

**2003 DRAFTING REQUEST**

**Senate Amendment (SA-SB44)**

Received: 05/28/2003

Received By: dkennedy

Wanted: As time permits

Identical to LRB:

For: Legislative Fiscal Bureau 266-3847

By/Representing: Stoller

This file may be shown to any legislator: NO

Drafter: dkennedy

May Contact:

Addl. Drafters:

Subject: **Health - long-term care**  
**Mental Health - protect place**

Extra Copies: **RLR**

Submit via email: NO

**Pre Topic:**

LFB:.....Stoller -

**Topic:**

Limitation on placement of individuals with developmental disabilities in ICFs-MR and nursing homes

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/1	dkennedy 06/05/2003	kfollett 06/06/2003	chaskett 06/06/2003	_____	sbasford 06/06/2003		
/2	dkennedy 06/09/2003	kgilfoy 06/09/2003	pgreensl 06/09/2003	_____	mbarman 06/09/2003		

FE Sent For:

<END>

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/?							
/1	dkennedy 06/05/2003	kfollett 06/06/2003	chaskett 06/06/2003	<u>6/5</u>	sbasford 06/06/2003		

FE Sent For:

12-6/9  
Kmg  
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ps/cph  
<END>

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1/?	dkennedy	1/1 kjf 6/6	1/1 cph 6/6	cph/st <del>6/6</del>			

FE Sent For:

<END>

DAK

**Legislative Fiscal Bureau**

One East Main, Suite 301 o Madison, WI 53703 o (608) 266-3847 • Fax: (608) 267-6873

**May 28, 2003**

**DELIVER TO: Debora Kennedy, LRB**

Addressee Fax #:

Addressee Phone #:

# of Pages, Including Cover: 12

**From: Rachel Carabell**

**Phone: (608) 266-3847**

**Fax: (608) 267-6873**

**Email: [rachel.carabell@legis.state.wi.us](mailto:rachel.carabell@legis.state.wi.us)**

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**Here is Motion #178, the omnibus MA motion. It was the only motion adopted by JFC last night on MA. The Committee has finished its action on all DHFS-related items. The one remaining issue (in our area) is the Patients' Compensation Fund, which technically falls under OCL. Please call if you have questions. Thanks.**

days of enactment of the bill: (a) a waiver proposal that would exempt certain facilities with a high proportion of private-pay residents or MA-supported residents from the bed assessment; and (b) a report on the feasibility of exempting private-pay residents from the bed assessment.

Decrease funding by \$12,179,000 (\$2,729,500 GPR, \$3,661,700 FED, -\$19,067,700 SEG, and \$497,500 PR) in 2003-04 and by \$1,316,900 (\$5,229,700 GPR, \$18,659,600 FED, -\$25,828,200 SEG, and \$622,000 PR) in 2004-05 to reflect these modifications. In addition, reduce estimated revenue to the MA trust fund by \$16,629,000 in 2003-04 and by \$16,165,900 in 2004-05 to reflect reestimates of revenue to the MA trust fund. Specify that these provisions would be effective July 1, 2003.

✓ g. *Paper #401 (Nursing Homes -- Labor Region Adjustment)*: Delete the Governor's recommendations and maintain the requirement that DHFS use the Medicare hospital cost index to calculate the labor region adjustment for nursing homes in St. Croix, Douglas, and Pierce Counties. Increase MA benefits funding by \$213,700 SEG and \$300,200 FED annually to restore funding to support labor region adjustments for nursing homes in these counties.

h. *Paper #402 (Limit Placement of Individuals with Developmental Disabilities in ICFs-MR and Nursing Homes)*: Modify the Governor's recommendations by: (a) repealing the statutory requirement that DHFS make payments for services for individuals that were formerly served by the Christian League for the Handicapped; (b) establishing an effective date of January 1, 2005, rather than January 1, 2004, to be consistent with the funding the Governor recommended for this item; and (c) extend from 90 days to 120 days specified periods by which county departments would be required to develop a plan for providing home- and community-based care to individuals in a noninstitutional setting.

In addition, require DHFS to negotiate a contract with a county that participates in CIP IB in a county subject to these provisions and with facilities subject to these provisions that are located in the county regarding long-term planning for residents placed in these facilities from out of state. Specify that a facility subject to these provisions would be an ICF-MR that is licensed as a private nonprofit organization determined by the federal IRS to be exempt from federal income taxation. Specify that a county that is subject to these provisions is a county with a population of less than 100,000 in which is located two or more facilities that are subject to these provisions (Jefferson County). Specify that the contract would define the conditions of admission to the facility, community placement, funding, and possible downsizing of the facilities.

i. *Paper #385 (Supplemental MA Payments to School Districts and Local Units of Government)*: Modify the Governor's recommendations by incorporating the administration's request to include changes that would eliminate the distributional effect of decreasing shared revenue payments and increasing MA payments to municipalities for emergency transportation services and including a provision that would authorize a modification to shared revenue payments to adjust a subsequent year's aid payment to reflect any overpayment or underpayment of the supplemental MA payments:

j. *Paper #386 (HMO Assessment and Payments)*: (Alternative 4). Delete the Governor's provision to create an assessment on the gross revenue of HMOs. Modify funding in the bill by

DAK  
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b0283  
-0210

DAK  
\*  
b0284  
-0209

DAK  
\*  
b0005/3

RLR  
\*

JLS

JLS

RC

RC



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

Date: \_\_\_\_\_

DELIVER TO:

Ms. Debora Kennedy

Addressee Fax #:

4-6948

Addressee Phone #: \_\_\_\_\_

# of Pages, Including Cover:

22

Sender's Initials: \_\_\_\_\_

From:

Charlie Morgan

Message:

DHFS INFO ON  
ICF - MR DOWNSIZING  
PROPOSAL.

Hope this makes sense  
to you.

Charlie

Δ to  
JTC

5-2-03

May 20, 2003

To: Members of the Joint Committee on Finance

From: Helene Nelson, Secretary of the Department of Health and Family Services

Re: Limit Placement of Individuals in ICF-MRs (Paper 402)

DHFS supports **Alternative 1** in paper 402 with the following modifications:

as  
was  
in the  
602

- > Change the effective date and other applicable dates in the bill to reflect the intended start date of January 1, 2005. A January 1, 2005 effective date is consistent with the proposed funding level.
- > Modify the standard under which a court considers the community plan and whether a long-term placement in an ICF-MR is eligible under MA. Require a court to use the standard "the most integrated setting appropriate to the needs of the individual, taking into account information presented by all affected parties" rather than the standard "in the individual's best interest." This change provides a more definitive standard and clarifies that information from all affected parties should be considered in determining the appropriate setting for the individual.
- > Extend the period a county has to develop a community based plan from 90 to 120 days when an individual is being considered for placement in an ICF-MR or is placed on a temporary or emergency basis in an ICF-MR. This change provides counties more time to develop a community placement to achieve the goal of permanence. Additional time will help reduce the possibility of the community placement failing and resulting in a return to the ICF-MR.

