



(By THURSDAY, please)

State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-2177/2

DAK:jld:jf

## 2005 BILL

REGENERATE ✓

1 AN ACT *to repeal* 46.279 (1) (bm); and *to amend* 46.279 (2), 55.06 (9) (a), 55.06  
2 (9) (b) and 55.06 (10) (a) 2. of the statutes; **relating to:** modifying certain  
3 restrictions on admissions to, protective placements in, or transfers to  
4 intermediate care facilities for the mentally retarded and nursing homes.

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### *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

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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.~~ <sup>the</sup> 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 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

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

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

13 55.06 (9) (a) The court may order protective services under s. 55.05 (2) (d) as  
14 an alternative to placement. When ordering placement, the court, on the basis of the  
15 evaluation and other relevant evidence, shall order the appropriate board specified  
16 under s. 55.02 or an agency designated by it to protectively place the individual.  
17 Placement by the appropriate board or designated agency is subject to s. 46.279 and  
18 shall be made ~~in the least restrictive environment consistent with the needs of the~~  
19 ~~person to be placed and with the placement resources of the appropriate board~~  
20 ~~specified under s. 55.02.~~ Factors to be considered in making protective placement  
21 after consideration of factors that shall include the needs of the person to be protected  
22 for health, social, or rehabilitative services; the level of supervision needed; the  
23 reasonableness of the placement given the cost and the actual benefits in the level  
24 of functioning to be realized by the individual; the limits of available state and  
25 federal funds and of county funds required to be appropriated to match state funds;

**BILL****SECTION 3**

1 and the reasonableness of the placement given the number or projected number of  
2 individuals who will need protective placement and given the limited funds  
3 available. Except as provided in s. 49.45 (30m), the county may not be required to  
4 provide funding, in addition to its funds that are required to be appropriated to  
5 match state funds, in order to protectively place an individual. Placement under this  
6 section does not replace commitment of a person in need of acute psychiatric  
7 treatment under s. 51.20 or 51.45 (13). Subject to s. 46.279, placement may be made  
8 to such facilities as nursing homes, public medical institutions, centers for the  
9 developmentally disabled under the requirements of s. 51.06 (3), foster care services  
10 and other home placements, or to other appropriate facilities but may not be made  
11 to units for the acutely mentally ill. If the appropriate board or designated agency  
12 proposes to place an individual who has a developmental disability in an  
13 intermediate facility or a nursing facility under an order under this paragraph, the  
14 county department, or, if s. 46.279 (4m) applies to the individual, the department or  
15 the department's contractor shall develop a plan under s. 46.279 (4) and furnish the  
16 plan to the board or agency and to the individual's guardian. The board or agency  
17 shall place the individual in a noninstitutional community setting in accord with the  
18 plan unless the court finds that placement in the intermediate facility or nursing  
19 facility is the most integrated setting, as defined in s. 46.279 (1) (bm), that is  
20 appropriate to the needs of the individual taking into account information presented  
21 by all affected parties a home or community-based setting is not reasonable within  
22 the factors required to be considered under this paragraph. The prohibition of  
23 placements in units for the acutely mentally ill does not prevent placement by a court  
24 for short-term diagnostic procedures under par. (d). Placement in a locked unit shall  
25 require a specific finding of the court as to the need for such action. A placement

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

3 **SECTION 4.** 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,  
25 the person's parents or the county of legal settlement shall be liable for guardian ad

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1 litem fees as provided in s. 48.235 (8). The petitioner, ward, and guardian shall have  
2 the right to attend, and to present and cross-examine witnesses.

3 **SECTION 5.** 55.06 (10) (a) 2. of the statutes is amended to read:

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

18

(END)

INSERT 6-17 ✓

DOA:.....Milioto, BB0056 - ICFMR restructuring; funding shield protection  
FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: ~~the~~ budget.

*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES**

**MENTAL ILLNESS AND DEVELOPMENTAL DISABILITIES**

Under current law, no individual with developmental disabilities may be placed in an intermediate care facility for the mentally retarded (ICFMR, other than a state center for the developmentally disabled) unless a community placement plan has been developed for the individual and a court has found that this is the most integrated setting appropriate to the needs of the individual. Also, if DHFS or an entity determines from conducting a screening under the Medical Assistance program that an individual requires active treatment for developmental disabilities, the individual may not be placed in or admitted to a nursing facility unless the screening determines that the individual's need for care cannot be met in an ICFMR or under a community placement plan. These prohibitions do not apply to emergency or temporary protective placements.

This bill modifies the standards for placement or continued protective placement of an individual with developmental disabilities in an ICFMR and placement of an individual needing active treatment for developmental disabilities in a nursing facility, to permit these placements if the county of residence of the individual would not reasonably be able to provide community-based care within the limits of available state and federal funds and county funds required to be appropriated to match state funds.

