



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-0584(P1) P2  
TJD:cdc

In: 214

DOA:.....Stinebrink, BB0038 - Long-term care; managed care

**FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION**

1 AN ACT<sup>φ</sup>; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

Insert analysis

state/local  
FE

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

2 SECTION 1. 16.009 (2) (em) of the statutes is amended to read:

3 16.009 (2) (em) Monitor, evaluate, and make recommendations concerning  
4 long-term community support services received by clients of the long-term support  
5 community options program under s. 46.27, the family care program, the Family  
6 Care Partnership Program, and the program of all-inclusive care for the elderly.

7 SECTION 2. 16.643 (2) of the statutes is amended to read:

8 16.643 (2) ELIGIBILITY FOR LONG-TERM CARE PROGRAMS. A person who is  
9 determining eligibility for an individual for a long-term care program under s. 46.27,

1 46.275, or 46.277, the family care benefit under s. 46.286, the family care partnership  
2 program, the long-term care program defined in s. 46.2899 (1), or any other  
3 demonstration program or program operated under a waiver of federal medicaid law  
4 that provides long-term care benefits shall exclude from the determination any  
5 income from assets accumulated in an account that is part of a qualified ABLE  
6 program under section 529A of the Internal Revenue Code.

7 **SECTION 3.** 20.435 (4) (b) of the statutes is amended to read:

8 20.435 (4) (b) *Medical Assistance program benefits.* Biennially, the amounts  
9 in the schedule to provide a portion of the state share of Medical Assistance program  
10 benefits administered under subch. IV of ch. 49, for a portion of the Badger Care  
11 health care program under s. 49.665, to provide a portion of the Medical Assistance  
12 program benefits administered under subch. IV of ch. 49 that are not also provided  
13 under par. (o), to fund the pilot project under s. 46.27 (9) and (10), to provide a portion  
14 of the facility payments under 1999 Wisconsin Act 9, section 9123 (9m), to fund  
15 services provided by resource centers under s. 46.283, for services under the family  
16 care benefit under s. 46.284 (5), for the community options program under s. 46.27,  
17 2017 stats., for assisting victims of diseases, as provided in ss. 49.68, 49.683, and  
18 49.685, for distributing grants under s. 146.64, and for reduction of any operating  
19 deficits as specified in 2005 Wisconsin Act 15, section 3. Notwithstanding s. 20.002  
20 (1), the department may transfer from this appropriation account to the  
21 appropriation account under sub. (5) (kc) funds in the amount of and for the purposes  
22 specified in s. 46.485. Notwithstanding ss. 20.001 (3) (b) and 20.002 (1), the  
23 department may credit or deposit into this appropriation account and may transfer  
24 between fiscal years funds that it transfers from the appropriation account under  
25 sub. (5) (kc) for the purposes specified in s. 46.485 (3r).

1           **SECTION 4.** 20.435 (4) (bd) of the statutes is amended to read:

2           20.435 (4) (bd) *Long-term care programs.* The amounts in the schedule for  
3           ~~assessments, case planning, services, administration and risk reserve escrow~~  
4           ~~accounts under s. 46.27,~~ for pilot projects under s. 46.271 (1), to fund services  
5           provided by resource centers other entities under s. 46.283 (5), for services under the  
6           family care program under s. 46.284 (5), ~~for services and supports under s. 46.2803~~  
7           ~~(2), and~~ and for services provided under the children's community options program under  
8           s. 46.272, ~~and for the payment of premiums under s. 49.472 (5).~~ Notwithstanding ss.  
9           20.001 (3) (a) and 20.002 (1), the department may under this paragraph transfer  
10          moneys between fiscal years. ~~Except for moneys authorized for transfer under this~~  
11          ~~appropriation or under s. 46.27 (7) (fm) or (g), all moneys under this appropriation~~  
12          ~~that are allocated under s. 46.27 and are not spent or encumbered by counties or by~~  
13          ~~the department by December 31 of each year shall lapse to the general fund on the~~  
14          ~~succeeding January 1 unless transferred to the next calendar year by the joint~~  
15          ~~committee on finance.~~

16          **SECTION 5.** 20.435 (4) (gm) of the statutes is amended to read:

17          20.435 (4) (gm) *Medical assistance; provider refunds and collections.* All  
18          moneys received from provider refunds, third party liability payments, drug rebates,  
19          audit recoveries, and other collections related to expenditures made from pars. (b),  
20          (jz), and (w), except for those moneys deposited in the appropriation accounts under  
21          par. (im) or (in) regardless of the fiscal year in which the expenditure from par. (b),  
22          (jz), or (w) is made, to provide a portion of the state share of Medical Assistance  
23          program benefits administered under subch. IV of ch. 49; to provide a portion of the  
24          Badger Care health care program under s. 49.665; to provide a portion of the Medical  
25          Assistance program benefits administered under subch. IV of ch. 49 that are not also

1 provided under par. (o); to fund the pilot project under s. ~~46.27 (9) and (10)~~; to fund  
2 services provided by resource centers under s. 46.283; to fund services under the  
3 family care benefit under s. 46.284 (5); and to assist victims of diseases, as provided  
4 in ss. 49.68, 49.683, and 49.685.

5 **SECTION 6.** 20.435 (4) (hp) of the statutes is amended to read:

6 20.435 (4) (hp) *Disabled children's long-term support waivers.* All moneys  
7 received under ss. 46.03 (18) and 46.10 for services for children reimbursed under a  
8 waiver under s. ~~46.27(11)~~, 46.275, or 46.278 or provided under the disabled children's  
9 long-term support program, as defined in s. 46.011 (1g), for distribution to counties  
10 according to a formula developed by the department as a portion of the state share  
11 of payments for services for children under the waiver under s. 46.278 or for services  
12 provided under the disabled children's long-term support program.

