

**2005 DRAFTING REQUEST**

**Bill**

Received: 02/17/2005

Received By: **dkennedy**

Wanted: **As time permits**

Identical to LRB:

For: **Daniel LeMahieu (608) 266-9175**

By/Representing: **Himself**

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

Drafter: **dkennedy**

May Contact: **Sarah Diedrick-Kasdorf (Wis. Cos**

Addl. Drafters:

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

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.LeMahieu@legis.state.wi.us**

Carbon copy (CC:) to: **robin.ryan@legis.state.wi.us**

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Apply county liability shield to placements in intermediate care facilities for the mentally retarded (ICFMRs)

---

**Instructions:**

See Attached

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**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>
/?	dkennedy 02/20/2005	jdyer 02/21/2005		_____			S&L
/P1			pgreensl 02/21/2005	_____	mbarman 02/21/2005		S&L
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/3	dkennedy 03/10/2005	jdyer 03/10/2005	rschluet 03/10/2005	_____	lemery 03/10/2005		S&L
/4	dkennedy 03/10/2005	jdyer 03/11/2005	chaugen 03/11/2005	_____	lemery 03/11/2005	mbarman 03/16/2005	S&L
/5	dkennedy 03/28/2005	jdyer 03/29/2005	rschluet 03/29/2005	_____	sbasford 03/29/2005	sbasford 03/29/2005	

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*[Handwritten signatures and initials]*  
3-29-05 JF

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/?	dkennedy	1/1 3/21 jls	2/21 PQ	2/21 PQ/20			

FE Sent For:

<END>

**Kennedy, Debora**

**From:** Diedrick-Kasdorf [Diedrick@wicounties.org]  
**Sent:** Thursday, February 17, 2005 9:13 AM  
**To:** Kennedy, Debora  
**Subject:** Rep. LeMahieu's Drafting Request on ICF-MR Placements

Debora:

Following please find our summary of the problem that Rep. LeMahieu is correcting through his bill draft. Please do not hesitate to contact me if you have any questions.

**Liability Shield Language**

2003 Wisconsin Act 33, the 2003-2005 state biennial budget, created new language placing restrictions on placements and admissions to intermediate and nursing facilities. Under the new language, "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 after 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 is the most integrated setting that is appropriate to the needs of the individual, taking into account information presented by all affected parties..." [s. 46.279 (2)].

Look at 49.45 (30m)  
46.279  
03-0209

Section 55.06 (9) (a) Wis. Stats. contains language commonly referred to as the "liability shield". Section 55.06 (9) (a) Wis. Stats. lists factors for the court to consider in making a protective placement including "the limits of available state and federal funds and of county funds required to be appropriated to match state funds" (liability shield). The purpose of the liability shield law is to protect counties fiscally from community placements that could have a significant impact on county budgets.

The new language drafted under 46.279 prohibits placements in an intermediate facility unless the court finds under 55.06 (9) (a) or (10) (a) that placement in the intermediate facility is the most integrated setting that is appropriate to the needs of the individual. It is unclear if the other factors listed under 55.06 (9) (a) are to also be considered by the court, including the liability shield language. If the liability shield language is not applied to s.46.279 Wis. Stats., counties will be forced to provide funding for community placements for all individuals currently residing in ICFs-MR regardless of the costs to relocate individuals as well as the costs of individuals entering the system. This will have an enormous impact on county property taxes.

} ?

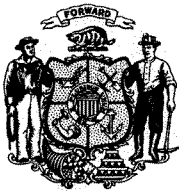
Note that, under s. 55.06(9)(a), the court must, under current law, consider "the placement resources of the appropriate board specified under s. 55.02."

\* Amend s. 46.279 Wis. Stats. to allow for placements in an ICF-MR if providing community-based care would not be feasible within the limits of available state and federal funding and required county matching funds.

Sarah Diedrick-Kasdorf  
Senior Legislative Associate

Wisconsin Counties Association  
22 E. Mifflin Street, Ste. 900  
Madison, WI 53703  
608-663-7188  
608-663-7189 (fax)





State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-2177/P1

DAK:...

JLD

By WED. 2/23

D-NOTE

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Gen

1 AN ACT ...; relating to: modifying certain restrictions on admissions to,  
2 protective placements in, or transfers to intermediate care facilities for the  
3 mentally retarded and nursing homes and on Medical Assistance payment for  
4 certain services for individuals with developmental disabilities.