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home ✓

(end insert)

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:*

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

46.279 (2) PLACEMENTS AND ADMISSIONS TO INTERMEDIATE FACILITIES. Except as provided in sub. (5), no person may protectively place or continue protective placement of an individual with a developmental disability in an intermediate facility and no intermediate facility may admit or continue service for such an individual unless, before the protective placement, continued placement following review under s. 55.06 (10), 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 protective placement in the intermediate facility is the most integrated setting that is appropriate to the needs of the individual or that the county of residence of the individual would not reasonably be able to provide community-based care in accordance with the plan within the limits of available state and federal funds and county funds required to be appropriated to match state funds, taking into account information presented by all affected parties. 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.

**SECTION 2.** 46.279 (3) of the statutes is amended to read:

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





INSERT 6-17 (cont.)

1 under s. 49.45 (6c) (b) that an individual requires active treatment for developmental  
2 disability, no individual may be protectively placed in a nursing facility or have  
3 protective placement in a nursing facility continued following review under s. 55.06  
4 (10), and no nursing facility may admit or continue service for the individual, unless  
5 it is determined from the department or entity that conducts the screening  
6 determines that the individual's need for care cannot fully be met in an intermediate  
7 facility or under a plan under sub. (4) or that the county of residence of the individual  
8 would not reasonably be able to provide community-based care in accordance with  
9 the plan within the limits of available state and federal funds and county funds  
10 required to be appropriated to match state funds.

11

~~END~~

End of MS 6-17

## Kennedy, Debora

---

**From:** Diedrick-Kasdorf [Diedrick@wicounties.org]  
**Sent:** Wednesday, March 09, 2005 3:02 PM  
**To:** Kennedy, Debora  
**Subject:** Fwd: Re: Proposed Shiled Legislation



Re: Proposed  
Shiled Legislatio...

Debora:

Some additional language changes came up on the liability shield draft after you spoke with Craig and Rep. LeMahieu this morning. Can you please incorporate the attached changes in the draft? Thanks.

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)

**Kennedy, Debora**

**From:** Andrew T. Phillips, Esq. [atp@prentice-phillips.com]  
**Sent:** Wednesday, March 09, 2005 10:49 AM  
**To:** Ann M. Wondergem  
**Cc:** chuenink@co.dunn.wi.us; rhaupt@co.ozaukee.wi.us; Joan H. Ketterman; Richard Kammerud (E-mail); Jack Schad (E-mail); Craig Thompson, Legislative Director; Sarah Diedrick-Kasdorf (WCA)  
**Subject:** Re: Proposed Shiled Legislation

After a telephone discussion with Joan Ketterman this morning, we concluded that we likely need to include some changes to 55.06 in the amendments. Attached is my attempt to cover the bases. As you will note, I used the same language that is in the DHFS approved rewrite of 46.279 in order to maintain consistency. If you see any problems, or would like to discuss this further, please do not hesitate to let me know.

Andy

<!--[if !supportEmptyParas]--> <!--[endif]-->  
 <!--[if !supportEmptyParas]--> <!--[endif]-->

Andrew T. Phillips, Esq.  
**PRENTICE & PHILLIPS LLP**  
 1110 N. Old World 3<sup>rd</sup> Street  
 Suite 505  
 Milwaukee, WI 53203-1117  
 (414) 277-7780  
 fax (414) 277-7783  
[atp@prentice-phillips.com](mailto:atp@prentice-phillips.com)

<!--[if !supportEmptyParas]--> <!--[endif]-->

\*\*\*\*\*

**NOTICE:** *This communication is confidential and is intended to be privileged pursuant to the attorney-client privilege and the work-product doctrine. Unless you are the addressee (or authorized to receive for the addressee), you may not use, copy or disclose to anyone the message or any information contained in the message. If you have received the message in error, please advise the sender by reply e-mail and delete the message. Although this email and any attachments are believed to be free of any virus or other defect that might affect any computer system into which it is received and opened, it is the responsibility of the recipient to ensure that it is virus free and no responsibility is accepted by Prentice & Phillips LLP for any loss or damage arising in any way from its use.*

\*\*\*\*\*

<!--[if !supportEmptyParas]--> <!--[endif]-->

Ann M. Wondergem wrote:

Good Morning - I have received the following confirmations for the conference

Ann M. Wondergem, Director  
 Sheboygan County Health and Human Services Department  
 1011 North 8th Street  
 Sheboygan, WI 53081  
 (920) 459-3213  
[wondeamw@co.sheboygan.wi.us](mailto:wondeamw@co.sheboygan.wi.us)

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

From: Missureli [<mailto:Missureli@wicounties.org>]  
Sent: Monday, March 07, 2005 8:21 AM  
To: [chuenink@co.dunn.wi.us](mailto:chuenink@co.dunn.wi.us); Ann M. Wondergem; [atp@prentice-phillips.com](mailto:atp@prentice-phillips.com); Diedri  
Cc: [rhaupt@co.ozaukee.wi.us](mailto:rhaupt@co.ozaukee.wi.us); Joan H. Ketterman  
Subject: Re: Proposed Shiled Legislation

Good Morning:

I have attached the ICFMR Restructuring: Funding Shield Protection Bill from Craig Thompson for today's conference call. If you have any problems with opening it, please call me at the WCA office.