13 **SECTION 7.** 20.435 (4) (im) of the statutes is amended to read:

14 20.435 (4) (im) *Medical assistance; correct payment recovery; collections;*  
15 *community services; other recoveries.* All moneys received from the recovery of  
16 correct medical assistance payments under ss. 49.496 and 49.849, all moneys  
17 received as collections and other recoveries from providers, drug manufacturers, and  
18 other 3rd parties under medical assistance performance-based contracts, all moneys  
19 received from the recovery of costs of care under ss. 46.27 (7g), 2017 stats., and 49.849  
20 for enrollees who are ineligible for Medical Assistance, all moneys not appropriated  
21 under par. (in), and all moneys credited to this appropriation account under s. 49.89  
22 (7) (f), for payments to counties and tribal governing bodies under s. 49.496 (4) (a),  
23 for payment of claims under s. 49.849 (5), for payments to the federal government for  
24 its share of medical assistance benefits recovered, for the state share of medical  
25 assistance benefits provided under subch. IV of ch. 49, for payments to care

1 management organizations for provision of the family care benefit under s. 46.284  
2 (5), for payments for long-term community support services funded under s. 46.27  
3 (7) as provided in s. 46.27 (7g) (e) and 49.849 (6) (b), for administration of the waiver  
4 program under s. 46.99, and for costs related to collections and other recoveries.

5 **SECTION 8.** 20.435 (4) (in) of the statutes is amended to read:

6 20.435 (4) (in) *Community options program; family care; recovery of costs*  
7 *administration.* From the moneys received from the recovery of costs of care under  
8 ss. 46.27 (7g), 2017 stats., and 49.849 for enrollees who are ineligible for medical  
9 assistance, the amounts in the schedule for administration of the recovery of costs  
10 of the care.

11 **SECTION 9.** 20.435 (4) (w) of the statutes is amended to read:

12 20.435 (4) (w) *Medical Assistance trust fund.* From the Medical Assistance  
13 trust fund, biennially, the amounts in the schedule for meeting costs of medical  
14 assistance administered under ss. ~~46.27~~, 46.275 (5), 46.278 (6), 46.283 (5), 46.284 (5),  
15 49.45, and 49.472 (6), for refunds under s. 50.38 (6) (a) and (6m) (a), and for  
16 administrative costs associated with augmenting the amount of federal moneys  
17 received under 42 CFR 433.51.

18 **SECTION 10.** 20.435 (7) (b) of the statutes is amended to read:

19 20.435 (7) (b) *Community aids and Medical Assistance payments.* The  
20 amounts in the schedule for human services and community mental health services  
21 under s. 46.40, to fund services provided by resource centers under s. 46.283 (5), to  
22 fund activities in support of resource center operations, for services under the family  
23 care benefit under s. 46.284 (5), for Medical Assistance payment adjustments under  
24 s. 49.45 (52) (a) for services described in s. 49.45 (52) (a) 1., for Medical Assistance  
25 payments under s. 49.45 (6tw), and for Medical Assistance payments under s. 49.45

1 (53) for services described in s. 49.45 (53) that are provided before January 1, 2012.  
2 Social services disbursements under s. 46.03 (20) (b) may be made from this  
3 appropriation. Refunds received relating to payments made under s. 46.03 (20) (b)  
4 for the provision of services for which moneys are appropriated under this paragraph  
5 shall be returned to this appropriation. Notwithstanding ss. 20.001 (3) (a) and  
6 20.002 (1), the department of health services may transfer funds between fiscal years  
7 under this paragraph. The department shall deposit into this appropriation funds  
8 it recovers under ss. 46.495 (2) (b) and 51.423 (15), from prior year audit adjustments  
9 including those resulting from audits of services under s. 46.26, 1993 stats., or s.  
10 46.27, 2017 stats. Except for amounts authorized to be carried forward under s.  
11 46.45, all funds recovered under ss. 46.495 (2) (b) and 51.423 (15) and all funds  
12 allocated under s. 46.40 and not spent or encumbered by December 31 of each year  
13 shall lapse to the general fund on the succeeding January 1 unless carried forward  
14 to the next calendar year by the joint committee on finance.

15 **SECTION 11.** 20.930 of the statutes is amended to read:

16 **20.930 Attorney fees.** Except as provided in ss. 5.05 (2m) (c) 7., 19.49 (2) (b)  
17 6., ~~46.27 (7g) (h)~~, 49.496 (3) (f), and 49.682 (6), no state agency in the executive branch  
18 may employ any attorney until such employment has been approved by the governor.

19 **SECTION 12.** 46.10 (16) of the statutes is amended to read:

20 **46.10 (16)** The department shall delegate to county departments under ss.  
21 51.42 and 51.437 or the local providers of care and services meeting the standards  
22 established by the department under s. 46.036, the responsibilities vested in the  
23 department under this section for collection of patient fees for services other than  
24 those provided at state facilities, those provided to children that are reimbursed  
25 under a waiver under s. ~~46.27 (11)~~, 46.275, 46.278, or 46.2785, or those provided

1 under the disabled children's long-term support program if the county departments  
2 or providers meet the conditions that the department determines are appropriate.  
3 The department may delegate to county departments under ss. 51.42 and 51.437 the  
4 responsibilities vested in the department under this section for collection of patient  
5 fees for services provided at the state facilities if the necessary conditions are met.

6 **SECTION 13.** 46.21 (2m) (b) 1. a. of the statutes is amended to read:

7 46.21 (2m) (b) 1. a. The powers and duties of the county departments under ss.  
8 46.215, 51.42 and 51.437, ~~including the administration of the long-term support~~  
9 ~~community options program under s. 46.27, if the county department under s. 46.215~~  
10 ~~is designated as the administering agency under s. 46.27 (3) (b) 1.~~

11 **SECTION 14.** 46.21 (2m) (b) 1. b. of the statutes is repealed.