From  
Charlei  
Morgan  
6/3/03:  
The intent  
of the  
motion  
was to  
include  
this

- Allow the Department to negotiate a multi-party memorandum of understanding with the ICF-MRs; Bethesda Clara Werner, Bethesda Dierker Olson, St. Colletta Alverno Cottage; and with Jefferson County to fulfill the goals of this proposal. These ICF-MRs, which are located in Jefferson County, have a large number of residents who have moved to the facility from out-of-state. Jefferson County may be unduly burdened by the proposal in the Governor's Budget. Through a multi-party memorandum, the requirements under this proposal could be met in such a way that does not overly burden any one party.

DHFS opposes Alternative 2, 3A2, and 3B2. These alternatives would delete all or key components of the Governor's proposal. The Governor's proposal improves access to community based long-term care for individuals diagnosed with a developmental disability by providing incentives to counties to relocate individuals from ICF-MRs to the community and by ensuring the most integrated placement possible for an individual.



**Statutory Language Draft for Modifications above specified:**

Page 539, following line 10

(bm) "Most integrated setting" means that setting that enables an individuals to interact with persons without disabilities to the fullest extent possible.

Page 539, lines 12 to 21

PLACEMENTS AND ADMISSIONS TO INTERMEDIATE FACILITIES. Except as provided in sub. (5), no person may place an individual with a developmental disability in an intermediate facility and no intermediate facility may admit such an individual unless, before the placement or admission and having considered a plan developed under sub. (4), a court under s. 55.06 (9) (a) or (10) (a) 2. finds that placement in the intermediate facility under a plan that was developed under sub. (4) is not the most integrated setting that is appropriate to the needs of the individual, taking into account information presented by all affected parties in the individual's best interests. 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.

Page 540, lines 3 to 17

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

(a) Within 120 90 days after any determination made under s. 49.45 (6c) (c) 3. that the level of care required by a resident that is provided by a facility could be provided in an intermediate facility or under a plan under this subsection.

(b) Within 120 90 days after receiving written notice under sub. (2) of an application.

(c) Within 120 90 days after a proposal is made under s. 55.06 (9) (a) to place the individual in an intermediate facility or a nursing facility.

(d) Within ~~120~~ <sup>90</sup> days after receiving written notice under s. 55.06 (10) (a) 2. of the placement of the individual in a nursing facility or an intermediate facility.

(e) Within ~~90~~ <sup>60</sup> days after extension of a temporary placement order by the court under s. 55.06 (11) (c).

From Charlie Morgan 6/3: The intent of the motion was to include this

**SECTION 9124. Nonstatutory provisions; health and family services.**

...  
(10) JEFFERSON COUNTY INTERMEDIATE CARE FACILITIES. The department shall negotiate a contract with a county department that participates in the program under s. 46.278 in a county subject to this subsection and with facilities subject to this subsection that are located in the county regarding long-term planning for residents placed in these facilities from out of state. A facility subject to this subsection is an intermediate care facility for the mentally retarded, as defined in section 46.278 (1m) (am) of the Statutes, that is licensed to a private nonprofit organization determined by the federal Internal Revenue Service to be exempt from federal income taxation. A county subject to this subsection is a county with a population of less than 100,000 in which is located two or more facilities subject to this subsection. This contract shall define the conditions of admission to the facility, community placement, funding, and possible downsizing of the facilities.

# DHFS

**Department of Health and Family Services  
2003-2005 Governor's Budget Technical Correction  
May 13, 2003**

## ICF-MR Downsizing

### Description of Correction

Amend Senate Bill 44 to reflect the intended effective date of January 1, 2005.

### Explanation

The Governor's 03-05 Biennial Budget provides \$1,112,100 AF (\$438,900 GPR) in FY 05 to fund the ICF-MR Downsizing proposal. This funding is based on six months of costs given a start date of January 1, 2005. The Biennial Budget Bill (Senate Bill 44) incorrectly shows the effective date to be January 1, 2004 and other applicable dates incorrectly reflect this January 1, 2004 start date. The effective date and other applicable dates in the bill should be changed to reflect a January 1, 2005 effective date to be consistent with the funding available for this initiative.

There is no fiscal effect or this change. Please see the attached statutory changes.

FY 04		FY 05		Appropriation	
\$	EFF	\$	EFF	Alpha	Numeric
\$0	0.00	\$0	0.00		

Agency: DHFS  
 Agency Contact: Anne Miller  
 Phone: 266-5422

## Kennedy, Debora

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**From:** Miller, Anne  
**Sent:** Friday, May 30, 2003 2:19 PM  
**To:** Gebhart, Neil  
**Cc:** Kennedy, Debora; Jones, James; Lund, C. David; McCabe, Sinikka; Bove, Fredi-Ellen; Frye, Judith; Megna, Richard  
**Subject:** LRB Draft of JFC Changes to ICF-MR Downsizing Proposal

**Importance:** High



JFC bud

memoICFMR402.doc

Dear Neil:

Deborah Kennedy just called me. She is drafting the changes to the ICF-MR Downsizing proposal in the Budget Bill made by Joint Finance earlier this week. She received a copy of the language you drafted (attached for your reference), and she has some questions about the non-statutory provisions dealing with Jefferson County.

If I can try to reiterate her question, it is that the non-statutory provision does not exempt any county or facility from the proposal's requirements. She believes our intent is to exempt Jefferson, Bethesda and St. Colletta's from at least some of the provisions in the proposal, if not all of them, and then have them meet conditions stipulated by DHFS under a contract. She would like our input on drafting language specifying the proposal's conditions Jefferson and the facilities are exempted from. Unfortunately she has only through Monday to finish drafting these changes!

My initial reaction was that we would have to exempt Bethesda and St. Colletta, but not Jefferson Co., from all of the proposal's language. However, there is the issue of residents at Bethesda and St. Colletta who are residents of other counties. Would we want these residents to be under the regular provisions or exempted? You may have a better sense as to what we provisions we intended to not apply to Bethesda and St. Colletta's. Any thoughts you have on this are greatly appreciated.

Please feel free to contact Deborah directly if you need further clarification of her question. Also feel free to contact me with any questions.

Thanks,  
Anne

## Kennedy, Debora

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**From:** Gebhart, Neil  
**Sent:** Monday, June 02, 2003 11:09 AM  
**To:** Miller, Anne  
**Cc:** Kennedy, Debora; Jones, James; Lund, C. David; McCabe, Sinikka; Bove, Fredi-Ellen; Frye, Judith; Megna, Richard  
**Subject:** Re: LRB Draft of JFC Changes to ICF-MR Downsizing Proposal



ICF-MR legn -  
JeffCo.doc

As I understand it, the object of the non-statutory provision is only to relieve Jefferson Co of the duty to develop community-based care plans under s. 46.279 with respect to individuals who are Jefferson Co residents only by virtue of the fact that they reside at Bethesda or St Coletta's. We intended to accomplish this objective by contracting with a private agency to perform this task. The original version of the non-statutory provision (see attached) spelled this out in par. (b). As we were kicking around the proposed language within the Dept, pars. (a) to (c) were replaced by the last sentence of the current draft, which reads:

"This contract shall define the conditions of admission to the facility, community placement, funding, and possible downsizing of the facilities."

