether this is a problem from a drafting viewpoint, but if it is perhaps these definitions could be moved to the substantive provisions to which they pertain. ?

p 6 line 18 to p 7 line 6

I'm not sure whether we discussed this previously, but just so we're all clear on this - these changes would require counties to pay the non-federal share of MA for all care in an ICF/MR except for care in a non-ITU bed at a DD Center. That is, the state would continue to pay the non-federal share of MA for care in "regular" (i.e., non-ITU Center beds). I just wanted to make sure everyone had the same understanding before we finalized this draft.

✓ p 7 lines 13-14

**"No payment that is provided by the federal government under this section may be made for services ..."**

**This language suggests that a county could pay for 100% of the cost of care for a person placed in an ICF/MR or NH where the county failed to do a community care plan. The only prohibition is against using federal funds for such a placement. Yet other provisions of the bill seem prohibit such a placement altogether. Perhaps this provision instead should read "no payment under this section may be made for services...," consistent with proposed s. 49.45 (30m) (b) [p 7 line 8].**

p 7 lines 16 - 20

" ... unless one of the following applies:

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

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

If I understand this language correctly, MA would pay for a ICF/MR placement made after the effective date of the legislation, even if the county did not do a community care plan before the placement (i.e., did not comply with s. 46.279), provided that the county does a community care plan at the time of the person's annual Watts review (i.e., complied with s. 55.06 (10) (a) 2). If this interpretation is correct, I don't think that's the result we want. As I understand our intent, for all ICF/MR placements made on or after the effective date of the legislation, we want to require the county to do a community care plan before the placement. To accurately reflect the dept's intent in this regard, perhaps this passage should be revised as follows:

" ... unless one of the following applies:

1. For an individual placed in or admitted to such a facility after December 31, 2003, the The placement or admission complied with the requirements of s. 46.279.
2. For an individual who was protectively placed under ch. 55 at any time, any annual review that is conducted under s. 55.06 (10) (a) 1. after December 31, 2003, complies with the requirements of s. 55.06 (10) (a) 2."

p 8 lines 7 to 13:

"These services should, to the maximum degree of feasibility under programs, services and resources that the county board of supervisors is reasonably able to provide within the limits of available state and federal funds and, except as provided in s. 49.45 (30m), of county funds required to be appropriated to match state funds, allow the individual the same rights as other citizens, and at the same time protect the individual from exploitation, abuse and degrading treatment."

I think the exception clause should be moved such that it applies to the entire sentence in which it appears rather than just the clause it proceeds. This is because 49.45(30m) has to do with county funds matching federal funds, whereas the clause modified by the amendment has to do with county funds matching state funds. Here are two possible alternatives:

>>> "Except as provided in s. 49.45 (30m), these These services should, to the maximum degree of feasibility under programs, services and resources that the county board of supervisors is reasonably able to provide within the limits of available state and federal funds and, of county funds required to be appropriated to match state funds, allow the individual the same rights as other citizens, and at the same time protect the individual from exploitation, abuse and degrading treatment."

*This doesn't work - request doesn't take eff. until 1/1/04*

*changed init. app to 4/1/04*

>>> **"These services should, to the maximum degree of feasibility under programs, services and resources that the county board of supervisors is reasonably able to provide, except as provided in s. 49.45 (30m), within the limits of available state and federal funds and of county funds required to be appropriated to match state funds, allow the individual the same rights as other citizens, and at the same time protect the individual from exploitation, abuse and degrading treatment."**

p 8 lines 17 to 20

Definitions of "intermediate facility" and "nursing facility" are created for ch 55. Because these terms are used only in s. 55.06, it might be a good idea to move the definitions to 55.06 and make them applicable only to that section rather than to all of ch 55. I think this may avoid some confusion down the road.

✓ p 8 line 21 through p 9 line 7

I think the exception clause may be misplaced. See comment re p 8 lines 7 to 13

p 9 lines 23 to 25

The draft would delete the current language "[t]he department shall be allowed to submit oral or written testimony regarding such a placement at the hearing." This has to do with prospective placements in DD Centers. I assume the drafter proposes to delete this language because it is unnecessary in light of other statutory changes in the draft, which it probably is. However, I'm concerned that if this language is deleted somewhere down the road someone will point to this amendment as legislative intent that the dept is not allowed to submit, or may be barred from submitting, testimony on a potential placement in a Center. For this reason I would request that the current language be retained.

✓ p 12 lines 9 to 11

"The board or agency shall place the individual in a noninstitutional community setting in accord with the plan unless the board or agency finds that to do so is not in the individual's best interests."

This language would allow the county protective services agency to place an individual in an ICF/MR regardless of the county community services plan if the protective services agency finds that placement in the community under the plan is not in the individual's best interests. The most recent dept draft of this legislation that I could find reserves to the court the exclusive right to make the "best interests" determination in this regard. I don't think we intend that the protective services agency should be able to veto a proposed community placement under the CIP agency's community plan based only on the protective services agency's own determination as to what is in the individual's "best interests."

p 14 lines 16 to 17

✓ "If an individual who has a developmental disability person is ordered ... "

The word "person" should be deleted.