Suzanne Missureli  
Wisconsin Counties Association  
1.866.404.2700  
608.663.7188

NOTICE: This e-mail may contain confidential and privileged material for the so

**55.06(9)(a)** (Page 3, Lines 17-25 of Previous Draft LRB-2177/1)

... 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 after consideration of factors that shall include the needs of the person to be protected for health, social, or rehabilitative services; whether the proposed placement is the least restrictive environment consistent with the needs of the person to be placed provided the county of residence of the person to be placed is reasonably able to provide care in such least restrictive environment within the limits of available state and federal funds and county funds required to be appropriated to match state funds; the level of supervision needed; the reasonableness of the placement given the cost and actual benefits in the level of functioning to be realized by the individual; . . .

**55.06(9)(a)** (Page 4, Lines 16-22 of Previous Draft LRB-2177/1)

... The Board or agency shall place the individual in a noninstitutional community setting in accord with the plan unless the court finds that placement in ~~the intermediate facility or nursing facility is the most integrated setting~~, as defined in s. 46.279 (1) (bm), that is appropriate to the needs of the individual taking into account information presented by all affected parties a home or community-based setting is not reasonable within the factors required to be considered under this paragraph. . . .

**55.06(9)(b)** (Page 5, Lines 16-21 of Previous Draft LRB-2177/1)

... cause to believe that the transfer is consistent with the requirements specified in par. (a) and is necessary for the best interest of the ward or, if the person is transferred to an intermediate facility or to a nursing facility, to determine if the intermediate facility or nursing facility is the most integrated setting, as defined in s. 46.279 (1) (bm), that is appropriate to the needs of the ward taking into account the factors required to be considered under s. 55.06 (9) (a) and information presented by all affected parties. . . .

**55.06(10)(a)2.** (Page 6, Lines 13-17 of Previous Draft LRB-2177/1)

. . . accordance with the plan unless the court finds that placement in the intermediate facility or nursing facility is the most integrated setting, as defined in s. 46.279 (1) (bm), that is appropriate to the needs of the person taking into account the factors required to be considered under s. 55.06 (9) (a) and information presented by all affected parties

## Kennedy, Debora

---

**From:** on behalf of Debora Kennedy  
**To:** Diedrick-Kasdorf  
**Subject:** RE: Re: Proposed Shiled Legislation

The bill incorporating the changes that I received this morning has already been drafted, edited, typed, and submitted to Representative LeMahieu's office. I will tell them that you are requesting further changes, which, if they approve, will be incorporated into a /3 of the bill.

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

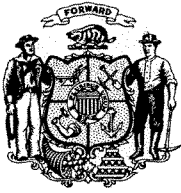
From: Diedrick-Kasdorf [mailto:Diedrick@wicounties.org]  
Sent: Wednesday, March 09, 2005 3:02 PM  
To: Kennedy, Debora  
Subject: Fwd: Re: Proposed Shiled Legislation

Debora:

Some additional language changes came up on the liability shield draft after you spoke with Craig and Rep. LeMahieu this morning. Can you please incorporate the attached changes in the draft? Thanks.

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)

Andy Phillips 414-277-7780 (Wis. Co. Assoc. legal advisor):  
3/10 He agreed that the proposed language for 55.06 (9)(a)  
(3rd sentence)  
re availability of funds is redundant to  
current law — DAK agreed to strike current law.  
He agreed to call Rep. LeMahieu's office to inform of  
change.



TODAY, please  
State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-2177/2 3

DAK:jld:jf

D-NOTE

## 2005 BILL

REGENERATE

1 AN ACT *to amend* 46.279 (2) and 46.279 (3) of the statutes; **relating to:**  
2 modifying certain restrictions on admissions to, protective placements in, or  
3 transfers to intermediate care facilities for the mentally retarded and nursing  
4 homes.