I don't recall the reason that change was made, but I think it was at Sinikka's request.

We did not intend to exempt Jefferson Co from the requirement that the Co pay the non-federal share of the MA payment for ICF/MR services for an individual who became a Jefferson Co resident by being placed in Bethesda or St Coletta's. As I understand it, the funds Jefferson Co will have available to make these payments will include the same amount for each of these Jefferson Co residents as for other (i.e., "real") Jefferson Co residents. Therefore, with respect to this payment obligation, Jefferson Co is not disadvantaged by the presence of the two ICF/MRs.

To clarify the Dept's intent in this regard, perhaps we should return to the original language [at least pars. (a) and (b)], or something like it.

Please let me know how you would like to proceed with this. I'm available the rest of the day, except 3 to 4 PM.

>>> Anne Miller 05/30/03 02:19PM >>>  
Dear Neil:

Deborah Kennedy just called me. She is drafting the changes to the ICF-MR Downsizing proposal in the Budget Bill made by Joint Finance earlier this week. She received a copy of the language you drafted (attached for your reference), and she has some questions about the non-statutory provisions dealing with Jefferson County.

If I can try to reiterate her question, it is that the non-statutory provision does not exempt any county or facility from the proposal's requirements. She believes our intent is to exempt Jefferson, Bethesda and St. Colletta's from at least some of the provisions in the proposal, if not all of them, and then have them meet conditions stipulated by DHFS under a contract. She would like our input on drafting language specifying the proposal's conditions Jefferson and the facilities are exempted from. Unfortunately she has only through Monday to finish drafting these changes!

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Colletta, but not Jefferson Co., from all of the proposal's language. However, there is the issue of residents at Bethesda and St. Colletta who are residents of other counties. Would we want these residents to be under the regular provisions or exempted? You may have a better sense as to what we provisions we intended to not apply to Bethesda and St. Colletta's. Any thoughts you have on this are greatly appreciated.

Please feel free to contact Deborah directly if you need further clarification of her question. Also feel free to contact me with any questions.

Thanks,  
Anne

## Kennedy, Debora

---

**From:** McCabe, Sinikka  
**Sent:** Monday, June 02, 2003 11:17 AM  
**To:** Gebhart, Neil; Miller, Anne  
**Cc:** Kennedy, Debora; Jones, James; Lund, C. David; Bove, Fredi-Ellen; Frye, Judith; Megna, Richard  
**Subject:** Re: LRB Draft of JFC Changes to ICF-MR Downsizing Proposal

My position:

1. Keep Bethesda, St. Coletta's residents who are from other WI counties than Jefferson in the "regular" ICF-MR downsizing program.
2. Exempt Jefferson County and out-of-state residents who live at St. Coletta or Bethesda.

Reason: It is very hard to tell who is an original Jefferson County resident and who is from out-of-state but now a Jefferson County resident.

>>> Anne Miller 05/30/03 02:19PM >>>  
Dear Neil:

Deborah Kennedy just called me. She is drafting the changes to the ICF-MR Downsizing proposal in the Budget Bill made by Joint Finance earlier this week. She received a copy of the language you drafted (attached for your reference), and she has some questions about the non-statutory provisions dealing with Jefferson County.

If I can try to reiterate her question, it is that the non-statutory provision does not exempt any county or facility from the proposal's requirements. She believes our intent is to exempt Jefferson, Bethesda and St. Colletta's from at least some of the provisions in the proposal, if not all of them, and then have them meet conditions stipulated by DHFS under a contract. She would like our input on drafting language specifying the proposal's conditions Jefferson and the facilities are exempted from. Unfortunately she has only through Monday to finish drafting these changes!

My initial reaction was that we would have to exempt Bethesda and St. Colletta, but not Jefferson Co., from all of the proposal's language. However, there is the issue of residents at Bethesda and St. Colletta who are residents of other counties. Would we want these residents to be under the regular provisions or exempted? You may have a better sense as to what we provisions we intended to not apply to Bethesda and St. Colletta's. Any thoughts you have on this are greatly appreciated.

Please feel free to contact Deborah directly if you need further clarification of her question. Also feel free to contact me with any questions.

Thanks,  
Anne

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**Sent:** Monday, June 02, 2003 2:54 PM  
**To:** McCabe, Sinikka; Miller, Anne  
**Cc:** Kennedy, Debora; Lund, C. David; Jones, Sue; McCann, Linda; Bove, Fredi-Ellen; Frye, Judith; Megna, Richard; Warner, Erin  
**Subject:** Re: LRB Draft of JFC Changes to ICF-MR Downsizing Proposal



ICF-MR legn -  
JeffCo 4.doc

I am attaching a new draft of the Jefferson County amendments to the ICF-MR legislation. As re-drafted, the amendments exempt Jefferson County both from plan development and payment responsibilities with respect to Jefferson Co residents who are placed or may be placed in an ICF/MR located in Jefferson Co. The department is to contract with a public or private agency to develop the plan under these circumstances.

Please let me know if you have any questions.

>>> Anne Miller 06/02/03 11:51AM >>>  
Dear Sinikka and Neil,

Sinikka, thank you for your comments on the Department's intent under this proposal.

Neil, do you think we can send Sinikka's comments over to Deborah and have her try to develop some stat language, or would you want to try to draft something here first?

It's too bad we have only today to resolve this - since I think a meeting would make this go much quicker.

Also, FYI. . .

Judith had asked whether or not the "most integrated setting" language change was included in the MA motion. According to LFB and LRB, this change was not in the motion. It seems to have been overlooked. I have contacted Charlie Morgan at LFB, and when we talk this afternoon I will request the change be included in a technical package that's being prepared for Joint Finance.

I will also ask that the technical package include a clarification that the 90 to 120 days change applies to the Watts review. As you might remember, the Watts review allows a 60 day extension from an initial 30 day period. This period totals 90 days and the Department intended this review period be included under the requested 90 to 120 day extension. However, Deborah is not comfortable extending the 60 days under the Watts review since the 60 days were not specifically mentioned in the motion, Deborah requested that we try to have the technical specify that the 60 days be extended to 90 as part of the larger 90 to 120 day change.

Please let me know if you have any questions.

Thanks,  
Anne Miller  
DHFS/OSF - Budget  
6-5422

>>> Neil Gebhart 06/02/03 11:09AM >>>

As I understand it, the object of the non-statutory provision is only to relieve Jefferson Co of the duty to develop community-based care plans under s. 46.279 with respect to individuals who are Jefferson Co residents only by



virtue of the fact that they reside at Bethesda or St Coletta's. We intended to accomplish this objective by contracting with a private agency to perform this task. The original version of the non-statutory provision (see attached) spelled this out in par. (b). As we were kicking around the proposed language within the Dept, pars. (a) to (c) were replaced by the last sentence of the current draft, which reads:

"This contract shall define the conditions of admission to the facility, community placement, funding, and possible downsizing of the facilities."