✓ p 15 lines 10 to 17

The effective date section provides that all sections of the draft take effect 1/1/04, except for the creation of ss. 49.43(7m) and (8m), which create definitions of "intermediate facility" and "nursing facility" for purposes of the MA statutes. Unless these provisions are added to the list of sections that take effect 1/1/04, they will take effect the day after publication of the budget bill. These sections were probably omitted from the list of sections that take effect 1/1/04 due to oversight, as it would make no sense to create these new definitions before the substantive provisions to which they relate take effect. Thus, the creation of s. 49.43(7m) and s. 49.43(8m) should be added to the list of provisions that take effect 1/1/04.

✓ p 8 lines 10 and 23 to 24 and p 11 line 22

I think the language "except as provided in s. 49.45 (30m)" should be changed to read "except as provided in s. 49.45 (30m)(a)." Pars. (b) and (c) of s. 49.45(30m) have nothing to do with county payment liability - they simply say that no MA payment will be made for certain placements. I'm concerned that maintaining this exception language as is would suggest that the placements referred to in pars. (b) and (c) of s. 49.45(30m) are ok if paid for with county funds. [The types of placements in question are: (30m)(b) - placement in an ICF/MR or placement of a person w/ DD in a NF in violation of a screen; (30m)(c) - placement in an ICF/MR or placement of a person w/ DD in a NF without following the new requirement that the county develop a community placement plan.]

#### Initial Applicability Language

I think 9423(1) [p 15 lines 1 to 6] requires some clarification. I'm attaching a document containing proposed language addressing some of the initial applicability questions that do not appear to be clearly resolved by the draft language. I'm not finished reviewing this area, but I thought I'd provide the attached as a start.

The treatment of sections 55.06 (5), (8) (intro.) and (9) (a) of the statutes first applies to petitions for protective placement filed on January 1, 2004.

The treatment of sections 55.06 (9) (b) and (c) of the statutes first applies to transfers made on January 1, 2004.

The renumbering of section 55.06 (10) (a) of the statutes and the creation of section 55.06 (10) (a) 2. of the statutes first apply to reviews due on January 1, 2004.

The treatment of section 55.06 (11) (c) of the statutes first applies to detentions occurring on January 1, 2004.

The creation of section 49.45 (30m) (a) 2. and (c) of the statutes first applies to services provided to an individual initially placed in a facility pursuant to a petition for protective placement filed, a transfer under s. 55.06 (9) made, or a detention under s. 55.06 (11) occurring on January 1, 2004, or to an individual initially placed in a facility before January 1, 2004, with respect to whom a review under s. 55.06 (10) is due on January 1, 2004.

The creation of s. 49.45 (30m) (b) of the statutes first applies to services provided to an individual on January 1, 2004, regardless whether the individual was placed in the facility before, on or after that date. >

## Kennedy, Debora

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**From:** Gebhart, Neil  
**Sent:** Monday, February 03, 2003 5:11 PM  
**To:** Blaine, Robert; Kennedy, Debora  
**Cc:** Miller, Anne  
**Subject:** ICF/MR Draft



ICF-MR draft  
comnts.doc

I'm re-sending this with the text of my previous email reproduced as a Word document, attached. Robert says that for some reason all formatting is lost is transmitting an email the 100 yards or so from my office to his. Go figure.

\* \* \*

Robert asked that I identify the requested changes I think the dept can't live without and those that won't kill us. I am reprinting all of my earlier emails below with the "can't live without" changes in bold. Please let me know if you have any questions.

\* \* \*

p 3 line 15 to p 4 line 2 -

"An intermediate facility to which an individual who has a developmental disability applies for admission shall, within 5 days after receiving the application, notify the county department that is participating in the program under s. 46.278 of the county of residence of the individual who is seeking admission concerning the application."

Does this language make any sense in relation to how people wind up in ICF/MRs in reality? An individual doesn't really "apply for" or "seek" admission, since ch 55 requires a court order for placement in an ICF/MR, right? (I didn't check the language of the dept's last draft in this regard, so I don't know whether this simply reiterates what we said.)

p 4 line 4

Does "entity" need to be defined?

p 4 lines 5 to 6

"...no person may place the individual in a nursing facility ..."

I know the LRB likes to avoid the passive voice (don't we all), but I think it would be preferable to make an exception here and say "no individual may be placed in a nursing facility" or "the individual may not be placed in a nursing facility." A court is not a "person" and so the language as is could be interpreted to mean that an individual could be placed in a NH by a court even if the person needs active treatment and the AT needs can be met in an ICF/MR or the community.

p 4 lines 7 to 9

"unless it is determined from the screening that the individual's need for care cannot be met in an intermediate facility or under a plan under sub. (4)."

Perhaps it would be clearer to say:



"unless it is determined from the screening that any part of the individual's need for care cannot be met in an intermediate facility or under a plan under sub. (4)."

or

"unless it is determined from the screening that the individual's need for care cannot be met fully in an intermediate facility or under a plan under sub. (4)."

p 4 lines 17 - 18

"Within 90 days after receiving written notice under sub. (2) of an application."

See comment re p 3 line 15 to p 4 line 2, above.

p 5 lines 4 and 6

49.43 (7m) "Intermediate facility" has the meaning given in s. 46.279 (1) (a).  
49.43 (8m) "Nursing facility" has the meaning given in s. 46.279 (1) (b).