12 **SECTION 15.** 46.215 (1) (m) of the statutes is repealed.

13 **SECTION 16.** 46.22 (1) (b) 1. e. of the statutes is repealed.

14 **SECTION 17.** 46.23 (3) (bm) of the statutes is repealed.

15 **SECTION 18.** 46.269 of the statutes is amended to read:

16 **46.269 Determining financial eligibility for long-term care programs.**

17 To the extent approved by the federal government, the department or its designee  
18 shall exclude any assets accumulated in a person's independence account, as defined  
19 in s. 49.472 (1) (c), and any income or assets from retirement benefits earned or  
20 accumulated from income or employer contributions while employed and receiving  
21 ~~state-funded benefits under s. 46.27 or~~ medical assistance under s. 49.472 in  
22 determining financial eligibility and cost-sharing requirements, if any, for a  
23 long-term care program under s. ~~46.27~~, 46.275, or 46.277, for the family care  
24 program that provides the benefit defined in s. 46.2805 (4), for the Family Care

1 Partnership program, or for the self-directed services option, as defined in s. 46.2897  
2 (1).

3 **SECTION 19.** 46.27 of the statutes is repealed.

4 **SECTION 20.** 46.271 (1) (c) of the statutes is amended to read:

5 46.271 (1) (c) The department may contract with an aging unit, as defined in  
6 s. ~~46.27~~ 46.82 (1) (a), for administration of services under par. (a) if, by resolution,  
7 the county board of supervisors of that county so requests the department.

8 **SECTION 21.** 46.275 (3) (e) of the statutes is repealed.

9 **SECTION 22.** 46.275 (5) (b) 7. of the statutes is amended to read:

10 46.275 (5) (b) 7. Provide services in any community-based residential facility  
11 unless the county or department uses as a service contract the approved model  
12 contract developed under s. 46.27 (2) (j), 2017 stats., or a contract that includes all  
13 of the provisions of the approved model contract.

14 **SECTION 23.** 46.277 (1m) (at) of the statutes is amended to read:

15 46.277 (1m) (at) "Private nonprofit agency" ~~has the meaning specified in s.~~  
16 ~~46.27 (1) (bm)~~ means a nonprofit corporation, as defined in s. 181.0103 (17), that  
17 provides a program of all-inclusive care for the elderly under 42 USC 1395eee or  
18 1396u-4.

19 **SECTION 24.** 46.277 (3) (a) of the statutes is amended to read:

20 46.277 (3) (a) ~~Sections 46.27 (3) (b) and Section 46.275 (3) (a) and (c) to (e) apply~~  
21 applies to county participation in this program, except that services provided in the  
22 program shall substitute for care provided a person in a skilled nursing facility or  
23 intermediate care facility who meets the level of care requirements for medical  
24 assistance reimbursement to that facility rather than for care provided at a state  
25 center for the developmentally disabled. The number of persons who receive services



1 provided by the program under this paragraph may not exceed the number of  
2 nursing home beds, other than beds specified in sub. (5g) (b), that are delicensed as  
3 part of a plan submitted by the facility and approved by the department.

4 **SECTION 25.** 46.277 (5) (d) 2. a. of the statutes is repealed.

5 **SECTION 26.** 46.277 (5) (d) 3. of the statutes is amended to read:

6 46.277 (5) (d) 3. If subd. 2. a. or b. applies, no county may use funds received  
7 under this section to pay for services provided to a person who resides or intends to  
8 reside in a community-based residential facility and who is initially applying for the  
9 services, if the projected cost of services for the person, plus the cost of services for  
10 existing participants, would cause the county to exceed the limitation under sub. (3)  
11 (c). The department may grant an exception to the requirement under this  
12 subdivision, under the conditions specified by rule, to avoid hardship to the person.

13 **SECTION 27.** 46.277 (5) (f) of the statutes is amended to read:

14 46.277 (5) (f) No county or private nonprofit agency may use funds received  
15 under this subsection to provide services in any community-based residential  
16 facility unless the county or agency uses as a service contract the approved model  
17 contract developed under s. 46.27 (2) (j), 2017 stats., or a contract that includes all  
18 of the provisions of the approved model contract.

19 **SECTION 28.** 46.278 (4) (a) of the statutes is amended to read:

20 46.278 (4) (a) ~~Sections 46.27 (3) (b) and Section 46.275 (3) (a) and (c) to (e) apply~~  
21 applies to county participation in a program, except that services provided in the  
22 program shall substitute for care provided a person in an intermediate care facility  
23 for persons with an intellectual disability or in a brain injury rehabilitation facility  
24 who meets the intermediate care facility for persons with an intellectual disability  
25 or brain injury rehabilitation facility level of care requirements for medical

1 assistance reimbursement to that facility rather than for care provided at a state  
2 center for the developmentally disabled.

3 **SECTION 29.** 46.2803 of the statutes is repealed.

4 **SECTION 30.** 46.2805 (1) (b) of the statutes is amended to read:

5 46.2805 (1) (b) A demonstration program known as the ~~Wisconsin~~ partnership  
6 Family Care Partnership program under a federal waiver authorized under 42 USC  
7 1315 1396n.

8 **SECTION 31.** 46.281 (1n) (d) of the statutes is repealed.

9 **SECTION 32.** 46.281 (3) of the statutes is repealed.

10 **SECTION 33.** 46.2825 of the statutes is repealed.