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We did not intend to exempt Jefferson Co from the requirement that the Co pay the non-federal share of the MA payment for ICF/MR services for an individual who became a Jefferson Co resident by being placed in Bethesda or St Coletta's. As I understand it, the funds Jefferson Co will have available to make these payments will include the same amount for each of these Jefferson Co residents as for other (i.e., "real") Jefferson Co residents. Therefore, with respect to this payment obligation, Jefferson Co is not disadvantaged by the presence of the two ICF/MRs.

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Please feel free to contact Deborah directly if you need further clarification of her question. Also feel free to contact me with any questions.

Thanks,  
Anne

## JEFFERSON COUNTY AMENDMENTS<sup>1</sup>

SECTION 1132. 46.279 of the statutes is created to read:

...

(4) PLAN FOR HOME OR COMMUNITY-BASED CARE. *Except as provided in sub. (4m)*, a county department that participates in the program under s. 46.278 shall develop a plan for providing home or community-based care in a noninstitutional community setting to an individual *who is a resident of that county* under any of the following circumstances:

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

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

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

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

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

*(4m) Subsection (4) does not apply to a placement of an individual who is a resident of a county that is subject to this subsection in an intermediate facility located in that county. A county subject to this subsection is a county with a population of less than 100,000 in which is located two or more intermediate facilities licensed to private nonprofit organizations determined by the federal Internal Revenue Service to be exempt from federal income taxation. The department shall contract with a public or private agency to develop a plan under sub. (4) for an individual described in this subsection.*

SECTION 1383. 49.45 (30m) of the statutes is renumbered 49.45 (30m) (a) (intro.) and amended to read:

49.45 (30m) (a) (intro.) *Except as provided in par. (am), a* A county shall provide the portion of ~~the~~ payment that is not provided by the federal government for all of the

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<sup>1</sup> Note: Changes in language from SB 44 as introduced are shown in bold italics.

following services under ~~s. 51.06 (1m) (d)~~ to individuals with developmental disability who are eligible for medical assistance that is not provided by the federal government.:

*SECTION 1386m. 49.45 (30m) (am) of the statutes is created to read:*

*49.45 (30m) (am) Paragraph (a) does not apply to services provided to an individual who is a resident of a county that is subject to this subsection in an intermediate care facility for the mentally retarded, as defined in s. 46.278 (1m) (am), located in that county. A county subject to this subsection is a county with a population of less than 100,000 in which is located two or more intermediate facilities licensed to private nonprofit organizations determined by the federal Internal Revenue Service to be exempt from federal income taxation.*

**SECTION 1508.** 55.06 (5) of the statutes is amended to read:

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

presumed able to attend the hearing unless, after a personal interview, the guardian ad litem certifies to the court that the person is unable to attend.

**SECTION 1508m. 55.06 (5m) of the statutes is created to read:**

**55.06 (5m)(a) Except as provided in par. (b), notice of a petition for placement under sub. (5) shall also be served personally or by mail, at least 10 days before the time set for hearing, upon the county department that is participating in the program under s. 46.278 of the county of residence of the person sought to be protected, if the person has a developmental disability and may be placed in an intermediate facility or a nursing facility.**

**(b) In the case of a person sought to be protected who is a resident of a county that is subject to this paragraph and who may be placed in an intermediate facility located in that county, notice under par (a) shall be served upon the department rather than the county department. A county subject to this subsection is a county with a population of less than 100,000 in which is located two or more intermediate facilities licensed to private nonprofit organizations determined by the federal Internal Revenue Service to be exempt from federal income taxation.**

**SECTION 1509. 55.06 (8) (intro.) of the statutes is amended to read:**

55.06 (8) (intro.) Before ordering the protective placement of any individual, the court shall direct a comprehensive evaluation of the person in need of placement, if such an evaluation has not already been made. The court may utilize available multidisciplinary resources in the community in determining the need for placement. The board designated under s. 55.02 or an agency designated by it shall cooperate with the court in securing available resources. Where applicable by reason of the particular disability, the appropriate board designated under s. 55.02 or an agency designated by it having responsibility for the place of legal residence of the individual as provided in s. 49.001 (6) shall make a recommendation for placement. If the court is considering placement of the individual in a center for the developmentally disabled, the court shall request a statement or testimony from the department regarding whether the placement is appropriate for the person's needs and whether it is consistent with the purpose of the center under s. 51.06 (1) ~~unless testimony was provided by the department under sub. (5).~~ **Except as provided in sub. (8m), if If the individual has a developmental disability and**

the court is considering placement of the individual in an intermediate facility or a nursing facility, the court shall request a statement or testimony from the county department of the individual's county of residence that is participating in the program under s. 46.278 as to whether the individual's needs could be met in a noninstitutional setting. A copy of the comprehensive evaluation shall be provided to the guardian, the guardian ad litem, and to the individual or attorney at least 96 hours in advance of the hearing to determine placement. The court or the cooperating agency obtaining the evaluation shall request appropriate information which shall include at least the following:

*SECTION 1509m. 55.06 (8m) of the statutes is created to read:*

*55.06 (8m) If the individual who has a developmental disability is a resident of a county that is subject to this subsection and the court is considering placement of the individual in an intermediate facility located in that county, the court shall request a statement or testimony as to whether the individual's needs could be met in a noninstitutional setting from the department rather than the county department. A county subject to this subsection is a county with a population of less than 100,000 in which is located two or more intermediate facilities licensed to private nonprofit organizations determined by the federal Internal Revenue Service to be exempt from federal income taxation.*

**SECTION 1510.** 55.06 (9) (a) of the statutes is amended to read:

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

functioning to be realized by the individual; the limits of available state and federal funds and of county funds required to be appropriated to match state funds; and the reasonableness of the placement given the number or projected number of individuals who will need protective placement and given the limited funds available. ~~The~~ Except as provided in s. 49.45 (30m), the county may not be required to provide funding, in addition to its funds that are required to be appropriated to match state funds, in order to protectively place an individual. Placement under this section does not replace commitment of a person in need of acute psychiatric treatment under s. 51.20 or 51.45 (13). ~~Placement~~ Subject to s. 46.279, placement may be made to such facilities as nursing homes, public medical institutions, centers for the developmentally disabled under the requirements of s. 51.06 (3), foster care services and other home placements, or to other appropriate facilities but may not be made to units for the acutely mentally ill. If the appropriate board or designated agency proposes to place an individual who has a developmental disability in an intermediate facility or a nursing facility under an order under this paragraph, the county department shall develop a plan under s. 46.279 (4), or the department or its contractor shall develop a plan under s. 46.279 (4m), whichever applies, and furnish the plan to the board or agency and to the individual's guardian. The board or agency shall place the individual in a noninstitutional community setting in accord with the plan unless the court finds that to do so is not in the individual's best interests. If the individual or the individual's guardian rejects the plan, the court shall take the rejection into consideration in determining whether or not the placement is in the individual's best interests. The prohibition of placements in units for the acutely mentally ill does not prevent placement by a court for short-term diagnostic procedures under par. (d). Placement in a locked unit shall require a specific finding of the court as to the need for such action. A placement facility may transfer a patient from a locked unit to a less restrictive environment without court approval.

