

**SENATE SUBSTITUTE AMENDMENT 1,
TO 2005 ASSEMBLY BILL 296**

September 28, 2005 – Offered by Senator DECKER.

1 **AN ACT** *to amend* 20.003 (4) (fm), 20.003 (4) (fr), 46.279 (2) and 46.279 (3) of the
2 statutes; **relating to:** modifying certain restrictions on admissions to,
3 protective placements in, or transfers to intermediate care facilities for the
4 mentally retarded and nursing homes; required general fund statutory
5 balance; required general fund structural balance; increasing nursing home
6 Medical Assistance reimbursement; and making appropriations.

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.

This substitute amendment modifies prohibitions on 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 exceptions for such a placement, a finding that the county of residence of the person to be placed 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.

Under current law, nursing homes that provide services to recipients of Medical Assistance (MA) receive reimbursement, under a formula, from state general purpose revenues, certain program revenues, the MA trust fund, and federal Medicaid moneys. This substitute amendment increases the state general purpose revenue appropriation by \$5,141,700 for fiscal year 2005–06 and by \$10,118,000 for fiscal year 2006–07 to provide a 1.4 percent increase in each fiscal year to the nursing home MA reimbursement rate. Under the substitute amendment, nursing homes that receive the additional reimbursement must expend at least 50 percent of the amount received for increased payment for direct care wages, fringe benefits, or hours for nursing home staff.

Current statutes contain a rule of proceeding governing legislative action on certain bills. Generally, the rule provides that no bill directly or indirectly affecting general purpose revenues may be adopted if the bill would cause the estimated general fund balance on June 30 of any fiscal year to be less than a certain amount of the total general purpose revenue appropriations for that fiscal year. For fiscal years 2005–06 and 2006–07, the amount is \$65,000,000. This substitute amendment reduces the amount for the 2005–06 fiscal year to \$60,000,000 and the amount for the 2006–07 fiscal year to \$50,000,000.

Current statutes also contain a rule of proceeding that generally prohibits the legislature from passing bills that would cause general fund expenditures in a given fiscal year to exceed moneys deposited in the general fund in that year. This

substitute amendment provides that this rule does not apply to the actions of the legislature in enacting this act for the 2006–07 fiscal year.

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

1 **SECTION 1.** 20.003 (4) (fm) of the statutes, as affected by 2005 Wisconsin Act
2 25, is amended to read:

3 20.003 (4) (fm) For fiscal year 2005–06, ~~\$65,000,000~~ \$60,000,000.

4 **SECTION 2.** 20.003 (4) (fr) of the statutes, as created by 2005 Wisconsin Act 25,
5 is amended to read:

6 20.003 (4) (fr) For fiscal year 2006–07, ~~\$65,000,000~~ \$50,000,000.

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

8 46.279 (2) PLACEMENTS AND ADMISSIONS TO INTERMEDIATE FACILITIES. Except as
9 provided in sub. (5), no person may protectively place or continue protective
10 placement of an individual with a developmental disability in an intermediate
11 facility and no intermediate facility may admit or continue service for such an
12 individual unless, before the protective placement, continued placement following
13 review under s. 55.06 (10), or admission and after having considered a plan
14 developed under sub. (4), a court under s. 55.06 (9) (a) or (10) (a) 2. finds that
15 protective placement in the intermediate facility is the most integrated setting that
16 is appropriate to the needs of the individual or that the county of residence of the
17 individual would not reasonably be able to provide community-based care in
18 accordance with the plan within the limits of available state and federal funds and
19 county funds required to be appropriated to match state funds, taking into account
20 information presented by all affected parties. An intermediate facility to which an
21 individual who has a developmental disability applies for admission shall, within 5

1 days after receiving the application, notify the county department that is
2 participating in the program under s. 46.278 of the county of residence of the
3 individual who is seeking admission concerning the application.

4 **SECTION 4.** 46.279 (3) of the statutes is amended to read:

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

17 **SECTION 5. Nonstatutory provisions.**

18 (1) REQUIRED GENERAL FUND STRUCTURAL BALANCE. Section 20.003 (4m) of the
19 statutes shall not apply to the actions of the legislature in enacting this act for the
20 2006–07 fiscal year.

21 (2) FACILITY REIMBURSEMENT SUPPLEMENT; REQUIRED EXPENDITURE. Each facility
22 that receives increased reimbursement from the amounts appropriated under
23 SECTION 6 (1) of this act shall expend, from the amount received, at least 50 percent
24 for increased payment for direct care wages, fringe benefits, or hours for facility staff.

25 **SECTION 6. Appropriation changes.**

1 (1) NURSING HOME MEDICAL ASSISTANCE REIMBURSEMENT RATE. In the schedule
2 under section 20.005 (3) of the statutes for the appropriation to the department of
3 health and family services under section 20.435 (4) (b) of the statutes, as affected by
4 the acts of 2005, the dollar amount is increased by \$5,141,700 for fiscal year 2005–06
5 and the dollar amount is increased by \$10,118,000 for fiscal year 2006–07 to increase
6 funding for Medical Assistance reimbursement to facilities under section 49.45 (6m)
7 of the statutes.

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(END)