Definitions in s 49.43 apply to all MA statutes. I think different terms may be used for either or both of these kinds of facilities in several provisions throughout the MA statutes. I'm not sure whether this is a problem from a drafting viewpoint, but if it is perhaps these definitions could be moved to the substantive provisions to which they pertain.

p 6 line 18 to p 7 line 6

I'm not sure whether we discussed this previously, but just so we're all clear on this - these changes would require counties to pay the non-federal share of MA for all care in an ICF/MR except for care in a non-ITU bed at a DD Center. That is, the state would continue to pay the non-federal share of MA for care in "regular" (i.e., non-ITU Center beds). I just wanted to make sure everyone had the same understanding before we finalized this draft.

p 7 lines 13-14

"No payment that is provided by the federal government under this section may be made for services ..."

This language suggests that a county could pay for 100% of the cost of care for a person placed in an ICF/MR or NH where the county failed to do a community care plan. The only prohibition is against using federal funds for such a placement. Yet other provisions of the bill seem prohibit such a placement altogether. Perhaps this provision instead should read "no payment under this section may be made for services...," consistent with proposed s. 49.45 (30m) (b) [p 7 line 8].

p 7 lines 16 - 20

" ... unless one of the following applies:

1. The placement or admission complied with the requirements of s. 46.279.
2. For an individual who was protectively placed under ch. 55 at any time, any annual review that is conducted under s. 55.06 (10) (a) 1. after December 31, 2003, complies with the requirements of s. 55.06 (10) (a) 2."

If I understand this language correctly, MA would pay for a ICF/MR placement made after the effective date of the legislation, even if the county did not do a community care plan before the placement (i.e., did not comply with s. 46.279), provided that the county does a community care plan at the time of the person's annual Watts review (i.e., complied with s. 55.06 (10) (a) 2). If this interpretation is correct, I don't think that's the result we want. As I understand our intent, for all ICF/MR placements made on or after the effective date of the legislation, we want to require the county to do a community care plan before the placement. To accurately reflect the dept's

intent in this regard, perhaps this passage should be revised as follows:

" ... unless one of the following applies:

1. For an individual placed in or admitted to such a facility after December 31, 2003, the placement or admission complied with the requirements of s. 46.279.
2. For an individual who was protectively placed under ch. 55 at any time, any annual review that is conducted under s. 55.06 (10) (a) 1. after December 31, 2003, complies with the requirements of s. 55.06 (10) (a) 2."

p 8 lines 7 to 13:

"These services should, to the maximum degree of feasibility under programs, services and resources that the county board of supervisors is reasonably able to provide within the limits of available state and federal funds and, except as provided in s. 49.45 (30m), of county funds required to be appropriated to match state funds, allow the individual the same rights as other citizens, and at the same time protect the individual from exploitation, abuse and degrading treatment."

I think the exception clause should be moved such that it applies to the entire sentence in which it appears rather than just the clause it proceeds. This is because 49.45(30m) has to do with county funds matching federal funds, whereas the clause modified by the amendment has to do with county funds matching state funds. Here are two possible alternatives:

>>> "Except as provided in s. 49.45 (30m), these These services should, to the maximum degree of feasibility under programs, services and resources that the county board of supervisors is reasonably able to provide within the limits of available state and federal funds and, of county funds required to be appropriated to match state funds, allow the individual the same rights as other citizens, and at the same time protect the individual from exploitation, abuse and degrading treatment."

>>> "These services should, to the maximum degree of feasibility under programs, services and resources that the county board of supervisors is reasonably able to provide, except as provided in s. 49.45 (30m), within the limits of available state and federal funds and of county funds required to be appropriated to match state funds, allow the individual the same rights as other citizens, and at the same time protect the individual from exploitation, abuse and degrading treatment."

p 8 lines 17 to 20

Definitions of "intermediate facility" and "nursing facility" are created for ch 55. Because these terms are used only in s. 55.06, it might be a good idea to move the definitions to 55.06 and make them applicable only to that section rather than to all of ch 55. I think this may avoid some confusion down the road.

p 8 line 21 through p 9 line 7

I think the exception clause may be misplaced. See comment re p 8 lines 7 to 13

p 9 lines 23 to 25

The draft would delete the current language "[t]he department shall be allowed to submit oral or written testimony regarding such a placement at the hearing." This has to do with prospective placements in DD Centers. I assume the drafter proposes to delete this language because it is unnecessary in light of other statutory changes in the draft, which it probably is. However, I'm concerned that if this language is deleted somewhere down the road someone will point to this amendment as legislative intent that the dept is not allowed to submit, or may be barred from submitting, testimony on a potential placement in a Center. For this reason I would request that the current language be retained.

p 12 lines 9 to 11

"The board or agency shall place the individual in a noninstitutional community setting in accord with the plan unless the board or agency finds that to do so is not in the individual's best interests."

This language would allow the county protective services agency to place an individual in an ICF/MR regardless of the county community services plan if the protective services agency finds that placement in the community under the plan is not in the individual's best interests. The most recent dept draft of this legislation that I could find reserves to the court the exclusive right to make the "best interests" determination in this regard. I don't think we intend that the protective services agency should be able to veto a proposed community placement under the CIP agency's community plan based only on the protective services agency's own determination as to what is in the individual's "best interests."

p 14 lines 16 to 17

"If an individual who has a developmental disability person is ordered ... "

The word "person" should be deleted.