---

### *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



**BILL**

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 services in the ICFMR, and for permissible services in the nursing home. (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 standards for placement or continued protective placement of an individual with developmental disabilities in an ICFMR and placement of an individual needing active treatment for developmental disabilities in a nursing home, to permit these placements if the county of residence of the individual would not reasonably be able to provide community-based care within the limits of available state and federal funds and county funds required to be appropriated to match state funds. INSERT ANAL ✓

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 (2) of the statutes is amended to read:
- 2           46.279 (2) PLACEMENTS AND ADMISSIONS TO INTERMEDIATE FACILITIES. Except as
- 3 provided in sub. (5), no person may protectively place or continue protective
- 4 placement of an individual with a developmental disability in an intermediate
- 5 facility and no intermediate facility may admit or continue service for such an
- 6 individual unless, before the protective placement, continued placement following
- 7 review under s. 55.06 (10), or admission and after having considered a plan
- 8 developed under sub. (4), a court under s. 55.06 (9) (a) or (10) (a) 2. finds that
- 9 protective placement in the intermediate facility is the most integrated setting that
- 10 is appropriate to the needs of the individual or that the county of residence of the

**BILL**

1 individual would not reasonably be able to provide community-based care in  
2 accordance with the plan within the limits of available state and federal funds and  
3 county funds required to be appropriated to match state funds, taking into account  
4 information presented by all affected parties. An intermediate facility to which an  
5 individual who has a developmental disability applies for admission shall, within 5  
6 days after receiving the application, notify the county department that is  
7 participating in the program under s. 46.278 of the county of residence of the  
8 individual who is seeking admission concerning the application.

9 **SECTION 2.** 46.279 (3)<sup>✓</sup> of the statutes is amended to read:

10 46.279 (3) PLACEMENTS AND ADMISSIONS TO NURSING FACILITIES. Except as  
11 provided in sub. (5), if the department or an entity determines from a screening  
12 under s. 49.45 (6c) (b) that an individual requires active treatment for developmental  
13 disability, no individual may be protectively placed in a nursing facility or have  
14 protective placement in a nursing facility continued following review under s. 55.06  
15 (10), and no nursing facility may admit or continue service for the individual, unless  
16 ~~it is determined from the department or entity that conducts the screening~~  
17 determines that the individual's need for care cannot fully be met in an intermediate  
18 facility or under a plan under sub. (4) or that the county of residence of the individual  
19 would not reasonably be able to provide community-based care in accordance with  
20 the plan within the limits of available state and federal funds and county funds  
21 required to be appropriated to match state funds.

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(END)

D-NOTE

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include, as one of the factors to be considered by a board or agency in making the placement, whether the proposed placement is the least restrictive environment consistent with the needs of the person to be placed provided the county of residence of the person to be placed is reasonably able to provide care in that least restrictive environment within the limits of available state and federal funds and county funds required to be appropriated to match state funds. The factor also is one of several that must be considered by a court in reviewing a plan for placement of an individual in a noninstitutional setting, and in finding that placement in an ICFMR or nursing facility is the most integrated setting that is appropriate to the needs of the individual.

**INSERT 3-21**

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

2 55.06 (9) (a) The court may order protective services under s. 55.05 (2) (d) as  
3 an alternative to placement. When ordering placement, the court, on the basis of the  
4 evaluation and other relevant evidence, shall order the appropriate board specified  
5 under s. 55.02 or an agency designated by it to protectively place the individual.  
6 Placement by the appropriate board or designated agency is subject to s. 46.279 and  
7 shall be made ~~in the least restrictive environment consistent with the needs of the~~  
8 ~~person to be placed and with the placement resources of the appropriate board~~  
9 ~~specified under s. 55.02. Factors to be considered in making protective placement~~  
10 after consideration of factors that shall include the needs of the person to be protected  
11 for health, social, or rehabilitative services; whether the proposed placement is the  
12 least restrictive environment consistent with the needs of the person to be placed  
13 provided the county of residence of the person to be placed is reasonably able to  
14 provide care in that least restrictive environment within the limits of available state  
15 and federal funds and county funds required to be appropriated to match state funds;  
16 the level of supervision needed; the reasonableness of the placement given the cost