11 **SECTION 34.** 46.283 (3) (f) of the statutes is amended to read:

12 46.283 (3) (f) Assistance to a person ~~who is eligible for the family care benefit~~  
13 with respect to the person's choice of whether or not to enroll in the self-directed  
14 services option, as defined in s. 46.2899 (1), the program of all-inclusive care for the  
15 elderly, the Family Care Partnership, or a care management organization for the  
16 family care benefit and, if so, which available long-term care program or care  
17 management organization would best meet his or her needs.

18 **SECTION 35.** 46.283 (4) (e) of the statutes is repealed.

19 **SECTION 36.** 46.283 (4) (f) of the statutes is amended to read:

20 46.283 (4) (f) Perform a functional screening and a financial and cost-sharing  
21 screening for any resident, ~~as specified in par. (e),~~ who requests a screening and  
22 assist any resident who is eligible and chooses to enroll in a care management  
23 organization or the self-directed services option to do so.

24 **SECTION 37.** 46.283 (6) (b) 7. of the statutes is repealed.

25 **SECTION 38.** 46.283 (6) (b) 9. of the statutes is amended to read:

1           46.283 (6) (b) 9. Review the number and types of grievances and appeals  
2           ~~concerning the long-term care system in the area served by~~ related to the resource  
3           center, to determine if a need exists for system changes, and recommend system or  
4           other changes if appropriate.

5           **SECTION 39.** 46.283 (6) (b) 10. of the statutes is repealed.

6           **SECTION 40.** 46.285 (intro.) of the statutes is renumbered 46.285 and amended  
7           to read:

8           **46.285    Operation of resource center and care management**  
9           **organization.** In order to meet federal requirements and assure federal financial  
10          participation in funding of the family care benefit, a county, a tribe or band, a  
11          long-term care district or an organization, including a private, nonprofit  
12          corporation, may not directly operate both a resource center and a care management  
13          organization, ~~except as follows:~~

14          **SECTION 41.** 46.285 (1) of the statutes is repealed.

15          **SECTION 42.** 46.285 (2) of the statutes is repealed.

16          **SECTION 43.** 46.286 (3) (b) 2. a. of the statutes is repealed.

17          **SECTION 44.** 46.287 (2) (a) 1. (intro.) of the statutes is amended to read:

18          46.287 (2) (a) 1. (intro.) Except as provided in subd. 2., a client may contest any  
19          of the following applicable matters by filing, within 45 days of the failure of a resource  
20          center or ~~care management organization~~ county to act on the contested matter  
21          within the time frames specified by rule by the department or within 45 days after  
22          receipt of notice of a decision in a contested matter, a written request for a hearing  
23          under s. 227.44 to the division of hearings and appeals created under s. 15.103 (1):

24          **SECTION 45.** 46.287 (2) (a) 1. d. of the statutes is renumbered 46.287 (2) (a) 1m.

25          b.

1           **SECTION 46.** 46.287 (2) (a) 1. e. of the statutes is repealed.

2           **SECTION 47.** 46.287 (2) (a) 1. f. of the statutes is repealed.

3           **SECTION 48.** 46.287 (2) (a) 1m. of the statutes is created to read:

4           46.287 (2) (a) 1m. Except as provided in subd. 2., a client may contest any of  
5 the following adverse benefit determinations by filing, within 120 days of the failure  
6 of a care management organization to act on a contested adverse benefit  
7 determination within the time frames specified by rule by the department or within  
8 120 days after receipt of notice of a decision upholding the adverse benefit  
9 determination, a written request for a hearing under s. 227.44 to the division of  
10 hearings and appeals created under s. 15.103 (1):

11           a. Denial of functional eligibility under s. 46.286 (1) as a result of the care  
12 management organization's administration of the long-term care functional screen,  
13 including a change from a nursing home level of care to a non-nursing home level  
14 of care.

15           c. Denial or limited authorization of a requested service, including  
16 determinations based on type or level of service, requirements or medical necessity,  
17 appropriateness, setting, or effectiveness of a covered benefit.

18           d. Reduction, suspension, or termination of a previously authorized service,  
19 unless the service was only authorized for a limited amount or duration and that  
20 amount or duration has been completed.

21           e. Denial, in whole or in part, of payment for a service.

22           f. The failure of a care management organization to act within the time frames  
23 provided in 42 CFR 438.408 (b) (1) and (2) regarding the standard resolution of  
24 grievances and appeals.

1 g. Denial of an enrollee's request to dispute financial liability, including  
2 copayments, premiums, deductibles, coinsurance, other cost sharing, and other  
3 member financial liabilities.

4 h. Denial of an enrollee, who is a resident of a rural area with only one care  
5 management organization, to obtain services outside the care management  
6 organization's network of contracted providers.

7 i. Development of a plan of care that is unacceptable to the enrollee because the  
8 plan of care requires the enrollee to live in a place that is unacceptable to the enrollee;  
9 the plan of care does not provide sufficient care, treatment, or support to meet the  
10 enrollee's needs and support the enrollee's identified outcomes; or the plan of care  
11 requires the enrollee to accept care, treatment, or support that is unnecessarily  
12 restrictive or unwanted by the enrollee.

13 j. Involuntary disenrollment from the care management organization.

14 **SECTION 49.** 46.287 (2) (b) of the statutes is amended to read:

15 46.287 (2) (b) An enrollee may contest a decision, omission or action of a care  
16 management organization other than those specified in par. (a), ~~or may contest the~~  
17 ~~choice of service provider. In these instances, the enrollee shall first send a written~~  
18 ~~request for review by the unit of the department that monitors care management~~  
19 ~~organization contracts. This unit shall review and attempt to resolve the dispute.~~  
20 1m. by filing a grievance with the care management organization. If the dispute  
21 grievance is not resolved to the satisfaction of the enrollee, he or she may request  
22 a hearing under the procedures specified in par. (a) 1. (intro.) that the department  
23 review the decision of the care management organization.