*Analysis by the Legislative Reference Bureau*

Under current law, beginning January 1, 2005, no person may place an individual with a developmental disability (except for an emergency or temporary protective placement) in an intermediate care facility for the mentally retarded (ICFMR), other than a state center for the developmentally disabled, and no such ICFMR may admit such an individual unless, before the placement or admission, a court finds that placement in the ICFMR is the most integrated setting (a setting that enables the individual to interact with persons without developmental disability to the fullest extent possible) that is appropriate to the needs of the individual. Before making this finding, the court must consider a plan for home or community-based, noninstitutional care that a county department of the county of which the individual is a resident must develop under certain time limitations. In a particular county that meets certain requirements, the Department of Health and Family Services must contract with an agency to develop the plan. In addition, if DHFS or an entity determines from a preadmission screening that an individual requires active treatment for developmental disability, no person may place the individual in a nursing home, and no nursing home may admit such an individual, unless the screening indicates that the individual's need for care cannot be fully met in an ICFMR or under a plan for home or community-based care.

(DHFS)

The plans required to be developed by county departments initially apply to preadmission screenings performed on May 1, 2005, petitions for protective placement filed on May 1, 2005, transfers of protectively placed persons made on May 1, 2005, annual reviews of protectively placed individuals that are due on May 1, 2005, and extensions of temporary protective placements that occur on April 1, 2005.

If an individual is placed in or admitted to a nursing home or ICFMR after a plan for home or community-based care has been considered and rejected, counties must provide the portion of Medical Assistance (MA) payment that is not provided by the federal government for evaluation services at state centers for the developmentally disabled, for services in an ICFMR, and for permissible services in nursing homes. MA may not be provided unless the individual who receives services is protectively placed or is under an emergency or temporary placement. (DHFS must provide the portion of non-federal MA payment for these services provided to an individual who is a resident of a particular county that meets certain requirements.)

This bill modifies the requirement that a county provide the portion of MA payment that is not provided by the federal government for evaluation services at state centers for the developmentally disabled for services in an ICFMR, and for permissible services in nursing homes, to instead require that DHFS pay for these costs. Further, the bill requires that a court, in placing an individual with developmental disability after having considered a plan developed by a county department, in considering the transfer of a protectively placed individual to a nursing home or and ICFMR, and in considering the review of a protective placement in an ICFMR or nursing home, consider (instead of whether placement in an ICFMR or nursing facility is the least restrictive environment consistent with the individual's needs) whether protective placement provides for 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.

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.** 46.279 (1) (bm) of the statutes is repealed.
- 2           **SECTION 2.** 46.279 (2) of the statutes is amended to read:

1           **46.279 (2)** PLACEMENTS AND ADMISSIONS TO INTERMEDIATE FACILITIES. Except as  
 2 provided in sub. (5), no person may place an individual with a developmental  
 3 disability in an intermediate facility and no intermediate facility may admit such an  
 4 individual unless, before the placement or admission and after having considered a  
 5 plan developed under sub. (4), a court under s. 55.06 (9) (a) or (10) (a) 2. finds that  
 6 placement ~~in the intermediate facility is the most integrated setting that is~~  
 7 ~~appropriate to the needs of the individual, taking into account information presented~~  
 8 ~~by all affected parties~~ is reasonable within the factors required to be considered  
 9 under s. 55.006 (9) (a). An intermediate facility to which an individual who has a  
 10 developmental disability applies for admission shall, within 5 days after receiving  
 11 the application, notify the county department that is participating in the program  
 12 under s. 46.278 of the county of residence of the individual who is seeking admission  
 13 concerning the application.

History: 2003 a. 33.

14           **SECTION 3.** 49.45 (30m) (a) (intro.) of the statutes is amended to read:

15           49.45 (30m) (a) (intro.) ~~Except as provided in par. (am), a county~~ The  
 16 department shall provide the portion of payment that is not provided by the federal  
 17 government for all of the following services to individuals with developmental  
 18 disability who are eligible for medical assistance:

History: 1971 c. 40 s. 93; 1971 c. 42, 125; 1971 c. 213 s. 5; 1971 c. 215, 217, 307; 1973 c. 62, 90, 147; 1973 c. 333 ss. 106g, 106h, 106j, 201w; 1975 c. 39; 1975 c. 223 s. 28; 1975 c. 224 ss. 54h, 56 to 59m; 1975 c. 383 s. 4; 1975 c. 411; 1977 c. 29, 418; 1979 c. 34 ss. 837f to 838, 2102 (20) (a); 1979 c. 102, 177, 221, 355; 1981 c. 20 ss. 839 to 854, 2202 (20) (r); 1981 c. 93, 317; 1983 a. 27 ss. 1046 to 1062m, 2200 (42); 1983 a. 245, 447, 527; 1985 a. 29 ss. 1026m to 1031d, 3200 (23), (56), 3202 (27); 1985 a. 120, 176, 269; 1985 a. 332 ss. 91, 251 (5), 253; 1985 a. 340; 1987 a. 27 ss. 989r to 1000s, 2247, 3202 (24); 1987 a. 186, 307, 339, 399; 1987 a. 403 s. 256; 1987 a. 413; 1989 a. 6; 1989 a. 31 ss. 1402 to 1452g, 2909g, 2909i; 1989 a. 107, 173, 310, 336, 351, 359; 1991 a. 22, 39, 80, 250, 269, 315, 316; 1993 a. 16 ss. 1362g to 1403, 3883; 1993 a. 27, 107, 112, 183, 212, 246, 269, 335, 356, 437, 446, 469; 1995 a. 20; 1995 a. 27 ss. 2947 to 3002r, 7299, 9126 (19), 9130 (4), 9145 (1); 1995 a. 191, 216, 225, 289, 303, 398, 417, 457; 1997 a. 3, 13, 27, 114, 175, 191, 237, 252, 293; 1999 a. 9, 63, 103, 180, 185; 2001 a. 13, 16, 35, 38, 57, 67, 104, 109; 2003 a. 33, 318, 321.

19           **SECTION 4.** 49.45 (30m) (am) of the statutes is repealed.

20           **SECTION 5.** 49.45 (30m) (b) of the statutes is amended to read:

21           49.45 (30m) (b) No payment under this section may be made for services  
 22 specified under par. (a) ~~or (am)~~ unless the individual who receives the services is

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

**History:** 1971 c. 40 s. 93; 1971 c. 42, 125; 1971 c. 213 s. 5; 1971 c. 215, 217, 307; 1973 c. 62, 90, 147; 1973 c. 333 ss. 106g, 106h, 106j, 201w; 1975 c. 39; 1975 c. 223 s. 28; 1975 c. 224 ss. 54h, 56 to 59m; 1975 c. 383 s. 4; 1975 c. 411; 1977 c. 29, 418; 1979 c. 34 ss. 837f to 838, 2102 (20) (a); 1979 c. 102, 177, 221, 355; 1981 c. 20 ss. 839 to 854, 2202 (20) (r); 1981 c. 93, 317; 1983 a. 27 ss. 1046 to 1062m, 2200 (42); 1983 a. 245, 447, 527; 1985 a. 29 ss. 1026m to 1031d, 3200 (23), (56), 3202 (27); 1985 a. 120, 176, 269; 1985 a. 332 ss. 91, 251 (5), 253; 1985 a. 340; 1987 a. 27 ss. 989r to 1000s, 2247, 3202 (24); 1987 a. 186, 307, 339, 399; 1987 a. 403 s. 256; 1987 a. 413; 1989 a. 6; 1989 a. 31 ss. 1402 to 1452g, 2909g, 2909i; 1989 a. 107, 173, 310, 336, 351, 359; 1991 a. 22, 39, 80, 250, 269, 315, 316; 1993 a. 16 ss. 1362g to 1403, 3883; 1993 a. 27, 107, 112, 183, 212, 246, 269, 335, 356, 437, 446, 469; 1995 a. 20, 1995 a. 27 ss. 2947 to 3002r, 7299, 9126 (19), 9130 (4), 9145 (1); 1995 a. 191, 216, 225, 289, 303, 398, 417, 457; 1997 a. 3, 13, 27, 114, 175, 191, 237, 252, 293; 1999 a. 9, 103, 180, 185; 2001 a. 13, 16, 35, 38, 57, 67, 104, 109; 2003 a. 33, 318, 321.