**SECTION 1514.** 55.06 (10) (a) 2. of the statutes is created to read:

55.06 (10) (a) 2. If the person has a developmental disability and is placed in an intermediate facility or a nursing facility, the agency that is responsible for the protective placement shall notify in writing the county department of the county of residence of the person that is participating in the program under s. 46.278, at least 90 days before the

review. *Except as provided in s. 46.279 (4m), the* county department so notified shall develop a plan under s. 46.279 (4) and furnish the plan to the court that ordered the placement and to the person's guardian. The court shall order that the person be transferred to the noninstitutional community setting in accordance with the plan unless the court finds that to do so is not in the person's best interests. If 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.

**SECTION 1515.** 55.06 (11) (c) of the statutes is amended to read:

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

**SECTION 9124. Nonstatutory provisions; health and family services.**

...

(10) JEFFERSON COUNTY INTERMEDIATE CARE FACILITIES. The department shall negotiate a multi-party memorandum of understanding with a county department that participates in the program under s. 46.278 in a county subject to this subsection and with facilities subject to this subsection that are located in the county. A facility subject to this subsection is an intermediate care facility for the mentally retarded, as defined in section 46.278 (1m) (am) of the Statutes, that is licensed to a private nonprofit organization determined by the federal Internal Revenue Service to be exempt from federal income taxation. A county subject to this subsection is a county with a population of less than 100,000 in which is located two or more facilities subject to this subsection. Pursuant to a memorandum of understanding under this subsection:

(a) The department and county department shall collaborate in determining which current residents of a facility subject to this subsection became residents of the county for the purpose of residing at the facility.

(b) A private contractor paid by the department shall carry out the county department's duty under section 46.279 of the Statutes to develop plans for providing home or community-based care to any individual identified under par. (a).

(c) Facilities subject to this subsection shall agree to reduce their licensed bed capacities to an extent and according to a schedule agreed to by the parties.



## Kennedy, Debora

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**From:** Miller, Anne  
**Sent:** Wednesday, June 04, 2003 3:10 PM  
**To:** Kennedy, Debora  
**Cc:** Blaine, Robert; Morgan, Charlie; Stoller, Jessica; Lund, C. David; McCabe, Sinikka; McCann, Linda; Bove, Fredi-Ellen; Frye, Judith; Gebhart, Neil; Megna, Richard  
**Subject:** ICF-MR Downsizing - Multi-party Contract



ICF-MR legn -  
JeffCo 5.doc

Dear Deborah:

Attached is Neil's draft language establishing separate requirements under the ICF-MR Downsizing proposal for Jefferson Co. and certain facilities through a multi-party contract.

As per our phone conversation last night, I think we're on the same page with these changes. We intend that any exemptions of any parties from the proposal be contingent on a multi-party contract.

I hope this attached language is helpful to you, although I understand that you may chose to draft the language differently.

Also, just as a heads-up. . .

Neil sent the following to me on drafting the change from "best interests" standard to "most integrated setting" that I'm forwarding to you.

He states. . .

"By the way, I noticed a couple additional changes that would need to be made if we were to change the "best interests" standard to "most integrated setting." See sections 1510 and 1514 of the budget bill."

Please feel free to contact me with any questions.

Anne Miller  
DHFS/OSF-Budget  
6-5422

## JEFFERSON COUNTY AMENDMENTS<sup>1</sup>

SECTION 1132. 46.279 of the statutes is created to read:

...

(4) PLAN FOR HOME OR COMMUNITY-BASED CARE. *Except as provided in sub. (4m)*, a county department that participates in the program under s. 46.278 shall develop a plan for providing home or community-based care in a noninstitutional community setting to an individual *who is a resident of that county* under any of the following circumstances:

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

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

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

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

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

*(4m) Subsection (4) does not apply to a placement of an individual who is a resident of a county that is subject to this subsection in an intermediate facility located in that county. A county subject to this subsection is a county with a population of less than 100,000 in which is located two or more intermediate facilities licensed to private nonprofit organizations determined by the federal Internal Revenue Service to be exempt from federal income taxation, if the facilities agree to reduce their licensed bed capacities to an extent and according to a schedule acceptable to the facilities and the department. The department shall contract with a public or private agency to develop a plan under sub. (4) for an individual described in this subsection.*

SECTION 1383. 49.45 (30m) of the statutes is renumbered 49.45 (30m) (a) (intro.) and amended to read:

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<sup>1</sup> Note: Changes in language from SB 44 as introduced are shown in bold italics.

49.45 (30m) (a) (intro.) Except as provided in par. (am), a A county shall provide the portion of ~~the~~ payment that is not provided by the federal government for all of the following services under s. 51.06 (1m) (d) to individuals with developmental disability who are eligible for medical assistance ~~that is not provided by the federal government.:~~

*SECTION 1386m. 49.45 (30m) (am) of the statutes is created to read:*

*49.45 (30m) (am) Paragraph (a) does not apply to services provided to an individual who is a resident of a county that is subject to this subsection in an intermediate care facility for the mentally retarded, as defined in s. 46.278 (1m) (am), located in that county. A county subject to this subsection is a county with a population of less than 100,000 in which is located two or more intermediate facilities licensed to private nonprofit organizations determined by the federal Internal Revenue Service to be exempt from federal income taxation, if the facilities agree to reduce their licensed bed capacities to an extent and according to a schedule acceptable to the facilities and the department.*

**SECTION 1508.** 55.06 (5) of the statutes is amended to read:

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

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

*SECTION 1508m. 55.06 (5m) of the statutes is created to read:*

*55.06 (5m)(a) Except as provided in par. (b), notice of a petition for placement under sub. (5) shall also be served personally or by mail, at least 10 days before the time set for hearing, upon the county department that is participating in the program under s. 46.278 of the county of residence of the person sought to be protected, if the person has a developmental disability and may be placed in an intermediate facility or a nursing facility.*

*(b) In the case of a person sought to be protected who is a resident of a county that is subject to this paragraph and who may be placed in an intermediate facility located in that county, notice under par (a) shall be served upon the department rather than the county department. A county subject to this subsection is a county with a population of less than 100,000 in which is located two or more intermediate facilities licensed to private nonprofit organizations determined by the federal Internal Revenue Service to be exempt from federal income taxation, if the facilities agree to reduce their licensed bed capacities to an extent and according to a schedule acceptable to the facilities and the department.*

*SECTION 1509. 55.06 (8) (intro.) of the statutes is amended to read:*

*55.06 (8) (intro.) Before ordering the protective placement of any individual, the court shall direct a comprehensive evaluation of the person in need of placement, if such an evaluation has not already been made. The court may utilize available multidisciplinary resources in the community in determining the need for placement. The board designated under s. 55.02 or an agency designated by it shall cooperate with the court in securing available resources. Where applicable by reason of the particular disability, the appropriate board designated under s. 55.02 or an agency designated by it having responsibility for the place of legal residence of the individual as provided in s.*