1 and the actual benefits in the level of functioning to be realized by the individual; ~~the~~  
 2 ~~limits of available state and federal funds and of county funds required to be~~  
 3 ~~appropriated to match state funds;~~ ✓ and the reasonableness of the placement given  
 4 the number or projected number of individuals who will need protective placement  
 5 and given the limited funds available. Except as provided in s. 49.45 (30m), the  
 6 county may not be required to provide funding, in addition to its funds that are  
 7 required to be appropriated to match state funds, in order to protectively place an  
 8 individual. Placement under this section does not replace commitment of a person  
 9 in need of acute psychiatric treatment under s. 51.20 or 51.45 (13). Subject to s.  
 10 46.279, placement may be made to such facilities as nursing homes, public medical  
 11 institutions, centers for the developmentally disabled under the requirements of s.  
 12 51.06 (3), foster care services and other home placements, or to other appropriate  
 13 facilities but may not be made to units for the acutely mentally ill. If the appropriate  
 14 board or designated agency proposes to place an individual who has a developmental  
 15 disability in an intermediate facility or a nursing facility under an order under this  
 16 paragraph, the county department, or, if s. 46.279 (4m) applies to the individual, the  
 17 department or the department's contractor shall develop a plan under s. 46.279 (4)  
 18 and furnish the plan to the board or agency and to the individual's guardian. The  
 19 board or agency shall place the individual in a noninstitutional community setting  
 20 in accord with the plan unless the court finds that placement in the intermediate  
 21 facility or nursing facility is the most integrated setting, as defined in s. 46.279 (1)  
 22 (bm), that is appropriate to the needs of the individual taking into account  
 23 information presented by all affected parties a home or community-based setting is  
 24 not reasonable within <sup>concerning</sup> the factors required to be considered under this paragraph.  
 25 The prohibition of placements in units for the acutely mentally ill does not prevent

Plain  
↳

RESTORE TO PLAIN  
TEXT

D-NOTE

To Representative LeMahieu:

This redraft incorporates the changes in the language proposed for the redraft by Phillips of Mr. Andrew Phillips of the Wisconsin Counties Association, as I discussed with your aide, Jeff Grothman, this morning.

Please let me know if you have questions or if I may further assist you with this bill.

DAK

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

LRB-2177/3dn  
DAK:jld:rs

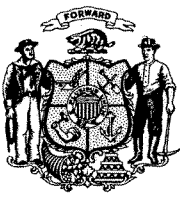
March 10, 2005

To Representative LeMahieu:

This redraft incorporates the changes in the language proposed for the redraft by Mr. Andrew Phillips of the Wisconsin Counties Association, as I discussed with your aide, Jeff Grothman, this morning.

Please let me know if you have questions or if I may further assist you with 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)



## 2005 BILL

Regen

- 1 AN ACT *to amend* 46.279 (2), 46.279 (3), 55.06 (9) (a), 55.06 (9) (b) and 55.06 (10)  
2 (a) 2. of the statutes; **relating to:** modifying certain restrictions on admissions  
3 to, protective placements in, or transfers to intermediate care facilities for the  
4 mentally retarded and nursing homes.

---

### *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

**BILL**

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 services in the ICFMR, and for permissible services in the nursing home. (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 standards for placement or continued protective placement of an individual with developmental disabilities in an ICFMR and placement of an individual needing active treatment for developmental disabilities in a nursing home, to include, as one of the factors to be considered by a board or agency in making the placement, whether the proposed placement is the least restrictive environment consistent with the needs of the person to be placed provided the county of residence of the person to be placed is reasonably able to provide care in that least restrictive environment within the limits of available state and federal funds and county funds required to be appropriated to match state funds. The factor also is one of several that must be considered by a court in reviewing a plan for placement of an individual in a noninstitutional setting, and in finding that placement in an ICFMR or nursing facility is the most integrated setting that is appropriate to the needs of the individual.

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 (2) of the statutes is amended to read:
- 2           46.279 (2) PLACEMENTS AND ADMISSIONS TO INTERMEDIATE FACILITIES. Except as
- 3 provided in sub. (5), no person may protectively place or continue protective
- 4 placement of an individual with a developmental disability in an intermediate
- 5 facility and no intermediate facility may admit or continue service for such an
- 6 individual unless, before the protective placement, continued placement following



**BILL**

1 review under s. 55.06 (10), or admission and after having considered a plan  
2 developed under sub. (4), a court under s. 55.06 (9) (a) or (10) (a) 2. finds that  
3 protective placement in the intermediate facility is the most integrated setting that  
4 is appropriate to the needs of the individual or that the county of residence of the  
5 individual would not reasonably be able to provide community-based care in  
6 accordance with the plan within the limits of available state and federal funds and  
7 county funds required to be appropriated to match state funds, taking into account  
8 information presented by all affected parties. An intermediate facility to which an  
9 individual who has a developmental disability applies for admission shall, within 5  
10 days after receiving the application, notify the county department that is  
11 participating in the program under s. 46.278 of the county of residence of the  
12 individual who is seeking admission concerning the application.

13 **SECTION 2.** 46.279 (3) of the statutes is amended to read:

14 **46.279 (3) PLACEMENTS AND ADMISSIONS TO NURSING FACILITIES.** Except as  
15 provided in sub. (5), if the department or an entity determines from a screening  
16 under s. 49.45 (6c) (b) that an individual requires active treatment for developmental  
17 disability, no individual may be protectively placed in a nursing facility or have  
18 protective placement in a nursing facility continued following review under s. 55.06  
19 (10), and no nursing facility may admit or continue service for the individual, unless  
20 ~~it is determined from the department or entity that conducts~~ the screening  
21 determines that the individual's need for care cannot fully be met in an intermediate  
22 facility or under a plan under sub. (4) or that the county of residence of the individual  
23 would not reasonably be able to provide community-based care in accordance with  
24 the plan within the limits of available state and federal funds and county funds  
25 required to be appropriated to match state funds.