3 **SECTION 6. 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. ~~Except as provided in s. 49.45 (30m) (a), these~~  
 8 These services should, to the maximum degree of feasibility under programs,  
 9 services and resources that the county board of supervisors is reasonably able to  
 10 provide within the limits of available state and federal funds and of county funds  
 11 required to be appropriated to match state funds, allow the individual the same  
 12 rights as other citizens, and at the same time protect the individual from  
 13 exploitation, abuse and degrading treatment. This chapter is designed to establish  
 14 those services and assure their availability to all persons when in need of them, and  
 15 to place the least possible restriction on personal liberty and exercise of  
 16 constitutional rights consistent with due process and protection from abuse,  
 17 exploitation and neglect.

18 **History:** 1973 c. 284; 1979 c. 221; 1995 a. 92; 2003 a. 3

18 **SECTION 7. 55.045** of the statutes is amended to read:

19 **55.045 Funding.** ~~Except as provided in s. 49.45 (30m) (a), the~~ The appropriate  
 20 county department designated under s. 55.02 shall within the limits of available  
 21 state and federal funds and of county funds required to be appropriated to match  
 22 state funds, provide for the reasonable program needs of persons who are

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

8 History: 1995 a. 92; 1999 a. 32; 2003 a. 33.

8 **SECTION 8.** 55.06 (9) (a) of the statutes is amended to read:

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

1 to provide funding, in addition to its funds that are required to be appropriated to  
2 match state funds, in order to protectively place an individual. Placement under this  
3 section does not replace commitment of a person in need of acute psychiatric  
4 treatment under s. 51.20 or 51.45 (13). Subject to s. 46.279, placement may be made  
5 to such facilities as nursing homes, public medical institutions, centers for the  
6 developmentally disabled under the requirements of s. 51.06 (3), foster care services  
7 and other home placements, or to other appropriate facilities but may not be made  
8 to units for the acutely mentally ill. If the appropriate board or designated agency  
9 proposes to place an individual who has a developmental disability in an  
10 intermediate facility or a nursing facility under an order under this paragraph, the  
11 county department, or, if s. 46.279 (4m) applies to the individual, the department or  
12 the department's contractor shall develop a plan under s. 46.279 (4) and furnish the  
13 plan to the board or agency and to the individual's guardian. The board or agency  
14 shall place the individual in a noninstitutional community setting in accord with the  
15 plan unless the court finds that placement in the intermediate facility or nursing  
16 facility is the most integrated setting, as defined in s. 46.279 (1) (bm), that is  
17 appropriate to the needs of the individual taking into account information presented  
18 by all affected parties a home or community-based setting is not reasonable within  
19 the factors required to be considered under this paragraph. The prohibition of  
20 placements in units for the acutely mentally ill does not prevent placement by a court  
21 for short-term diagnostic procedures under par. (d). Placement in a locked unit shall  
22 require a specific finding of the court as to the need for such action. A placement

1 facility may transfer a patient from a locked unit to a less restrictive environment  
2 without court approval.

**History:** 1973 c. 284; 1975 c. 41; 1975 c. 94 s. 3; 1975 c. 189 s. 99 (2); 1975 c. 393, 421, 422; 1975 c. 430 ss. 67 to 71, 80; 1977 c. 26, 299, 428; 1977 c. 449 s. 497; 1979 c. 32 s. 92 (1); 1979 c. 110 s. 60 (1); 1979 c. 221; 1981 c. 314 s. 146; 1981 c. 379; 1983 a. 27; 1983 a. 189 s. 329 (19); 1983 a. 219; 1985 a. 29 ss. 1143, 3202 (23); 1987 a. 366; 1989 a. 31, 359; 1991 a. 269; 1993 a. 187, 451; 1995 a. 27, 92; 1995 a. 237, 283; 2001 a. 109; 2003 a. 33, 326.

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

4 55.06 (9) (b) Transfer may be made between placement units or from a  
5 placement unit to a medical facility other than those specified in pars. (c) to (e) by a  
6 guardian or placement facility without approval by a court. When transfer is made  
7 by a placement facility, 24 hours' prior written notice of the transfer shall be provided  
8 to the guardian, when feasible. If it is not feasible to notify the guardian in advance,  
9 written notice shall be provided immediately upon transfer, and notice shall also be  
10 provided to the court and to the board designated under s. 55.02 or an agency  
11 designated by it within a reasonable time, not to exceed 48 hours from the time of the  
12 transfer. Upon petition to a court by a guardian, ward, or attorney, or other  
13 interested person specifying objections to a transfer, or if the person is transferred  
14 to an intermediate facility or to a nursing facility, the court shall order a hearing,  
15 within 96 hours after filing of the petition, to determine whether there is probable  
16 cause to believe that the transfer is consistent with the requirements specified in par.  
17 (a) and is necessary for the best interests of the ward or, if the person is transferred  
18 to an intermediate facility or to a nursing facility, to determine if the intermediate  
19 facility or nursing facility is the most integrated setting, as defined in s. 46.279 (1)  
20 (bm), that is appropriate to the needs of the ward taking into account information  
21 presented by all affected parties. The court shall notify the ward, guardian, and  
22 petitioner of the time and place of the hearing, and a guardian ad litem shall be  
23 appointed to represent the ward. If the person is an adult who is indigent, the county  
24 of legal settlement shall be liable for guardian ad litem fees. If the person is a child,