\*\*\*\*NOTE: The requested language uses both "care management organization" and  
"managed care entity." I do not know if these terms mean the same thing or something  
different. If the preferred term is "managed care entity," then the definition should be

confirmed and the term “care management organization” should be replaced throughout the statutes.

1           **SECTION 50.** 46.288 (2) (intro.) of the statutes is renumbered 46.288 (2) and  
2 amended to read:

3           **46.288 (2)** Criteria and procedures for determining functional eligibility under  
4 s. 46.286 (1) (a), financial eligibility under s. 46.286 (1) (b), and cost sharing under  
5 s. 46.286 (2) (a). ~~The rules for determining functional eligibility under s. 46.286 (1)~~  
6 ~~(a) 1m. shall be substantially similar to eligibility criteria for receipt of the long-term~~  
7 ~~support community options program under s. 46.27. Rules under this subsection~~  
8 ~~shall include definitions of the following terms applicable to s. 46.286:~~

9           **SECTION 51.** 46.288 (2) (d) to (j) of the statutes are repealed.

10          **SECTION 52.** 46.2896 (1) (a) of the statutes is amended to read:

11          **46.2896 (1) (a)** “Long-term care program” means the long-term care program  
12 under s. ~~46.27~~, 46.275, 46.277, 46.278, or 46.2785; the family care program providing  
13 the benefit under s. 46.286; the Family Care Partnership program; or the long-term  
14 care program defined in s. 46.2899 (1).

15          **SECTION 53.** 46.82 (3) (a) 13. of the statutes is repealed.

16          **SECTION 54.** 49.45 (2) (a) 23. of the statutes is amended to read:

17          **49.45 (2) (a) 23.** Promulgate rules that define “supportive services”, “personal  
18 services” and “nursing services” provided in a certified residential care apartment  
19 complex, as defined under s. 50.01 (6d), for purposes of reimbursement under ~~ss.~~  
20 ~~46.27 (11) (e) 7. and s. 46.277 (5) (e).~~

21          **SECTION 55.** 49.45 (3) (a) of the statutes is amended to read:

22          **49.45 (3) (a)** Reimbursement shall be made to each county department under  
23 ss. 46.215, 46.22, and 46.23 for any administrative services performed in the Medical

1 Assistance program on the basis of s. 49.78 (8). ~~For purposes of reimbursement~~  
2 ~~under this paragraph, assessments completed under s. 46.27 (6) (a) are~~  
3 ~~administrative services performed in the Medical Assistance program.~~

4 **SECTION 56.** 49.45 (5) (a) of the statutes is amended to read:

5 49.45 (5) (a) Any person whose application for medical assistance is denied or  
6 is not acted upon promptly or who believes that the payments made in the person's  
7 behalf have not been properly determined or that his or her eligibility has not been  
8 properly determined may file an appeal with the department pursuant to par. (b).  
9 Review is unavailable if the decision or failure to act arose more than 45 days before  
10 submission of the petition for a hearing, except as provided in par. (ag) or (ar).

11 **SECTION 57.** 49.45 (5) (ag) of the statutes is created to read:

12 49.45 (5) (ag) A person shall request a hearing within 120 days of the date of  
13 receipt of a notice from a care management organization upholding its adverse  
14 benefit determination relating to any of the following or within 120 days of the date  
15 the care management organization failed to act on the contested matter within the  
16 time specified by the department:

17 1. Denial or limited authorization of a requested services, including a  
18 determination based on the type or level of service, requirement for medical  
19 necessity, appropriateness, setting, or effectiveness of a covered benefit.

20 2. Reduction, suspension, or termination of a previously authorized service,  
21 unless the service was only authorized for a limited amount or duration and that  
22 amount or duration has been completed.

23 3. Denial, in whole or in part, of payment for a service.

24 4. Failure to provide services in a timely manner.

XXXNOTE: Is this intended to apply to both HMOs and  
care management organizations that administer Family Care?  
As it is currently drafted, it does not apply to the HMOs.

**SECTION 57**

1           5. Failure of a care management organization to act within the time frames  
2 provided in 42 CFR 438.408 (b) (1) and (2) regarding the standard resolution of  
3 grievances and appeals.

4           6. Denial of an enrollee's request to dispute financial liability, including  
5 copayments, premiums, deductibles, coinsurance, other cost sharing, and other  
6 member financial liabilities.

7           7. Denial of an enrollee, who is a resident of a rural area with only one care  
8 management organization, to obtain services outside the care management  
9 organization's network of contracted providers.

10           **SECTION 58.** 49.45 (5) (ar) of the statutes is created to read:

11           49.45 (5) (ar) If a federal regulation specifies a different time limit to request  
12 a hearing than par. (a) or (ag), the time limit in the federal regulation shall apply.

13           **SECTION 59.** 49.45 (5) (b) 1. (intro.) of the statutes is amended to read:

14           49.45 (5) (b) 1. (intro.) Upon receipt of a timely petition under par. (a) the  
15 department shall give the applicant or recipient reasonable notice and opportunity  
16 for a fair hearing. The department may make such additional investigation as it  
17 considers necessary. Notice of the hearing shall be given to the applicant or recipient  
18 and, if a county department under s. 46.215, 46.22, or 46.23 is responsible for making  
19 the medical assistance determination, to the county clerk of the county. The county  
20 may be represented at such hearing. The department shall render its decision as  
21 soon as possible after the hearing and shall send a certified copy of its decision to the  
22 applicant or recipient, to the county clerk, and to any county officer charged with  
23 administration of the Medical Assistance program. The decision of the department  
24 shall have the same effect as an order of a county officer charged with the  
25 administration of the Medical Assistance program. The decision shall be final, but



1 may be revoked or modified as altered conditions may require. The department shall  
2 deny a petition for a hearing or shall refuse to grant relief if:

3 **SECTION 60.** 49.45 (5) (b) 1. d. of the statutes is created to read:

4 49.45 (5) (b) 1. d. The issue is an adverse benefit determination described in  
5 par. (ag) 1. to 7. made by a care management organization and the person requesting  
6 the hearing has not exhausted the internal appeal procedure with the care  
7 management organization.