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

*SECTION 1509m. 55.06 (8m) of the statutes is created to read:*

*55.06 (8m) If the individual who has a developmental disability is a resident of a county that is subject to this subsection and the court is considering placement of the individual in an intermediate facility located in that county, the court shall request a statement or testimony as to whether the individual's needs could be met in a noninstitutional setting from the department rather than the county department. A county subject to this subsection is a county with a population of less than 100,000 in which is located two or more intermediate facilities licensed to private nonprofit organizations determined by the federal Internal Revenue Service to be exempt from federal income taxation, if the facilities agree to reduce their licensed bed capacities to an extent and according to a schedule acceptable to the facilities and the department.*

*SECTION 1510. 55.06 (9) (a) of the statutes is amended to read:*

*55.06 (9) (a) The court may order protective services under s. 55.05 (2) (d) as an alternative to placement. When ordering placement, the court, on the basis of the evaluation and other relevant evidence, shall order the appropriate board specified under s. 55.02 or an agency designated by it to protectively place the individual. Placement by*

the appropriate board or designated agency is subject to s. 46.279 and shall be made in the least restrictive environment consistent with the needs of the person to be placed and with the placement resources of the appropriate board specified under s. 55.02. Factors to be considered in making protective placement shall include the needs of the person to be protected for health, social, or rehabilitative services; the level of supervision needed; the reasonableness of the placement given the cost and the actual benefits in the level of functioning to be realized by the individual; the limits of available state and federal funds and of county funds required to be appropriated to match state funds; and the reasonableness of the placement given the number or projected number of individuals who will need protective placement and given the limited funds available. The Except as provided in s. 49.45 (30m), the county may not be required to provide funding, in addition to its funds that are required to be appropriated to match state funds, in order to protectively place an individual. Placement under this section does not replace commitment of a person in need of acute psychiatric treatment under s. 51.20 or 51.45 (13). Placement Subject to s. 46.279, placement may be made to such facilities as nursing homes, public medical institutions, centers for the developmentally disabled under the requirements of s. 51.06 (3), foster care services and other home placements, or to other appropriate facilities but may not be made to units for the acutely mentally ill. If the appropriate board or designated agency proposes to place an individual who has a developmental disability in an intermediate facility or a nursing facility under an order under this paragraph, the county department shall develop a plan under s. 46.279 (4), or the department or its contractor shall develop a plan under s. 46.279 (4m), whichever applies, and furnish the plan to the board or agency and to the individual's guardian. The board or agency shall place the individual in a noninstitutional community setting in accord with the plan unless the court finds that to do so is not in the individual's best interests. If the individual or the individual's guardian rejects the plan, the court shall take the rejection into consideration in determining whether or not the placement is in the individual's best interests. The prohibition of placements in units for the acutely mentally ill does not prevent placement by a court for short-term diagnostic procedures under par. (d). Placement in a locked unit shall require a specific finding of the court as to the need

for such action. A placement facility may transfer a patient from a locked unit to a less restrictive environment without court approval.

**SECTION 1514.** 55.06 (10) (a) 2. of the statutes is created to read:

55.06 (10) (a) 2. If the person has a developmental disability and is placed in an intermediate facility or a nursing facility, the agency that is responsible for the protective placement shall notify in writing the county department of the county of residence of the person that is participating in the program under s. 46.278, at least 90 days before the review. *Except as provided in s. 46.279 (4m), the county department so notified shall develop a plan under s. 46.279 (4) and furnish the plan to the court that ordered the placement and to the person's guardian. The court shall order that the person be transferred to the noninstitutional community setting in accordance with the plan unless the court finds that to do so is not in the person's best interests. If 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.*

**SECTION 1515.** 55.06 (11) (c) of the statutes is amended to read:

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



D-NOTE

LFB:.....Stoller – Limitation on placement of individuals with developmental disabilities in ICFs–MR and nursing homes

FOR 2003-05 BUDGET — NOT READY FOR INTRODUCTION

SENATE AMENDMENT ,

TO 2003 SENATE BILL 44

1 At the locations indicated, amend the bill as follows:

2 1. Page 539, line 10: after that line insert:

3 “(bm) “Most integrated setting” means a setting that enables an individual to  
4 interact with persons without developmental disabilities to the fullest extent  
5 possible.”.

6 2. Page 539, line 15: delete lines 15 to 17 and substitute: “unless, before the  
7 placement or admission and after having considered a plan developed under sub. (4),  
8 a court under s. 55.06 (9) (a) or (10) (a) 2. finds that placement in the intermediate  
9 facility is the most integrated setting that is appropriate to the needs of the  
10 individual, taking into account information presented by all affected parties. An  
11 intermediate facility to which an individual who has”.



1           **3.** Page 540, line 3: delete "A" and substitute "Except as provided in a contract  
2 specified in sub. (4m), a".

3           **4.** Page 540, line 5: delete that line and substitute: "or community-based care  
4 in a noninstitutional community setting to an individual who is a resident of that  
5 county,".

6           **5.** Page 540, line 7: on lines 7, 10, 12 and 14, delete "90" and substitute "120".

7           **6.** Page 540, line 16: delete "60" and substitute "90".

8           **7.** Page 540, line 17: after that line insert:

9           **"(4m) CONTRACT FOR PLAN DEVELOPMENT.** The department shall contract with  
10 a public or private agency to develop a plan under sub. (4), and the county  
11 department is not required to develop such a plan, for an individual to whom all of  
12 the following apply:

13           (a) The individual resides in a county with a population of less than 100,000  
14 in which are located at least 2 intermediate facilities that have licenses issued to  
15 private nonprofit organizations that are exempt from federal income tax under  
16 section 501 (a) of the Internal Revenue Code.

17           (b) Placement for the individual is in, or proposed to be in, an intermediate  
18 facility specified under par. (a) that has agreed to reduce its licensed bed capacity to  
19 an extent and according to a schedule acceptable to the facility and the department."

20           **8.** Page 547, line 25: after that line insert:

21           **"SECTION 1159c.** 46.48 (7) of the statutes is repealed."

22           **9.** Page 611, line 23: delete "A" and substitute "Except as provided in par. (am),  
23 a".

1           **10.** Page 612, line 11: after that line insert:

2           “**SECTION 1386d.** 49.45 (30m) (am) of the statutes is created to read:

3           49.45 (30m) (am) The department shall provide the portion of the payment that  
4 is not provided by the federal government for any of the services specified in par. (a)  
5 1. to 3. that are provided to an individual with developmental disability who is  
6 eligible for medical assistance and is specified in s. 46.279 (4m).”.

7           **11.** Page 612, line 22: delete “2004” and substitute “2005”.

8           **12.** Page 613, line 2: delete “2004” and substitute “2005”.

9           **13.** Page 652, line 8: after “nursing facility” insert “, except that, for a person  
10 sought to be protected to whom s. 46.279 (4m) applies, this notice shall instead be  
11 served on the department”.

12           **14.** Page 653, line 5: after “setting” insert “, except that, if s. 46.279 (4m)  
13 applies to the individual, the court shall request the statement or testimony from the  
14 department, rather than the county department”.