1 the person's parents or the county of legal settlement shall be liable for guardian ad  
2 litem fees as provided in s. 48.235 (8). The petitioner, ward, and guardian shall have  
3 the right to attend, and to present and cross-examine witnesses.

History: 1973 c. 284; 1975 c. 41; 1975 c. 94 s. 3; 1975 c. 189 s. 99 (2); 1975 c. 393, 421, 422; 1975 c. 430 ss. 67 to 71, 80; 1977 c. 26, 299, 428; 1977 c. 449 s. 497; 1979  
c. 32 s. 92 (1); 1979 c. 110 s. 60 (1); 1979 c. 221; 1981 c. 314 s. 146; 1981 c. 379; 1983 a. 27; 1983 a. 189 s. 329 (19); 1983 a. 219; 1985 a. 29 ss. 1143, 3202 (23); 1987 a. 366;  
1989 a. 31, 359; 1991 a. 269; 1993 a. 187, 451; 1995 a. 27, 92; 1997 a. 237, 283; 2001 a. 109; 2003 a. 33, 326.

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

5 55.06 (10) (a) 2. If the person has a developmental disability and is placed in  
6 an intermediate facility or a nursing facility, the agency that is responsible for the  
7 protective placement shall notify in writing the county department of the county of  
8 residence of the person that is participating in the program under s. 46.278 or, if s.  
9 46.279 (4m) applies to the person, the department, at least 120 days before the  
10 review. The county department so notified or, if s. 46.279 (4m) applies, the  
11 department's contractor shall develop a plan under s. 46.279 (4) and furnish the plan  
12 to the court that ordered the placement and to the person's guardian. The court shall  
13 order that the person be transferred to the noninstitutional community setting in  
14 accordance with the plan unless the court finds that placement in the intermediate  
15 facility or nursing facility is the most integrated setting, as defined in s. 46.279 (1)  
16 (bm), that is appropriate to the needs of the person taking into account information  
17 presented by all affected parties a home or community-based setting is not  
18 reasonable within the factors required to be considered under sub. (9) (a).

History: 1973 c. 284; 1975 c. 41; 1975 c. 94 s. 3; 1975 c. 189 s. 99 (2); 1975 c. 393, 421, 422; 1975 c. 430 ss. 67 to 71, 80; 1977 c. 26, 299, 428; 1977 c. 449 s. 497; 1979  
c. 32 s. 92 (1); 1979 c. 110 s. 60 (1); 1979 c. 221; 1981 c. 314 s. 146; 1981 c. 379; 1983 a. 27; 1983 a. 189 s. 329 (19); 1983 a. 219; 1985 a. 29 ss. 1143, 3202 (23); 1987 a. 366;  
1989 a. 31, 359; 1991 a. 269; 1993 a. 187, 451; 1995 a. 27, 92; 1997 a. 237, 283; 2001 a. 109; 2003 a. 33, 326.

19

(END)

D-NOTE



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

LRB-21777<sup>PI</sup>dn

DAK:.....  
JK

To Representative LeMahieu:

Please review this draft carefully; the issues are quite complex. I have drafted it in preliminary form because I was unsure whether you wanted to have the Medical Assistance provision (s. 49.45 (30m), stats.) affected, since it was not mentioned in the instructions I received from Sarah Diedrick-Kasdorf; it does, however, affect county liability. It is likely that this bill, at least in this form, will have a high fiscal estimate; you may wish to have one of the Legislative Fiscal Bureau staff members review it to give you an estimate of the potential cost. If you wish to have the bill take effect upon publication, and if the bill is enacted and published before July 1, 2005, it may be necessary to increase the amounts in the schedule for state Medical Assistance expenditure, although you may choose not to do so or that may be able to be done by amendment.