8 **SECTION 61.** 49.45 (6m) (c) 5. of the statutes is amended to read:

9 49.45 (6m) (c) 5. Admit only patients assessed or who waive or are exempt from  
10 the requirement of assessment under s. 46.27 (6) (a) or, if required under s. 50.035  
11 (4n) or 50.04 (2h), who have been referred to a resource center.

12 **SECTION 62.** 49.45 (6m) (L) of the statutes is amended to read:

13 49.45 (6m) (L) For purposes of ~~ss. 46.27 (11) (e) 7. and s. 46.277 (5) (e)~~, the  
14 department shall, by July 1 annually, determine the statewide medical assistance  
15 daily cost of nursing home care and submit the determination to the department of  
16 administration for review. The department of administration shall approve the  
17 determination before payment may be made under ~~s. 46.27 (11) (e) 7. or 46.277 (5)~~  
18 (e).

19 **SECTION 63.** 49.45 (47) (b) of the statutes is amended to read:

20 49.45 (47) (b) No person may receive reimbursement under ~~s. 46.27 (11)~~ for the  
21 provision of services to clients in an adult day care center unless the adult day care  
22 center is certified by the department under sub. (2) (a) 11. as a provider of medical  
23 assistance.

24 **SECTION 64.** 49.46 (1) (a) 14. of the statutes is amended to read:

1           49.46 (1) (a) 14. Any person who would meet the financial and other eligibility  
2 requirements for home or community-based services under s. ~~46.27 (11)~~, 46.277, or  
3 46.2785 but for the fact that the person engages in substantial gainful activity under  
4 42 USC 1382c (a) (3), if a waiver under s. 49.45 (38) is in effect or federal law permits  
5 federal financial participation for medical assistance coverage of the person and if  
6 funding is available for the person under s. ~~46.27 (11)~~, 46.277, or 46.2785.

7           **SECTION 65.** 49.46 (1) (em) of the statutes is amended to read:

8           49.46 (1) (em) To the extent approved by the federal government, for the  
9 purposes of determining financial eligibility and any cost-sharing requirements of  
10 an individual under par. (a) 6m., 14., or 14m., (d) 2., or (e), the department or its  
11 designee shall exclude any assets accumulated in a person's independence account,  
12 as defined in s. 49.472 (1) (c), and any income or assets from retirement benefits  
13 earned or accumulated from income or employer contributions while employed and  
14 receiving ~~state-funded benefits under s. 46.27~~ or medical assistance under s. 49.472.

15           **SECTION 66.** 49.46 (2) (b) 8. of the statutes is amended to read:

16           49.46 (2) (b) 8. Home or community-based services, if provided under s. ~~46.27~~  
17 ~~(11)~~, 46.275, 46.277, 46.278, 46.2785, 46.99, or under the family care benefit if a  
18 waiver is in effect under s. 46.281 (1d), or under the disabled children's long-term  
19 support program, as defined in s. 46.011 (1g).

20           **SECTION 67.** 49.47 (4) (as) 1. of the statutes is amended to read:

21           49.47 (4) (as) 1. The person would meet the financial and other eligibility  
22 requirements for home or community-based services under s. ~~46.27 (11)~~, 46.277, or  
23 46.2785 or under the family care benefit if a waiver is in effect under s. 46.281 (1d)  
24 but for the fact that the person engages in substantial gainful activity under 42 USC  
25 1382c (a) (3).

1           **SECTION 68.** 49.47 (4) (as) 3. of the statutes is amended to read:

2           49.47 (4) (as) 3. Funding is available for the person under s. ~~46.27 (11)~~, 46.277,  
3           or 46.2785 or under the family care benefit if a waiver is in effect under s. 46.281 (1d).

4           **SECTION 69.** 49.47 (4) (b) (intro.) of the statutes is amended to read:

5           49.47 (4) (b) (intro.) Eligibility exists if the applicant's property, subject to the  
6           exclusion of any amounts under the Long-Term Care Partnership Program  
7           established under s. 49.45 (31), any amounts in an independence account, as defined  
8           in s. 49.472 (1) (c), or any retirement assets that accrued from employment while the  
9           applicant was eligible for ~~the community options program under s. 46.27 (11)~~, or any  
10          ~~other~~ Medical Assistance program, including deferred compensation or the value of  
11          retirement accounts in the Wisconsin Retirement System or under the federal Social  
12          Security Act, does not exceed the following:

13          **SECTION 70.** 49.472 (3) (b) of the statutes is amended to read:

14          49.472 (3) (b) The individual's assets do not exceed \$15,000. In determining  
15          assets, the department may not include assets that are excluded from the resource  
16          calculation under 42 USC 1382b (a), assets accumulated in an independence  
17          account, and, to the extent approved by the federal government, assets from  
18          retirement benefits accumulated from income or employer contributions while  
19          employed and receiving medical assistance under this section ~~or state-funded~~  
20          ~~benefits under s. 46.27~~. The department may exclude, in whole or in part, the value  
21          of a vehicle used by the individual for transportation to paid employment.

22          **SECTION 71.** 49.472 (3) (f) of the statutes is amended to read:

23          49.472 (3) (f) The individual maintains premium payments under sub. (4) (am)  
24          and, if applicable and to the extent approved by the federal government, premium

1 payments calculated by the department in accordance with sub. (4) (bm), unless the  
2 individual is exempted from premium payments under sub. (4) (dm) ~~or (5)~~.