p 15 lines 10 to 17

The effective date section provides that all sections of the draft take effect 1/1/04, except for the creation of ss. 49.43(7m) and (8m), which create definitions of "intermediate facility" and "nursing facility" for purposes of the MA statutes. Unless these provisions are added to the list of sections that take effect 1/1/04, they will take effect the day after publication of the budget bill. These sections were probably omitted from the list of sections that take effect 1/1/04 due to oversight, as it would make no sense to create these new definitions before the substantive provisions to which they relate take effect. Thus, the creation of s. 49.43(7m) and s. 49.43(8m) should be added to the list of provisions that take effect 1/1/04.

p 8 lines 10 and 23 to 24 and p 11 line 22

I think the language "except as provided in s. 49.45 (30m)" should be changed to read "except as provided in s. 49.45 (30m)(a)." Pars. (b) and (c) of s. 49.45(30m) have nothing to do with county payment liability - they simply say that no MA payment will be made for certain placements. I'm concerned that maintaining this exception language as is would suggest that the placements referred to in pars. (b) and (c) of s. 49.45(30m) are ok if paid for with county funds. [The types of placements in question are: (30m)(b) - placement in an ICF/MR or placement of a person w/ DD in a NF in violation of a screen; (30m)(c) - placement in an ICF/MR or placement of a person w/ DD in a NF without following the new requirement that the county develop a community placement plan.]

#### Initial Applicability Language

I think 9423(1) [p 15 lines 1 to 6] requires some clarification. I'm attaching a document containing proposed language addressing some of the initial applicability questions that do not appear to be clearly resolved by the draft language. I'm not finished reviewing this area, but I thought I'd provide the attached as a start.

The treatment of sections 55.06 (5), (8) (intro.) and (9) (a) of the statutes first applies to petitions for protective placement filed on January 1, 2004.

The treatment of sections 55.06 (9) (b) and (c) of the statutes first applies to transfers made on January 1, 2004.

The renumbering of section 55.06 (10) (a) of the statutes and the creation of section 55.06 (10) (a) 2. of the statutes first apply to reviews due on

January 1, 2004.

The treatment of section 55.06 (11) (c) of the statutes first applies to detentions occurring on January 1, 2004.

The creation of section 49.45 (30m) (a) 2. and (c) of the statutes first applies to services provided to an individual initially placed in a facility pursuant to a petition for protective placement filed, a transfer under s. 55.06 (9) made, or a detention under s. 55.06 (11) occurring on January 1, 2004, or to an individual initially placed in a facility before January 1, 2004, with respect to whom a review under s. 55.06 (10) is due on January 1, 2004.

The creation of s. 49.45 (30m) (b) of the statutes first applies to services provided to an individual on January 1, 2004, regardless whether the individual was placed in the facility before, on or after that date.

## PETITIONS FOR PROTECTIVE PLACEMENT

The treatment of sections 55.06 (5), (8) (intro.) and (9) (a) of the statutes first applies to petitions for protective placement filed on January 1, 2004.

## TRANSFERS OF PROTECTIVELY PLACED PERSONS

The treatment of sections 55.06 (9) (b) and (c) of the statutes first applies to transfers <sup>of individuals who are -</sup> made on January 1, 2004. <sub>protectively placed</sub>

## ANNUAL REVIEWS OF PROTECTIVELY PLACED PERSONS

The renumbering of section 55.06 (10) (a) of the statutes and the creation of section 55.06 (10) (a) 2. of the statutes first apply to reviews due on January 1, 2004.

## TEMPORARY PROTECTIVE PLACEMENTS

The treatment of section 55.06 (11) (c) of the statutes first applies to ~~detentions~~ <sup>temporary protective placements</sup> occurring on January 1, 2004.

## REQUIRED COUNTY FUNDING OF SERVICES

The creation of section 49.45 (30m) (a) 2. and (c) of the statutes first applies <sup>under</sup> to services provided to an individual initially placed in a facility pursuant to a petition for protective placement filed, a transfer under s. 55.06 (9) made, or a ~~detention~~ <sup>temporary P.P.</sup> under s. 55.06 (11) occurring on January 1, 2004, or to an individual initially placed in a facility before January 1, 2004, with respect to whom a review under s. 55.06 (10) is due on January 1, 2004.

## LIMITATION ON PAYMENT

The creation of s. 49.45 (30m) (b) of the statutes first applies to services <sup>with respect</sup> provided to an individual on January 1, 2004, ~~regardless whether the individual was placed in the facility before, on or after that date.~~

under section  
49.45 (30m) (a) 1.  
and 3.

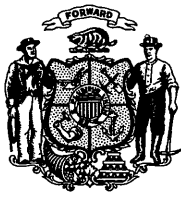
Change all dates to April 1, 2004

## TELEPHONE DRAFTING INSTRUCTIONS

Drafting instructions received by Debora Kennedy.

DATE: 3/4/03  
CONVERSATION WITH: Neil Gebhart  
OF:  
TELEPHONE NO:  
REGARDING LRB # OR DRAFT TOPIC: - 0209/P2  
INSTRUCTIONS: Redraft

① Make rule effective 1/1/04, but have initial app that requires first plans by 4/1/04



TODAY  
State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-0209/P2 1  
DAK:kjf&cjs&cmh:rs

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

Do Not Gen

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

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*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 (MA) program payment that is not provided by the federal government for services to individuals in state centers for the developmentally disabled who are also mentally

ill and exhibit extremely aggressive and challenging behaviors. Under one of the community integration programs, persons with developmental disabilities who are eligible for MA and who formerly resided in, or were diverted from, state centers 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.