**BILL**

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

2           55.06 (9) (a) The court may order protective services under s. 55.05 (2) (d) as  
3 an alternative to placement. When ordering placement, the court, on the basis of the  
4 evaluation and other relevant evidence, shall order the appropriate board specified  
5 under s. 55.02 or an agency designated by it to protectively place the individual.  
6 Placement by the appropriate board or designated agency is subject to s. 46.279 and  
7 shall be made ~~in the least restrictive environment consistent with the needs of the~~  
8 ~~person to be placed and with the placement resources of the appropriate board~~  
9 ~~specified under s. 55.02. Factors to be considered in making protective placement~~  
10 after consideration of factors that shall include the needs of the person to be protected  
11 for health, social, or rehabilitative services; ~~whether the proposed placement is the~~  
12 least restrictive environment consistent with the needs of the person to be placed  
13 provided the county of residence of the person to be placed is reasonably able to  
14 provide care in that least restrictive environment within the limits of available state  
15 and federal funds and county funds required to be appropriated to match state funds;  
16 the level of supervision needed; the reasonableness of the placement given the cost  
17 and the actual benefits in the level of functioning to be realized by the individual; ~~the~~  
18 ~~limits of available state and federal funds and of county funds required to be~~  
19 ~~appropriated to match state funds;~~ and the reasonableness of the placement given  
20 the number or projected number of individuals who will need protective placement  
21 and given the limited funds available. Except as provided in s. 49.45 (30m), the  
22 county may not be required to provide funding, in addition to its funds that are  
23 required to be appropriated to match state funds, in order to protectively place an  
24 individual. Placement under this section does not replace commitment of a person  
25 in need of acute psychiatric treatment under s. 51.20 or 51.45 (13). Subject to s.

**BILL**

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

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

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

**BILL****SECTION 4**

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

21 **SECTION 5.** 55.06 (10) (a) 2. of the statutes is amended to read:

22 55.06 (10) (a) 2. If the person has a developmental disability and is placed in  
23 an intermediate facility or a nursing facility, the agency that is responsible for the  
24 protective placement shall notify in writing the county department of the county of  
25 residence of the person that is participating in the program under s. 46.278 or, if s.

**BILL**

1 46.279 (4m) applies to the person, the department, at least 120 days before the  
2 review. The county department so notified or, if s. 46.279 (4m) applies, the  
3 department's contractor shall develop a plan under s. 46.279 (4) and furnish the plan  
4 to the court that ordered the placement and to the person's guardian. The court shall  
5 order that the person be transferred to the noninstitutional community setting in  
6 accordance with the plan unless the court finds that placement in the intermediate  
7 facility or nursing facility is the most integrated setting, as defined in s. 46.279 (1)  
8 (bm), that is appropriate to the needs of the person taking into account the factors  
9 required to be considered under sub. (9) (a) and information presented by all affected  
10 parties.

11 (END)

**Barman, Mike**

---

**From:** Grothman, Jeffrey  
**Sent:** Wednesday, March 16, 2005 11:57 AM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB 05-2177/4 Topic: Apply county liability shield to placements in intermediate care facilities for the mentally retarded (ICFMRs)

It has been requested by <Grothman, Jeffrey> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 05-2177/4 Topic: Apply county liability shield to placements in intermediate care facilities for the mentally retarded (ICFMRs)

**TELEPHONE DRAFTING INSTRUCTIONS**

Drafting instructions received by Debora Kennedy.

**DATE:**

3/28/05

**CONVERSATION  
WITH:**

Jeff Grothman

**OF:**

**TELEPHONE NO:**

6-9175

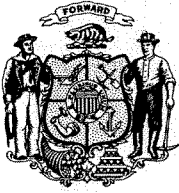
**REGARDING LRB #  
OR DRAFT TOPIC:**

2177/4

**INSTRUCTIONS:**

Redraft:

Remove SECS 3-5



## 2005 BILL

REGENERATE

- 1 AN ACT *to amend* 46.279 (2), 46.279 (3), 55.06 (9) (a), 55.06 (9) (b) and 55.06 (10)  
2 (a) 2. of the statutes; **relating to:** modifying certain restrictions on admissions  
3 to, protective placements in, or transfers to intermediate care facilities for the  
4 mentally retarded and nursing homes.