Please let me know if you have questions or I can provide you with further assistance on this 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**

LRB-2177/P1dn  
DAK:jld:pg

February 21, 2005

To Representative LeMahieu:

Please review this draft carefully; the issues are quite complex. I have drafted it in preliminary form because I was unsure whether you wanted to have the Medical Assistance provision (s. 49.45 (30m), stats.) affected, since it was not mentioned in the instructions I received from Sarah Diedrick-Kasdorf; it does, however, affect county liability. It is likely that this bill, at least in this form, will have a high fiscal estimate; you may wish to have one of the Legislative Fiscal Bureau staff members review it to give you an estimate of the potential cost. If you wish to have the bill take effect upon publication, and if the bill is enacted and published before July 1, 2005, it may be necessary to increase the amounts in the schedule for state Medical Assistance expenditure, although you may choose not to do so or that may be able to be done by amendment.

Please let me know if you have questions or I can provide you with further assistance on this bill.

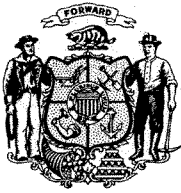
Debora A. Kennedy  
Managing Attorney  
Phone: (608) 266-0137  
E-mail: [debora.kennedy@legis.state.wi.us](mailto:debora.kennedy@legis.state.wi.us)

2/24/05

2177/P1

From Sarah Diedrich-Kasdorf:

Redraft: Take out MA provisions



By Friday 2/25, please

State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-2177/P1  
DAK:jld:pg

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

REGENERATE ✓

1 AN ACT *to repeal* 46.279 (1) (bm) and 49.45 (30m) (am); and *to amend* 46.279  
2 (2), 49.45 (30m) (a) (intro.), 49.45 (30m) (b), 55.001, 55.045, 55.06 (9) (a), 55.06  
3 (9) (b) and 55.06 (10) (a) 2. of the statutes; **relating to:** modifying certain  
4 restrictions on admissions to, protective placements in, or transfers to  
5 intermediate care facilities for the mentally retarded and nursing homes and  
6 on Medical Assistance payment for certain services for individuals with  
7 developmental disabilities.

***Analysis by the Legislative Reference Bureau***

Under current law, beginning January 1, 2005, no person may place an individual with a developmental disability (except for an emergency or temporary protective placement) in an intermediate care facility for the mentally retarded (ICFMR), other than a state center for the developmentally disabled, and no such ICFMR may admit such an individual unless, before the placement or admission, a court finds that placement in the ICFMR is the most integrated setting (a setting that enables the individual to interact with persons without developmental disability to the fullest extent possible) that is appropriate to the needs of the individual. Before making this finding, the court must consider a plan for home or community-based, noninstitutional care that a county department of the county of which the individual is a resident must develop under certain time limitations. In

a particular county that meets certain requirements, the Department of Health and Family Services (DHFS) must contract with an agency to develop the plan. In addition, if DHFS or an entity determines from a preadmission screening that an individual requires active treatment for developmental disability, no person may place the individual in a nursing home, and no nursing home may admit such an individual, unless the screening indicates that the individual's need for care cannot be fully met in an ICFMR or under a plan for home or community-based care.

The plans required to be developed by county departments initially apply to preadmission screenings performed on May 1, 2005, petitions for protective placement filed on May 1, 2005, transfers of protectively placed persons made on May 1, 2005, annual reviews of protectively placed individuals that are due on May 1, 2005, and extensions of temporary protective placements that occur on April 1, 2005.

If an individual is placed in or admitted to a nursing home or ICFMR after a plan for home or community-based care has been considered and rejected, counties must provide the portion of Medical Assistance (MA) payment that is not provided by the federal government for evaluation services at state centers for the developmentally disabled, for services in an ICFMR, and for permissible services in nursing homes. MA may not be provided unless the individual who receives services is protectively placed or is under an emergency or temporary placement. (DHFS must provide the portion of nonfederal MA payment for these services provided to an individual who is a resident of a particular county that meets certain requirements.)