This bill, beginning January 1, 2004, places restrictions on protective placements and admissions of persons with developmental disabilities to intermediate facilities and nursing facilities, as defined in the bill. Within 90 days after receiving written notice of the prospective placement or admission of a person with developmental disabilities 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 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.

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 the level of care that they require that is provided by the facility could be provided safely in an intermediate facility or under a plan for home or community care.

Beginning January 1, 2004, the bill prohibits payment of the federal portion of MA for services for an individual in a state center for the developmentally disabled who is also mentally ill and exhibits 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 persons who are found incompetent, to require that the court notify the appropriate county department to

These restrictions first apply on April 1, 2004.

The requirements and limitations just apply to services provided and payment made on April 1, 2004



develop a plan for home or community care, for a person about to be protectively placed, and that the person be placed in a noninstitutional community 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.

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.

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

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

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

3           **46.279 Restrictions on placements and admissions to intermediate**  
4 **and nursing facilities. (1) DEFINITIONS.** In this section:

5           (a) "Developmental disability" has the meaning given in s. 51.01 (5) (a).

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

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

10           **(2) PLACEMENTS AND ADMISSIONS TO INTERMEDIATE FACILITIES.** Except as provided  
11 in sub. (5), no person may place an individual with a developmental disability in an  
12 intermediate facility and no intermediate facility may admit such an individual  
13 unless, before the placement or admission, a court under s. 55.06 (9) (a) or (10) (a)  
14 2. finds that placement under a plan that was developed under sub. (4) is not in the  
15 individual's best interests. An intermediate facility to which an individual who has  
16 a developmental disability applies for admission shall, within 5 days after receiving  
17 the application, notify the county department that is participating in the program

1 under s. 46.278 of the county of residence of the individual who is seeking admission  
2 concerning the application.

3 (3) PLACEMENTS AND ADMISSIONS TO NURSING FACILITIES. Except as provided in  
4 sub. (5), if the department or an entity determines from a screening under s. 49.45  
5 (6c) (b) that an individual requires active treatment for developmental disability, no  
6 ~~person may place the~~ individual <sup>may be placed</sup> in a nursing facility, and no nursing facility may  
7 admit the individual, unless it is determined from the screening that the individual's  
8 need for care cannot be met in an intermediate facility or under a plan under sub.  
9 (4). <sup>fully</sup>

10 (4) PLAN FOR HOME OR COMMUNITY-BASED CARE. A county department that  
11 participates in the program under s. 46.278 shall develop a plan for providing home  
12 or community-based care to an individual in a noninstitutional community setting  
13 under any of the following circumstances:

14 (a) Within 90 days after any determination made under s. 49.45 (6c) (c) 3. that  
15 the level of care required by a resident that is provided by a facility could be provided  
16 in an intermediate facility or under a plan under this subsection.

17 (b) Within 90 days after receiving written notice under sub. (2) of an  
18 application.

19 (c) Within 90 days after a proposal is made under s. 55.06 (9) (a) to place the  
20 individual in an intermediate facility or a nursing facility.

21 (d) Within 90 days after receiving written notice under s. 55.06 (10) (a) 2. of the  
22 placement of the individual in a nursing facility or an intermediate facility.

23 (e) Within 60 days after extension of a temporary placement order by the court  
24 under s. 55.06 (11) (c).

49.45 (6c)(a) 6m.

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

3 SECTION 3. ~~49.43 (7m)~~ of the statutes is created to read:

4 ~~49.43 (7m)~~ "Intermediate facility" has the meaning given in s. 46.279 (1) (a).

5 ~~SECTION 4. 49.43 (8m) of the statutes is created to read:~~

6 ~~49.43 (8m) "Nursing facility" has the meaning given in s. 46.279 (1) (a).~~

7 SECTION 5. 49.45 (6c) (b) of the statutes is amended to read:

8 49.45 (6c) (b) *Preadmission screening*. Except as provided in par. (e), beginning  
9 on August 9, 1989, every individual who applies for admission to a facility or to an  
10 institution for mental diseases shall be screened to determine if the individual has  
11 developmental disability or mental illness. ~~Beginning on August 9, 1989, the~~ The  
12 department or an entity to which the department has delegated authority shall  
13 screen every individual who has been identified as having a developmental disability  
14 or mental illness to determine if the individual needs facility care. If the individual  
15 is determined to need facility care, the department or an entity to which the  
16 department has delegated authority shall also assess the individual to determine if  
17 he or she requires active treatment for developmental disability or active treatment  
18 for mental illness. If the department or entity determines that the individual  
19 requires active treatment for developmental disability, the department or entity  
20 shall determine whether the level of care required by the individual that is provided  
21 by a facility could be provided safely in an intermediate facility or under a plan that  
22 is developed under s. 46.279 (4).

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

24 49.45 (6c) (c) *Resident review*. (intro.) Except as provided in par. (e), the  
25 department or an entity to which the department has delegated authority shall

1 review every resident of a facility or institution for mental diseases who has a  
2 developmental disability or mental illness and who has experienced a significant  
3 change in his or her physical or mental condition to determine ~~if any~~ all of the  
4 following applies:

5 **SECTION 7.** 49.45 (6c) (c) 1. of the statutes is amended to read:

6 49.45 (6c) (c) 1. ~~The~~ Whether the resident needs facility care.

7 **SECTION 8.** 49.45 (6c) (c) 2. of the statutes is amended to read:

8 49.45 (6c) (c) 2. ~~The~~ Whether the resident requires active treatment for  
9 developmental disability or active treatment for mental illness.