---

### *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



**BILL**

accordance with the plan

exceptions for such a placement, a finding that

would not

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.

This bill modifies ~~the standards for~~ placement or continued protective placement of an individual with developmental disabilities in an ICFMR and placement of an individual needing active treatment for developmental disabilities in a nursing home, to include, as one of the ~~factors to be considered by a board or agency in making the placement, whether the proposed placement is the least restrictive environment consistent with the needs of the person to be placed provided the county of residence of the person to be placed is reasonably able to provide care in that least restrictive environment,~~ within the limits of available state and federal funds and county funds required to be appropriated to match state funds. The factor also is one of several that must be considered by a court in reviewing a plan for placement of an individual in a noninstitutional setting, and in finding that placement in an ICFMR or nursing facility is the most integrated setting that is appropriate to the needs of the individual.

Prohibitions on

be

community-based

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 (2) of the statutes is amended to read:
- 2 46.279 (2) PLACEMENTS AND ADMISSIONS TO INTERMEDIATE FACILITIES. Except as
- 3 provided in sub. (5), no person may protectively place or continue protective
- 4 placement of an individual with a developmental disability in an intermediate
- 5 facility and no intermediate facility may admit or continue service for such an
- 6 individual unless, before the protective placement, continued placement following
- 7 review under s. 55.06 (10), or admission and after having considered a plan
- 8 developed under sub. (4), a court under s. 55.06 (9) (a) or (10) (a) 2. finds that
- 9 protective placement in the intermediate facility is the most integrated setting that
- 10 is appropriate to the needs of the individual or that the county of residence of the

**BILL**

1 individual would not reasonably be able to provide community-based care in  
2 accordance with the plan within the limits of available state and federal funds and  
3 county funds required to be appropriated to match state funds, taking into account  
4 information presented by all affected parties. An intermediate facility to which an  
5 individual who has a developmental disability applies for admission shall, within 5  
6 days after receiving the application, notify the county department that is  
7 participating in the program under s. 46.278 of the county of residence of the  
8 individual who is seeking admission concerning the application.

9 **SECTION 2.** 46.279 (3)<sup>X</sup> of the statutes is amended to read:

10 46.279 (3) PLACEMENTS AND ADMISSIONS TO NURSING FACILITIES. Except as  
11 provided in sub. (5), if the department or an entity determines from a screening  
12 under s. 49.45 (6c) (b) that an individual requires active treatment for developmental  
13 disability, no individual may be protectively placed in a nursing facility or have  
14 protective placement in a nursing facility continued following review under s. 55.06  
15 (10), and no nursing facility may admit or continue service for the individual, unless  
16 it is determined from the department or entity that conducts the screening  
17 determines that the individual's need for care cannot fully be met in an intermediate  
18 facility or under a plan under sub. (4) or that the county of residence of the individual  
19 would not reasonably be able to provide community-based care in accordance with  
20 the plan within the limits of available state and federal funds and county funds  
21 required to be appropriated to match state funds.

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

23 55.06 (9) (a) The court ~~may order~~ protective services under s. 55.05 (2) (d) as  
24 an alternative to placement. When ordering placement, the court, on the basis of the  
25 evaluation and other relevant evidence, shall order the appropriate board specified

**BILL**

1 under s. 55.02 or an agency designated by it to protectively place the individual.  
2 Placement by the appropriate board or designated agency is subject to s. 46.279 and  
3 shall be made in the least restrictive environment consistent with the needs of the  
4 person to be placed and with the placement resources of the appropriate board  
5 specified under s. 55.02. Factors to be considered in making protective placement  
6 after consideration of factors that shall include the needs of the person to be protected  
7 for health, social, or rehabilitative services; whether the proposed placement is the  
8 least restrictive environment consistent with the needs of the person to be placed  
9 provided the county of residence of the person to be placed is reasonably able to  
10 provide care in that least restrictive environment within the limits of available state  
11 and federal funds and county funds required to be appropriated to match state funds;  
12 the level of supervision needed; the reasonableness of the placement given the cost  
13 and the actual benefits in the level of functioning to be realized by the individual; ~~the~~  
14 ~~limits of available state and federal funds and of county funds required to be~~  
15 ~~appropriated to match state funds;~~ and the reasonableness of the placement given  
16 the number or projected number of individuals who will need protective placement  
17 and given the limited funds available. Except as provided in s. 49.45 (30m), the  
18 county may not be required to provide funding, in addition to its funds that are  
19 required to be appropriated to match state funds, in order to protectively place an  
20 individual. Placement under this section does not replace commitment of a person  
21 in need of acute psychiatric treatment under s. 51.20 or 51.45 (13). Subject to s.  
22 46.279, placement may be made to such facilities as nursing homes, public medical  
23 institutions, centers for the developmentally disabled under the requirements of s.  
24 51.06 (3), foster care services and other home placements, or to other appropriate  
25 facilities but may not be made to units for the acutely mentally ill. If the appropriate