3 **SECTION 72.** 49.472 (4) (am) of the statutes is amended to read:

4 49.472 (4) (am) To the extent approved by the federal government and except  
5 as provided in pars. (dm) and (em) ~~and sub. (5)~~, an individual who receives medical  
6 assistance under this section shall pay a monthly premium of \$25 to the department.

7 **SECTION 73.** 49.472 (5) of the statutes is repealed.

8 **SECTION 74.** 49.849 (1) (e) of the statutes is amended to read:

9 49.849 (1) (e) "Public assistance" means any services provided as a benefit  
10 under a long-term care program, as defined in s. 49.496 (1) (bk), medical assistance  
11 under subch. IV, ~~long-term community support services funded under s. 46.27 (7)~~,  
12 or aid under s. 49.68, 49.683, 49.685, or 49.785.

13 **SECTION 75.** 49.849 (2) (a) (intro.) of the statutes is amended to read:

14 49.849 (2) (a) (intro.) Subject to par. (b), the department may collect from the  
15 property of a decedent by affidavit under sub. (3) (b) or by lien under sub. (4) (a) an  
16 amount equal to the medical assistance that is recoverable under s. 49.496 (3) (a), the  
17 long-term community support services under s. 46.27, 2017 stats., that is  
18 recoverable under s. 46.27 (7g) (c) 1., 2017 stats., or the aid under s. 49.68, 49.683,  
19 49.685, or 49.785 that is recoverable under s. 49.682 (2) (a) or (am), and that was paid  
20 on behalf of the decedent or the decedent's spouse, if all of the following conditions  
21 are satisfied:

22 **SECTION 76.** 49.849 (6) (a) of the statutes is renumbered 49.849 (6).

23 **SECTION 77.** 49.849 (6) (b) of the statutes is repealed.

24 **SECTION 78.** 50.034 (1) (a) of the statutes is amended to read:

1           50.034 (1) (a) No person may operate a residential care apartment complex that  
2 provides living space for residents who are clients under s. 46.27 (11) ~~or~~ 46.277 and  
3 publicly funded services as a home health agency or under contract with a county  
4 department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 that is a home health  
5 agency unless the residential care apartment complex is certified by the department  
6 under this section. The department may charge a fee, in an amount determined by  
7 the department, for certification under this paragraph. The amount of any fee  
8 charged by the department for certification of a residential care apartment complex  
9 need not be promulgated as a rule under ch. 227.

10           **SECTION 79.** 50.034 (3) (a) 1. of the statutes is repealed.

11           **SECTION 80.** 50.034 (5m) of the statutes is amended to read:

12           50.034 (5m) PROVISION OF INFORMATION REQUIRED. ~~Subject to sub. (5p), when~~  
13 When a residential care apartment complex first provides written material  
14 regarding the residential care apartment complex to a prospective resident, the  
15 residential care apartment complex shall also provide the prospective resident  
16 information specified by the department concerning the services of a resource center  
17 under s. 46.283, the family care benefit under s. 46.286, and the availability of a  
18 functional screening and a financial and cost-sharing screening to determine the  
19 prospective resident's eligibility for the family care benefit under s. 46.286 (1).

20           **SECTION 81.** 50.034 (5n) (intro.) of the statutes is amended to read:

21           50.034 (5n) REQUIRED REFERRAL. (intro.) ~~Subject to sub. (5p), when~~ When a  
22 residential care apartment complex first provides written material regarding the  
23 residential care apartment complex to a prospective resident who is at least 65 years  
24 of age or has developmental disability or a physical disability and whose disability  
25 or condition is expected to last at least 90 days, the residential care apartment

1 complex shall refer the prospective resident to a resource center under s. 46.283,  
2 unless any of the following applies:

3 **SECTION 82.** 50.034 (5p) of the statutes is repealed.

4 **SECTION 83.** 50.034 (6) of the statutes is amended to read:

5 50.034 (6) FUNDING. Funding for supportive, personal or nursing services that  
6 a person who resides in a residential care apartment complex receives, other than  
7 private or 3rd-party funding, may be provided only under s. ~~46.27(11)(e)7. or 46.277~~  
8 (5) (e), except if the provider of the services is a certified medical assistance provider  
9 under s. 49.45 or if the funding is provided as a family care benefit under ss. 46.2805  
10 to 46.2895.

11 **SECTION 84.** 50.035 (4m) of the statutes is amended to read:

12 50.035 (4m) PROVISION OF INFORMATION REQUIRED. ~~Subject to sub. (4p), when~~  
13 When a community-based residential facility first provides written material  
14 regarding the community-based residential facility to a prospective resident, the  
15 community-based residential facility shall also provide the prospective resident  
16 information specified by the department concerning the services of a resource center  
17 under s. 46.283, the family care benefit under s. 46.286, and the availability of a  
18 functional screening and a financial and cost-sharing screening to determine the  
19 prospective resident's eligibility for the family care benefit under s. 46.286 (1).

20 **SECTION 85.** 50.035 (4n) (intro.) of the statutes is amended to read:

21 50.035 (4n) REQUIRED REFERRAL. (intro.) When a community-based residential  
22 facility first provides written information regarding the community-based  
23 residential facility to a prospective resident who is at least 65 years of age or has  
24 developmental disability or a physical disability and whose disability or condition is  
25 expected to last at least 90 days, the community-based residential facility shall refer

1 the individual to a resource center under s. 46.283 or, if the secretary has not certified  
2 under s. 46.281 (3) that a resource center is available in the area of the  
3 community-based residential facility to serve individuals in an eligibility group to  
4 which the prospective resident belongs, to the county department that administers  
5 a program under ss. 46.27 or 46.277, unless any of the following applies:

6 **SECTION 86.** 50.035 (4p) of the statutes is repealed.