10 **SECTION 9.** 49.45 (6c) (c) 3. of the statutes is created to read:

11 49.45 (6c) (c) 3. If the department or entity determines under subd. 1. that the  
12 resident needs facility care and under subd. 2. that the resident requires active  
13 treatment for developmental disability, whether the level of care required by the  
14 resident that is provided by a facility could be provided safely in an intermediate  
15 facility or under a plan that is developed under s. 46.279 (4).

16 **SECTION 10.** 49.45 (30m) of the statutes is renumbered 49.45 (30m) (a) (intro.)  
17 and amended to read:

18 49.45 (30m) (a) (intro.) A county shall provide the portion of the payment that  
19 is not provided by the federal government for all of the following services under s.  
20 51.06 (1m) (d) to individuals with developmental disability who are eligible for  
21 medical assistance that is not provided by the federal government.:

22 **SECTION 11.** 49.45 (30m) (a) 1. of the statutes is created to read:

23 49.45 (30m) (a) 1. Services under s. 51.06 (1m) (d).

24 **SECTION 12.** 49.45 (30m) (a) 2. of the statutes is created to read:

1 49.45 (30m) (a) 2. Services in an intermediate care facility for the mentally  
2 retarded, as defined in s. 46.278 (1m) (am), other than a state center for the  
3 developmentally disabled.

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

5 49.45 (30m) (a) 3. Services for which payment is permitted under sub. (6c) (d)

6 2. that are provided in a nursing facility, as defined in s. 46.279(1)(c)

7 SECTION 14. 49.45 (30m) (b) of the statutes is created to read:

8 49.45 (30m) (b) No payment under this section may be made for services  
9 specified under par. (a) unless the individual who receives the services is protectively  
10 placed under s. 55.06 (9) (a) or is placed under an emergency placement under s.

11 55.06 (11) (a) or a temporary placement under s. 55.06 (11) (c).

12 SECTION 15. 49.45 (30m) (c) of the statutes is created to read:

13 49.45 (30m) (c) No payment that is provided by the federal government under  
14 this section may be made for services specified under par. (a) 2. or 3. that are provided  
15 to an individual who was placed in or admitted to an intermediate facility or nursing

16 facility unless one of the following applies: that is made after March 31, 2004,

17 1. <sup>Any</sup> The placement or admission complied with the requirements of s. 46.279.

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

21 SECTION 16. 49.46 (2) (a) 4. c. of the statutes is amended to read:

22 49.46 (2) (a) 4. c. Skilled nursing home services other than in an institution for  
23 mental diseases, except as limited under s. 49.45 (6c) and (30m) (b) and (c).

24 SECTION 17. 49.46 (2) (b) 6. a. of the statutes is amended to read:

, as defined in s. 46.279 (1)(c),

as defined in s. 46.279 (1)(b),

March 31, 2004

Except as provided in  
s. 49.45 (30m)(a), these

1 49.46 (2) (b) 6. a. Intermediate care facility services other than in an institution  
2 for mental diseases, except as limited under s. 49.45 (30m) (b) and (c).

3 SECTION 18. 55.001 of the statutes is amended to read:

4 55.001 Declaration of policy. The legislature recognizes that many citizens  
5 of the state, because of the infirmities of aging, chronic mental illness, mental  
6 retardation, other developmental disabilities or like incapacities incurred at any age,  
7 are in need of protective services. ~~These~~ services should, to the maximum degree of

8 feasibility under programs, services and resources that the county board of  
9 supervisors is reasonably able to provide within the limits of available state and  
10 federal funds and ~~except as provided in s. 49.45 (30m)~~ of county funds required to

11 be appropriated to match state funds, allow the individual the same rights as other  
12 citizens, and at the same time protect the individual from exploitation, abuse and  
13 degrading treatment. This chapter is designed to establish those services and assure  
14 their availability to all persons when in need of them, and to place the least possible  
15 restriction on personal liberty and exercise of constitutional rights consistent with  
16 due process and protection from abuse, exploitation and neglect.

17 SECTION 19. 55.01 (4g) of the statutes is created to read:

18 55.01 (4g) "Intermediate facility" has the meaning given in s. 46.279 (1) (a).

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

20 55.01 (4t) "Nursing facility" has the meaning given in s. 46.279 (1) (b).

21 SECTION 21. 55.045 of the statutes is amended to read:

22 55.045 Funding. The appropriate county department designated under s.  
23 55.02 shall within the limits of available state and federal funds and ~~except as~~

24 ~~provided in s. 49.45 (30m)~~ of county funds required to be appropriated to match state  
25 funds, provide for the reasonable program needs of persons who are protectively

Except as provided in s. 49.45 (30m)(a), the

1 placed or who receive protective services under this chapter, including reasonable  
2 expenses for the evaluations required by s. 55.06 (8). Payment and collections for  
3 protective placement or protective services provided in public facilities specified in  
4 s. 46.10 shall be governed in accordance with s. 46.10. The department may require  
5 that a person who is protectively placed or receives protective services under this  
6 chapter provide reimbursement for services or care and custody received, based on  
7 the ability of the person to pay for such costs.