15           **15.** Page 654, line 12: after “department” insert “, or, if s. 46.279 (4m) applies  
16 to the individual, the department or the department’s contractor”.

17           **16.** Page 654, line 15: delete lines 15 to 18 and substitute: “the court finds that  
18 placement in the intermediate facility or nursing facility is the most integrated  
19 setting, as defined in s. 46.279 (1) (bm), that is appropriate to the needs of the  
20 individual taking into account information presented by all affected parties. The  
21 prohibition of placements in units for the acutely mentally ill does not”.

22           **17.** Page 655, line 10: delete lines 10 and 11 and substitute: “within 96 hours  
23 after filing of the petition, to”.

1           **18.** Page 655, line 14: after “ward” insert “or, if the person is transferred to an  
2 intermediate facility or to a nursing facility, to determine if the intermediate facility  
3 or nursing facility is the most integrated setting, as defined in s. 46.279 (1) (bm), ~~that~~ ← set  
4 is appropriate to the needs of the ward taking into account information presented by  
5 all affected parties”.

6           **19.** Page 656, line 9: after “46.278” insert “or, if s. 46.279 (4m) applies to the  
7 person, the department”.

8           **20.** Page 656, line 10: after “notified” insert “or, if s. 46.279 (4m) applies, the  
9 department’s contractor”.

10           **21.** Page 656, line 14: delete lines 14 to 16 and substitute “finds that  
11 placement in the intermediate facility or nursing facility is the most integrated  
12 setting, as defined in s. 46.279 (1) (bm), <sup>which</sup> ~~that~~ <sub>is</sub> appropriate to the needs of the person  
13 taking into account information presented by all affected parties.”.

14           **22.** Page 656, line 25: delete “60” and substitute “90”.

15           **23.** Page 657, line 1: after “46.278” insert “or, if s. 46.279 (4m) applies, the  
16 department’s contractor”.

17           **24.** Page 1119, line 11: on lines 11, 14, 17, 20, and 23, delete “2004” and  
18 substitute “2005”.

19           **25.** Page 1120, line 4: on lines 4, 6, and 9, delete “2004” and substitute “2005”.

20           **26.** Page 1132, line 2: after “46.279” insert “(title), (1) to (4), and (5)”.

21           **27.** Page 1132, line 6: after “3.,” insert “(am).”.

22           **28.** Page 1132, line 7: delete “2004” and substitute “2005”.

23  
(END)

D-NOTE

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

LRBb0284/1dn

DAK: 

*Date*

To Jessica Stoller:

This is the draft for Motion 178, item h.

Please review my language for the nonstatutory provision. These issues arose in the course of drafting:

1. Since a nonstatutory provision must be time-limited, I required that the memorandum of understanding be negotiated by January 1, 2005, which is the effective date for the other provisions; okay?
2. Is it certain that Jefferson County is the only county in the state with a population of less than 100,000 that has at least two ICFs-MR that are private nonprofits exempt from federal income tax requirements?
3. Please note that, in changing the "best interests" standard, I affected ss. 46.279 (2) and 55.06 (9) (a) and (b) and (10) (a) 2.
4. I did not include s. 46.279 in the delayed effective date, because it seems to me that DHFS needs to contract with the entity before the requirements begin; on the other hand, I included the creation of s. 49.45 (30m) (am) in the delayed effective date.
5. A Wisconsin court could find that this amendment is a "private or local law" which, under art. IV, sec. 18, of the Wisconsin Constitution, must be enacted as single-subject legislation. If so, this amendment cannot validly be enacted as part of the budget bill, which clearly encompasses more than one subject. Under *Milwaukee Brewers Baseball Club v. Wisconsin Dept. of Health and Social Services*, 130 Wis. 2d 79, 115 (1986), "a legislative provision which is specific to any person, place or thing is a private or local law within the meaning of art. 4, sec. 18, unless: 1) the general subject matter of the provision relates to a state responsibility of statewide dimension; and 2) its enactment will have direct and immediate effect on a specific statewide concern or interest." As it is difficult to predict the potential for and outcome of any court action on this amendment, you may wish to consider introducing this proposal as a separate bill.

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**

LRBb0284/1dn  
DAK:kjf:cph

June 6, 2003

To Jessica Stoller:

This is the draft for Motion 178, item h.

Please review my language for the nonstatutory provision. These issues arose in the course of drafting:

1. Since a nonstatutory provision must be time-limited, I required that the memorandum of understanding be negotiated by January 1, 2005, which is the effective date for the other provisions; okay?
2. Is it certain that Jefferson County is the only county in the state with a population of less than 100,000 that has at least two ICFs-MR that are private nonprofits exempt from federal income tax requirements?
3. Please note that, in changing the "best interests" standard, I affected ss. 46.279 (2) and 55.06 (9) (a) and (b) and (10) (a) 2.
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Phone: (608) 266-0137  
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## Kennedy, Debora

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**From:** Stoller, Jessica  
**Sent:** Friday, June 06, 2003 5:07 PM  
**To:** Kennedy, Debora  
**Cc:** Morgan, Charlie  
**Subject:** A few comments/questions on ICF-MR Downsizing draft b0284/1

In response to a few of your questions (and to add a few of my own):

1. In the memo sent to the JFC, DHFS requested that the effective date and other applicable dates of these provisions be changed to Jan. 1, 2005 but #11, #12, #24, and #25 in the draft specify different effective months in 2005. (ie April, March, etc.)
2. Jefferson County is the only county with a population of 100,000 with 2 ICF-MR facilities identified as non-profits. There are approximately 6 non-profit ICF-MRs in the state right now-2 of which are in Milwaukee, and 2 of which are in Brown County.
4. I don't think that there is a problem with the effective date of the contracting provisions, but Charlie may have a few comments on this.
5. Section 1386d under #10 makes DHFS responsible for all the non-federal costs for all Jefferson County residents receiving ICF-MR, Nursing home, and ITP services. I believe DHFS would like to specify in their contracts/plans who would be responsible for which costs. However, counties are currently responsible for the non-federal portion of ITP costs and requiring DHFS to pay for these costs for Jefferson county residents only may pose a problem. Please let me know if I am misreading this section.

Thanks.

Jessica

*Jessica Stoller*  
*Legislative Fiscal Bureau Analyst*  
*Jessica.Stoller@legis.state.wi.us*  
*(608)266-3847*



D-NOTE

ekg ✓

LFB:.....Stoller – Limitation on placement of individuals with developmental disabilities in ICFs–MR and nursing homes

FOR 2003–05 BUDGET — NOT READY FOR INTRODUCTION

SENATE AMENDMENT ,

TO 2003 SENATE BILL 44

1 At the locations indicated, amend the bill as follows:

2 1. Page 539, line 10: after that line insert:

3 “(bm) “Most integrated setting” means a setting that enables an individual to  
4 interact with persons without developmental disabilities to the fullest extent  
5 possible.”.

6 2. Page 539, line 15: delete lines 15 to 17 and substitute “unless, before the  
7 placement or admission and after having considered a plan developed under sub. (4),  
8 a court under s. 55.06 (9) (a) or (10) (a) 2. finds that placement in the intermediate  
9 facility is the most integrated setting that is appropriate to the needs of the  
10 individual, taking into account information presented by all affected parties. An  
11 intermediate facility to which an individual who has”.