This bill modifies the requirement that a county provide the portion of MA payment that is not provided by the federal government for evaluation services at state centers for the developmentally disabled for services in an ICFMR, and for permissible services in nursing homes, to instead require that DHFS pay for these costs. Further, the bill requires that a court, in placing an individual with developmental disability after having considered a plan developed by a county department, in considering the transfer of a protectively placed individual to a nursing home or an ICFMR, and in considering the review of a protective placement in an ICFMR or nursing home, consider (instead of whether placement in an ICFMR or nursing facility is the least restrictive environment consistent with the individual's needs) whether protective placement provides for 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.

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.** 46.279 (1) (bm) of the statutes is repealed.

2           **SECTION 2.** 46.279 (2) of the statutes is amended to read:

3           46.279 (2) PLACEMENTS AND ADMISSIONS TO INTERMEDIATE FACILITIES. Except as  
4 provided in sub. (5), no person may place an individual with a developmental  
5 disability in an intermediate facility and no intermediate facility may admit such an  
6 individual unless, before the placement or admission and after having considered a  
7 plan developed under sub. (4), a court under s. 55.06 (9) (a) or (10) (a) 2. finds that  
8 placement ~~in the intermediate facility is the most integrated setting that is~~  
9 ~~appropriate to the needs of the individual, taking into account information presented~~  
10 ~~by all affected parties~~ is reasonable within the factors required to be considered  
11 under s. 55.06 (9) (a). An intermediate facility to which an individual who has a  
12 developmental disability applies for admission shall, within 5 days after receiving  
13 the application, notify the county department that is participating in the program  
14 under s. 46.278 of the county of residence of the individual who is seeking admission  
15 concerning the application.

16           **SECTION 3.** 49.45 (30m) (a) (intro.) of the statutes is amended to read:

17           49.45 (30m) (a) (intro.) ~~Except as provided in par. (am),~~ a county ~~The~~  
18 department shall provide the portion of payment that is not provided by the federal  
19 government for all of the following services to individuals with developmental  
20 disability who are eligible for medical assistance:

21           **SECTION 4.** 49.45 (30m) (am) of the statutes is repealed.

1       **SECTION 5.** 49.45 (30m) (b) of the statutes is amended to read:

2       49.45 (30m) (b) No payment under this section may be made for services  
3       specified under par. (a) or (am) unless the individual who receives the services is  
4       protectively placed under s. 55.06 (9) (a) or is placed under an emergency placement  
5       under s. 55.06 (11) (a) or a temporary placement under s. 55.06 (11) (c).

6       **SECTION 6.** 55.001 of the statutes is amended to read:

7       **55.001 Declaration of policy.** The legislature recognizes that many citizens  
8       of the state, because of the infirmities of aging, chronic mental illness, mental  
9       retardation, other developmental disabilities or like incapacities incurred at any age,  
10       are in need of protective services. ~~Except as provided in s. 49.45 (30m) (a), these~~  
11       These services should, to the maximum degree of feasibility under programs,  
12       services and resources that the county board of supervisors is reasonably able to  
13       provide within the limits of available state and federal funds and of county funds  
14       required to be appropriated to match state funds, allow the individual the same  
15       rights as other citizens, and at the same time protect the individual from  
16       exploitation, abuse and degrading treatment. This chapter is designed to establish  
17       those services and assure their availability to all persons when in need of them, and  
18       to place the least possible restriction on personal liberty and exercise of  
19       constitutional rights consistent with due process and protection from abuse,  
20       exploitation and neglect.

21       **SECTION 7.** 55.045 of the statutes is amended to read:

22       **55.045 Funding.** ~~Except as provided in s. 49.45 (30m) (a), the~~ The appropriate  
23       county department designated under s. 55.02 shall within the limits of available  
24       state and federal funds and of county funds required to be appropriated to match  
25       state funds, provide for the reasonable program needs of persons who are