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

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

1 time set for hearing, upon the county department that is participating in the  
2 program under s. 46.278 of the county of residence of the person sought to be  
3 protected, if the person has a developmental disability and may be placed in an  
4 intermediate facility or a nursing facility. The incompetent or proposed incompetent  
5 is presumed able to attend the hearing unless, after a personal interview, the  
6 guardian ad litem certifies to the court that the person is unable to attend.

7 **SECTION 23.** 55.06 (8) (intro.) of the statutes is amended to read:

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



1 could be met in a noninstitutional setting. A copy of the comprehensive evaluation  
2 shall be provided to the guardian, the guardian ad litem, and to the individual or  
3 attorney at least 96 hours in advance of the hearing to determine placement. The  
4 court or the cooperating agency obtaining the evaluation shall request appropriate  
5 information which shall include at least the following:

6 **SECTION 24.** 55.06 (9) (a) of the statutes is amended to read:

7 55.06 (9) (a) The court may order protective services under s. 55.05 (2) (d) as  
8 an alternative to placement. When ordering placement, the court, on the basis of the  
9 evaluation and other relevant evidence, shall order the appropriate board specified  
10 under s. 55.02 or an agency designated by it to protectively place the individual.  
11 Placement by the appropriate board or designated agency is subject to s. 46.279 and  
12 shall be made in the least restrictive environment consistent with the needs of the  
13 person to be placed and with the placement resources of the appropriate board  
14 specified under s. 55.02. Factors to be considered in making protective placement  
15 shall include the needs of the person to be protected for health, social, or  
16 rehabilitative services; the level of supervision needed; the reasonableness of the  
17 placement given the cost and the actual benefits in the level of functioning to be  
18 realized by the individual; the limits of available state and federal funds and of  
19 county funds required to be appropriated to match state funds; and the  
20 reasonableness of the placement given the number or projected number of  
21 individuals who will need protective placement and given the limited funds  
22 available. The Except as provided in s. 49.45 (30m), the county may not be required  
23 to provide funding, in addition to its funds that are required to be appropriated to  
24 match state funds, in order to protectively place an individual. Placement under this  
25 section does not replace commitment of a person in need of acute psychiatric

1 treatment under s. 51.20 or 51.45 (13). Placement Subject to s. 46.279, placement  
2 may be made to such facilities as nursing homes, public medical institutions, centers  
3 for the developmentally disabled under the requirements of s. 51.06 (3), foster care  
4 services and other home placements, or to other appropriate facilities but may not  
5 be made to units for the acutely mentally ill. If the appropriate board or designated  
6 agency proposes to place an individual who has a developmental disability in an  
7 intermediate facility or a nursing facility under an order under this paragraph, the  
8 county department shall develop a plan under s. 46.279 (4) and furnish the plan to  
9 the board or agency and to the individual's guardian. The board or agency shall place  
10 the individual in a noninstitutional community setting in accord with the plan unless  
11 the ~~board or agency~~ <sup>(court)</sup> finds that to do so is not in the individual's best interests. If the  
12 individual or the individual's guardian rejects the plan, the court shall take the  
13 rejection into consideration in determining whether or not the placement is in the  
14 individual's best interests. The prohibition of placements in units for the acutely  
15 mentally ill does not prevent placement by a court for short-term diagnostic  
16 procedures under par. (d). Placement in a locked unit shall require a specific finding  
17 of the court as to the need for such action. A placement facility may transfer a patient  
18 from a locked unit to a less restrictive environment without court approval.

19 **SECTION 25.** 55.06 (9) (b) of the statutes is amended to read:

20 55.06 (9) (b) Transfer may be made between placement units or from a  
21 placement unit to a medical facility other than those specified in pars. (c) to (e) by a  
22 guardian or placement facility without approval by a court. When transfer is made  
23 by a placement facility, 24 hours' prior written notice of the transfer shall be provided  
24 to the guardian, when feasible. If it is not feasible to notify the guardian in advance,  
25 written notice shall be provided immediately upon transfer, and notice shall also be

1 provided to the court and to the board designated under s. 55.02 or an agency  
2 designated by it within a reasonable time, not to exceed 48 hours from the time of the  
3 transfer. Upon petition to a court by a guardian, ward, or attorney, or other  
4 interested person specifying objections to a transfer, or if the person is transferred  
5 to an intermediate facility or to a nursing facility, the court shall order a hearing,  
6 within 96 hours after filing of the petition or, if the person is transferred to an  
7 intermediate facility or to a nursing facility, within 96 hours after the transfer, to  
8 determine whether there is probable cause to believe that the transfer is consistent  
9 with the requirements specified in par. (a) and is necessary for the best interests of  
10 the ward. The court shall notify the ward, guardian, and petitioner of the time and  
11 place of the hearing, and a guardian ad litem shall be appointed to represent the  
12 ward. If the person is an adult who is indigent, the county of legal settlement shall  
13 be liable for guardian ad litem fees. If the person is a child, the person's parents or  
14 the county of legal settlement shall be liable for guardian ad litem fees as provided  
15 in s. 48.235 (8). The petitioner, ward, and guardian shall have the right to attend,  
16 and to present and cross-examine witnesses.

17 **SECTION 26.** 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,  
22 or other interested person specifying objections to the transfer or if the person has  
23 a developmental disability and is transferred to an intermediate facility or a nursing  
24 facility, the court shall order a hearing as provided in par. (b).

25 **SECTION 27.** 55.06 (10) (a) of the statutes is renumbered 55.06 (10) (a) 1.