**BILL**

1 board or designated agency proposes to place an individual who has a developmental  
2 disability in an intermediate facility or a nursing facility under an order under this  
3 paragraph, the county department, or, if s. 46.279 (4m) applies to the individual, the  
4 department or the department's contractor shall develop a plan under s. 46.279 (4)  
5 and furnish the plan to the board or agency and to the individual's guardian. The  
6 board or agency shall place the individual in a noninstitutional community setting  
7 in accord with the plan unless the court finds that placement in the intermediate  
8 facility or nursing facility is the most integrated setting, as defined in s. 46.279 (1)  
9 (bm), that is appropriate to the needs of the individual taking into account  
10 information presented by all affected parties concerning the factors required to be  
11 considered under this paragraph. The prohibition of placements in units for the  
12 acutely mentally ill does not prevent placement by a court for short-term diagnostic  
13 procedures under par. (d). Placement in a locked unit shall require a specific finding  
14 of the court as to the need for such action. A placement facility may transfer a patient  
15 from a locked unit to a less restrictive environment without court approval.

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

17 55.06 (9) (b) Transfer may be made between placement units or from a  
18 placement unit to a medical facility other than those specified in pars. (c) to (e) by a  
19 guardian or placement facility without approval by a court. When transfer is made  
20 by a placement facility, 24 hours' prior written notice of the transfer shall be provided  
21 to the guardian, when feasible. If it is not feasible to notify the guardian in advance,  
22 written notice shall be provided immediately upon transfer, and notice shall also be  
23 provided to the court and to the board designated under s. 55.02 or an agency  
24 designated by it within a reasonable time, not to exceed 48 hours from the time of the  
25 transfer. Upon petition to a court by a guardian, ward, or attorney, or other

**BILL**

1 interested person specifying objections to a transfer, or if the person is transferred  
2 to an intermediate facility or to a nursing facility, the court shall order a hearing,  
3 within 96 hours after filing of the petition, to determine whether there is probable  
4 cause to believe that the transfer is consistent with the requirements specified in par.  
5 (a) and is necessary for the best interests of the ward or, if the person is transferred  
6 to an intermediate facility or to a nursing facility, to determine if the intermediate  
7 facility or nursing facility is the most integrated setting, as defined in s. 46.279 (1)  
8 (bm), that is appropriate to the needs of the ward taking into account the factors  
9 required to be considered under par. (a) and information presented by all affected  
10 parties. The court shall notify the ward, guardian, and petitioner of the time and  
11 place of the hearing, and a guardian ad litem shall be appointed to represent the  
12 ward. If the person is an adult who is indigent, the county of legal settlement shall  
13 be liable for guardian ad litem fees. If the person is a child, the person's parents or  
14 the county of legal settlement shall be liable for guardian ad litem fees as provided  
15 in s. 48.235 (8). The petitioner, ward, and guardian shall have the right to attend,  
16 and to present and cross-examine witnesses.

17 **SECTION 5.** 55.06 (10) (a) 2. of the statutes is amended to read:

18 55.06 (10) (a) 2. If the person has a developmental disability and is placed in  
19 an intermediate facility or a nursing facility, the agency that is responsible for the  
20 protective placement shall notify in writing the county department of the county of  
21 residence of the person that is participating in the program under s. 46.278 or, if s.  
22 46.279 (4m) applies to the person, the department, at least 120 days before the  
23 review. The county department so notified or, if s. 46.279 (4m) applies, the  
24 department's contractor shall develop a plan under s. 46.279 (4) and furnish the plan  
25 to the court that ordered the placement and to the person's guardian. The court shall

**BILL**

1 order that the person be transferred to the noninstitutional community setting in  
2 accordance with the plan unless the court finds that placement in the intermediate  
3 facility or nursing facility is the most integrated setting, as defined in s. 46.279 (1)  
4 (bm), that is appropriate to the needs of the person taking into account the factors  
5 required to be considered under sub. (9) (a) and information presented by all affected  
6 parties.

7

(END)



State of Wisconsin

**LEGISLATIVE REFERENCE BUREAU**

- LEGAL SECTION -

1 EAST MAIN STREET, SUITE 200

PHONE 266-3561

**CONFIDENTIAL ...**

TO BE OPENED ONLY BY THE REQUESTOR

**RUSH ...**

**TO: REPRESENTATIVE /**

**SENATOR / AGENCY**

LeMahieu 17-N

Take Reference Bureau Printing  
Attn: Deb. Kennedy  
LRB 2177/4  
2177

- ① Rep. Kestell
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