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

8 SECTION 8. 55.06 (9) (a) of the statutes is amended to read:

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

RESTORE TO  
PLAIN TEXT



1 match state funds, in order to protectively place an individual. Placement under this  
2 section does not replace commitment of a person in need of acute psychiatric  
3 treatment under s. 51.20 or 51.45 (13). Subject to s. 46.279, placement may be made  
4 to such facilities as nursing homes, public medical institutions, centers for the  
5 developmentally disabled under the requirements of s. 51.06 (3), foster care services  
6 and other home placements, or to other appropriate facilities but may not be made  
7 to units for the acutely mentally ill. If the appropriate board or designated agency  
8 proposes to place an individual who has a developmental disability in an  
9 intermediate facility or a nursing facility under an order under this paragraph, the  
10 county department, or, if s. 46.279 (4m) applies to the individual, the department or  
11 the department's contractor shall develop a plan under s. 46.279 (4) and furnish the  
12 plan to the board or agency and to the individual's guardian. The board or agency  
13 shall place the individual in a noninstitutional community setting in accord with the  
14 plan unless the court finds that placement in ~~the intermediate facility or nursing~~  
15 ~~facility is the most integrated setting, as defined in s. 46.279 (1) (bm), that is~~  
16 ~~appropriate to the needs of the individual taking into account information presented~~  
17 ~~by all affected parties~~ a home or community-based setting is not reasonable within  
18 the factors required to be considered under this paragraph. The prohibition of  
19 placements in units for the acutely mentally ill does not prevent placement by a court  
20 for short-term diagnostic procedures under par. (d). Placement in a locked unit shall  
21 require a specific finding of the court as to the need for such action. A placement  
22 facility may transfer a patient from a locked unit to a less restrictive environment  
23 without court approval.

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

1           55.06 (9) (b) Transfer may be made between placement units or from a  
2 placement unit to a medical facility other than those specified in pars. (c) to (e) by a  
3 guardian or placement facility without approval by a court. When transfer is made  
4 by a placement facility, 24 hours' prior written notice of the transfer shall be provided  
5 to the guardian, when feasible. If it is not feasible to notify the guardian in advance,  
6 written notice shall be provided immediately upon transfer, and notice shall also be  
7 provided to the court and to the board designated under s. 55.02 or an agency  
8 designated by it within a reasonable time, not to exceed 48 hours from the time of the  
9 transfer. Upon petition to a court by a guardian, ward, or attorney, or other  
10 interested person specifying objections to a transfer, or if the person is transferred  
11 to an intermediate facility or to a nursing facility, the court shall order a hearing,  
12 within 96 hours after filing of the petition, to determine whether there is probable  
13 cause to believe that the transfer is consistent with the requirements specified in par.  
14 (a) and is necessary for the best interests of the ward ~~or, if the person is transferred~~  
15 ~~to an intermediate facility or to a nursing facility, to determine if the intermediate~~  
16 ~~facility or nursing facility is the most integrated setting, as defined in s. 46.279 (1)~~  
17 ~~(bm), that is appropriate to the needs of the ward taking into account information~~  
18 ~~presented by all affected parties.~~ The court shall notify the ward, guardian, and  
19 petitioner of the time and place of the hearing, and a guardian ad litem shall be  
20 appointed to represent the ward. If the person is an adult who is indigent, the county  
21 of legal settlement shall be liable for guardian ad litem fees. If the person is a child,  
22 the person's parents or the county of legal settlement shall be liable for guardian ad  
23 litem fees as provided in s. 48.235 (8). The petitioner, ward, and guardian shall have  
24 the right to attend, and to present and cross-examine witnesses.

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

1           55.06 (10) (a) 2. If the person has a developmental disability and is placed in  
2 an intermediate facility or a nursing facility, the agency that is responsible for the  
3 protective placement shall notify in writing the county department of the county of  
4 residence of the person that is participating in the program under s. 46.278 or, if s.  
5 46.279 (4m) applies to the person, the department, at least 120 days before the  
6 review. The county department so notified or, if s. 46.279 (4m) applies, the  
7 department's contractor shall develop a plan under s. 46.279 (4) and furnish the plan  
8 to the court that ordered the placement and to the person's guardian. The court shall  
9 order that the person be transferred to the noninstitutional community setting in  
10 accordance with the plan unless the court finds that placement in the intermediate  
11 facility or nursing facility is the most integrated setting, as defined in s. 46.279 (1)  
12 (bm), that is appropriate to the needs of the person taking into account information  
13 presented by all affected parties a home or community-based setting is not  
14 reasonable within the factors required to be considered under sub. (9) (a).

15 (END)

## TELEPHONE DRAFTING INSTRUCTIONS

Drafting instructions received by Debora Kennedy.

DATE:

3/9/05

CONVERSATION  
WITH:

Rep LeMahieu

OF:

TELEPHONE NO:

6-9175

REGARDING LRB #  
OR DRAFT TOPIC:

Redraft LRB-2177/1 — remove its  
language and replace with

INSTRUCTIONS:

0354/4. (HFSS - for budget)

DAK ensured that Rep LeMahieu has copy of draft