1           **SECTION 28.** 55.06 (10) (a) 2. of the statutes is created to read:

2           55.06 (10) (a) 2. If the person has a developmental disability and is placed in  
3 an intermediate facility or a nursing facility, the agency that is responsible for the  
4 protective placement shall notify in writing the county department of the county of  
5 residence of the person that is participating in the program under s. 46.278, at least  
6 90 days before the review. The county department so notified shall develop a plan  
7 under s. 46.279 (4) and furnish the plan to the court that ordered the placement and  
8 to the person's guardian. The court shall order that the person be transferred to the  
9 noninstitutional community setting in accordance with the plan unless the court  
10 finds that to do so is not in the person's best interests. If the person or the person's  
11 guardian rejects the transfer, the court shall take the rejection into consideration in  
12 determining whether or not the transfer is in the person's best interests.

13           **SECTION 29.** 55.06 (11) (c) of the statutes is amended to read:

14           55.06 (11) (c) Upon a finding of probable cause under par. (b), the court may  
15 order temporary placement up to 30 days pending the hearing for a permanent  
16 placement, or the court may order such protective services as may be required. If an  
17 individual who has a developmental disability ~~person~~ is ordered, under this  
18 paragraph, to be temporarily placed in an intermediate facility or in a nursing  
19 facility, and if at the hearing for permanent placement the court orders that the  
20 individual be protectively placed, the court may, before permanent placement,  
21 extend the temporary placement order for not more than 60 days if necessary for the  
22 county department that is participating in the program under s. 46.278 to develop  
23 the plan required under s. 46.279 (4).

24           **SECTION 9324. Initial applicability; health and family services.**

1 (1) PLACEMENTS AND ADMISSIONS TO INTERMEDIATE AND NURSING FACILITIES. The  
 2 treatment of sections 46.279, 55.001, 55.01 (4g) and (4t), 55.045, and 55.06 (5), (8)  
 3 (intro.), (9) (a), (b), and (c), and (11) (c) of the statutes, the renumbering of section  
 4 55.06 (10) (a) of the statutes, and the creation of section 55.06 (10) (a) 2. of the  
 5 statutes first apply to protective placements initiated and admissions to  
 6 intermediate and nursing facilities sought on January 1, 2004.

7 (1) PREADMISSION SCREENING AND RESIDENT REVIEW. The treatment of section  
 8 49.45 (6c) (b) and (c) (intro.), 1., 2., and 3. of the statutes first applies to a screening  
 9 or resident review performed on ~~January~~ <sup>April</sup> 1, 2004. <sup>(a) 6m. Lem.</sup>

INSERT  
15-9

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

11 (1) PLACEMENTS AND ADMISSIONS TO INTERMEDIATE AND NURSING FACILITIES. The  
 12 treatment of sections 46.278 (6) (f), 46.279, 49.45 (6c) (b) and (c) (intro.), 1., 2., and  
 13 3., 49.46 (2) (a) 4. c. and (b) 6. a., 55.001, 55.01 (4g) and (4t), 55.045, and 55.06 (5),  
 14 (8) (intro.), (9) (a), (b), and (c), and (11) (c) of the statutes, the renumbering of section  
 15 55.06 (10) (a) of the statutes, the renumbering and amendment of section 49.45 (30m)  
 16 of the statutes, and the creation of sections 49.45 (30m) (a) 1., 2., and 3., (b), and (c)  
 17 and 55.06 (10) (a) 2. of the statutes take effect on January 1, 2004.

18

(END)

2003-2004 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

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INSERT 15-9

- 1 (2) PETITIONS FOR PROTECTIVE PLACEMENT. The treatment of sections 55.06 (5),  
2 (8) (intro.), and (9) (a) of the statutes first applies to petitions for protective placement  
3 filed on April 1, 2004.
- 4 (3) TRANSFERS OF PROTECTIVELY PLACED PERSONS. The treatment of sections 55.06  
5 (9) (b) and (c) of the statutes first applies to transfers of protectively placed  
6 individuals that are made on April 1, 2004.
- 7 (4) ANNUAL REVIEWS OF PROTECTIVELY PLACED INDIVIDUALS. The renumbering of  
8 section 55.06 (10) (a) of the statutes and the creation of section 55.06 (10) (a) 2. of the  
9 statutes first apply to reviews that are due on April 1, 2004.
- 10 (5) TEMPORARY PROTECTIVE PLACEMENT. The treatment of sections 55.06 (11) (c)  
11 of the statutes first applies to temporary protective placements that occur on April  
12 1, 2004.
- 13 (6) REQUIRED COUNTY FUNDING OF SERVICES. The creation of section 49.45 (30m)  
14 (a) 2. and (c) of the statutes first applies to services provided to an individual who is  
15 initially placed in a facility under a petition for protective placement that is filed on,  
16 a transfer under section 55.06 (9) of the statutes that is made, or a temporary  
17 protective placement under section 55.06 (11) of the statutes that occurs on, April 1,  
18 2004, or to a person who is initially placed in a facility before April 1, 2004, with  
19 respect to whom a review under section 55.06 (10) of the statutes is due on April 1,  
20 2004.

(c)



1     ⑦ ~~(8)~~ LIMITATION ON PAYMENT. The creation of section 49.45 (30m) (b) of the statutes  
2     first applies with respect to services under section 49.45 (30m) (a) 1. and 3. of the  
3     statutes that are provided to an individual on April 1, 2004.

*end insert*