1           **3.** Page 540, line 3: delete “A” and substitute “Except as provided in a contract  
2 specified in sub. (4m), a”.

3           **4.** Page 540, line 5: delete that line and substitute “or community-based care  
4 in a noninstitutional community setting to an individual who is a resident of that  
5 county,”.

6           **5.** Page 540, line 7: on lines 7, 10, 12 and 14, delete “90” and substitute “120”.

7           **6.** Page 540, line 16: delete “60” and substitute “90”.

*as specified  
in the contract,*

8           **7.** Page 540, line 17: after that line insert:

9           “(4m) CONTRACT FOR PLAN DEVELOPMENT. The department shall contract with  
10 a public or private agency to develop a plan under sub. (4), and the county  
11 department is not required to develop such a plan, for an individual to whom all of  
12 the following apply:

13           (a) The individual resides in a county with a population of less than 100,000  
14 in which are located at least 2 intermediate facilities that have licenses issued to  
15 private nonprofit organizations that are exempt from federal income tax under  
16 section 501 (a) of the Internal Revenue Code.

17           (b) Placement for the individual is in, or proposed to be in, an intermediate  
18 facility specified under par. (a) that has agreed to reduce its licensed bed capacity to  
19 an extent and according to a schedule acceptable to the facility and the department.”.

20           **8.** Page 547, line 25: after that line insert:

21           “SECTION 1159c. 46.48 (7) of the statutes is repealed.”.

22           **9.** Page 611, line 23: delete “A” and substitute “Except as provided in par. (am),  
23 a”.



1           **10.** Page 612, line 11: after that line insert:

2           “SECTION 1386d. 49.45 (30m) (am) of the statutes is created to read:

3           49.45 (30m) (am) The department shall provide the portion of the payment that  
4           is not provided by the federal government for any of the services specified in par. (a)  
5           1. to 3. that are provided to an individual with developmental disability who is  
6           eligible for medical assistance ~~and as specified in~~ s. 46.279 (4m).”

, as determined  
under the  
contract under

✓  
INSERT 3-6

7           **11.** Page 612, line 22: delete “2004” and substitute “2005”.

March 31,

April 30,

8           **12.** Page 613, line 2: delete “2004” and substitute “2005”.

9           **13.** Page 652, line 8: after “nursing facility” insert “, except that, for a person  
10           sought to be protected to whom s. 46.279 (4m) applies, this notice shall instead be  
11           served on the department”.

12           **14.** Page 653, line 5: after “setting” insert “, except that, if s. 46.279 (4m)  
13           applies to the individual, the court shall request the statement or testimony from the  
14           department, rather than the county department”.

15           **15.** Page 654, line 12: after “department” insert “, or, if s. 46.279 (4m) applies  
16           to the individual, the department or the department’s contractor”.

17           **16.** Page 654, line 15: delete lines 15 to 18 and substitute “the court finds that  
18           placement in the intermediate facility or nursing facility is the most integrated  
19           setting, as defined in s. 46.279 (1) (bm), that is appropriate to the needs of the  
20           individual taking into account information presented by all affected parties. The  
21           prohibition of placements in units for the acutely mentally ill does not”.

22           **17.** Page 655, line 10: delete lines 10 and 11 and substitute “within 96 hours  
23           after filing of the petition, to”.

1           **18.** Page 655, line 14: after “ward” insert “or, if the person is transferred to an  
2 intermediate facility or to a nursing facility, to determine if the intermediate facility  
3 or nursing facility is the most integrated setting, as defined in s. 46.279 (1) (bm), that  
4 is appropriate to the needs of the ward taking into account information presented by  
5 all affected parties”.

6           **19.** Page 656, line 9: after “46.278” insert “or, if s. 46.279 (4m) applies to the  
7 person, the department”.

8           ✓ **20.** Page 656, line 10: after “notified” insert “or, if s. 46.279 (4m) applies, the  
9 department’s contractor”.

*delete that line and substitute “120 days before the review. The county department*

*so notified*

*shall develop a plan*

10           **21.** Page 656, line 14: delete lines 14 to 16 and substitute “finds that  
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13 taking into account information presented by all affected parties.”.

14           **22.** Page 656, line 25: delete “60” and substitute “90”.

15           **23.** Page 657, line 1: after “46.278” insert “or, if s. 46.279 (4m) applies, the  
16 department’s contractor”.

17           ✓ **24.** Page 1119, line 11: on lines 11, 14, ~~17, 20, 22, 24~~, delete “2004” and  
18 substitute “2005”.

*and*

*April 1,*

*May 1,*

19 ✓ **25.** Page 1120, line 4: on lines 4, 6 and 9, delete “2004” and substitute “2005”

INSERT 4-19

20           **26.** Page 1132, line 2: after “46.279” insert “(title), (1) to (4), and (5)”.

21           **27.** Page 1132, line 6: after “3.,” insert “(am).”.

22           **28.** Page 1132, line 7: delete “2004” and substitute “2005”.

23           (END)

*D-NOTE*

INSERT 3-6

✓  
# Page 612, line 14: after "(a)" insert "or  
(am)".

INSERT 4-19 ✓

✓ #. Page 1119, line 16: delete "(b) and".

✓ #. Page 1119, line 17: on lines 17 and 20, delete "April 1, 2004" and substitute "May 1, 2005".

✓ #. Page 1119, line 21: delete <sup>(CS)</sup> "TEMPORARY" and substitute <sup>(CS)</sup> "EXTENSIONS OF TEMPORARY".

✓ #. Page 1119, line 23: delete "2004" and substitute "2005".

✓ #. Page 1119, line 24: delete the material beginning with that line and ending with page 1120, line 6.

✓ #. Page 1120, line 9: delete "April 1, 2004" and substitute "May 1, 2005".

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

LRBb0284/2dn

DAK: [redacted]:cph



To Jessica Stoller:

This redraft is in response to your June 6 e-mail. I have, in this redraft, done the following:

1. Clarified in s. 46.279 (4m) (intro.) and 49.45 (30m) (am) that the contract and payment for services shall cover individuals as specified in the contract, in order to allow DHFS and the contractor to determine how to differentiate between county and "non-county" residents.
2. Changed dates throughout to more fully reflect the 90-to-120 and 60-to-90 day increases.
3. Thoroughly revised the Initial Applicability provisions to more accurately reflect the provisions that actually are affected by the requirements to produce plans under s. 46.279.

If you have any questions, please don't hesitate to call.

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**DRAFTER'S NOTE**  
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LRBb0284/2dn  
DAK:kg:pg

June 9, 2003

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State of Wisconsin  
2003 - 2004 LEGISLATURE

LRBb0284/2  
DAK:kjf&kg:pg

LFB:.....Stoller – Limitation on placement of individuals with developmental disabilities in ICFs–MR and nursing homes

FOR 2003–05 BUDGET — NOT READY FOR INTRODUCTION

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