7 **SECTION 87.** 50.04 (2g) (a) of the statutes is amended to read:

8 50.04 (2g) (a) Subject to sub. (2i), a A nursing home shall, within the time  
9 period after inquiry by a prospective resident that is prescribed by the department  
10 by rule, inform the prospective resident of the services of a resource center under s.  
11 46.283, the family care benefit under s. 46.286, and the availability of a functional  
12 screening and a financial and cost-sharing screening to determine the prospective  
13 resident's eligibility for the family care benefit under s. 46.286 (1).

14 **SECTION 88.** 50.04 (2h) (a) (intro.) of the statutes is amended to read:

15 50.04 (2h) (a) (intro.) Subject to sub. (2i), a A nursing home shall, within the  
16 time period prescribed by the department by rule, refer to a resource center under  
17 s. 46.283 a person who is seeking admission, who is at least 65 years of age or has  
18 developmental disability or physical disability and whose disability or condition is  
19 expected to last at least 90 days, unless any of the following applies:

20 **SECTION 89.** 50.04 (2i) of the statutes is repealed.

21 **SECTION 90.** 50.04 (2m) of the statutes is repealed.

22 **SECTION 91.** 50.06 (7) of the statutes is amended to read:

23 50.06 (7) An individual who consents to an admission under this section may  
24 request that an assessment be conducted for the incapacitated individual under the  
25 long-term support community options program under s. 46.27 (6) or, if the secretary

**SECTION 91**

1 ~~has certified under s. 46.281 (3) that a resource center is available for the individual,~~  
2 a functional screening and a financial and cost-sharing screening to determine  
3 eligibility for the family care benefit under s. 46.286 (1). If admission is sought on  
4 behalf of the incapacitated individual or if the incapacitated individual is about to  
5 be admitted on a private pay basis, the individual who consents to the admission may  
6 waive the requirement for a financial and cost-sharing screening under s. 46.283 (4)  
7 (g), unless the incapacitated individual is expected to become eligible for medical  
8 assistance within 6 months.

9 **SECTION 92.** 51.06 (8) (b) 6. of the statutes is amended to read:

10 51.06 (8) (b) 6. The extent of Medical Assistance provided to relocated or  
11 diverted individuals that is in addition to Medical Assistance provided to the  
12 individuals under s. ~~46.27 (11)~~, 46.275, 46.277, or 46.278, as a family care benefit  
13 under ss. 46.2805 to 46.2895, or under any other home-based or community-based  
14 program for which the department has received a waiver under 42 USC 1396n (c).

15 **SECTION 93.** 51.42 (3) (ar) 3. of the statutes is amended to read:

16 51.42 (3) (ar) 3. Plan for and establish a community developmental disabilities  
17 program to deliver the services required under s. 51.437 if, under s. 51.437 (4g) (b),  
18 the county board of supervisors in a county with a single-county department of  
19 community programs or the county boards of supervisors in counties with a  
20 multicounty department of community programs transfer the powers and duties of  
21 the county department under s. 51.437 to the county department of community  
22 programs. The county board of supervisors in a county with a single-county  
23 department of community programs and the county boards of supervisors in counties  
24 with a multicounty department of community programs may designate the county  
25 department of community programs to which these powers and duties have been



1 transferred as the administrative agency of the long-term support community  
2 options program under s. 46.27 (3) (b) 1. and 5. and the community integration  
3 programs under ss. 46.275, 46.277 and 46.278.

4 **SECTION 94.** 51.421 (1) of the statutes is amended to read:

5 51.421 (1) PURPOSE. In order to provide the least restrictive and most  
6 appropriate care and treatment for persons with serious and persistent mental  
7 illness, community support programs should be available in all parts of the state.  
8 In order to integrate community support programs with other long-term care  
9 programs, community support programs shall be coordinated, to the greatest extent  
10 possible, with the community options program under s. 46.27, with the protective  
11 services system in a county, with the medical assistance program under subch. IV of  
12 ch. 49 and with other care and treatment programs for persons with serious and  
13 persistent mental illness.

14 **SECTION 95.** 54.21 (2) (g) of the statutes is amended to read:

15 54.21 (2) (g) The current and likely future effect of the proposed transfer of  
16 assets on the ward's eligibility for public benefits, including medical assistance or a  
17 benefit under s. 46.27.

18 **SECTION 96.** 54.34 (1) (k) of the statutes is amended to read:

19 54.34 (1) (k) Whether the proposed ward is a recipient of a public benefit,  
20 including medical assistance or a benefit under s. 46.27.

21 **SECTION 97.** 71.52 (6) of the statutes is amended to read:

22 71.52 (6) "Income" means the sum of Wisconsin adjusted gross income and the  
23 following amounts, to the extent not included in Wisconsin adjusted gross income:  
24 maintenance payments (except foster care maintenance and supplementary  
25 payments excludable under section 131 of the internal revenue code), support money,

1 cash public assistance (not including credit granted under this subchapter and  
2 amounts under s. 46.27, 2017 stats.), cash benefits paid by counties under s. 59.53  
3 (21), the gross amount of any pension or annuity (including railroad retirement  
4 benefits, all payments received under the federal social security act and veterans  
5 disability pensions), nontaxable interest received from the federal government or  
6 any of its instrumentalities, nontaxable interest received on state or municipal  
7 bonds, worker's compensation, unemployment insurance, the gross amount of "loss  
8 of time" insurance, compensation and other cash benefits received from the United  
9 States for past or present service in the armed forces, scholarship and fellowship gifts  
10 or income, capital gains, gain on the sale of a personal residence excluded under  
11 section 121 of the internal revenue code, dividends, income of a nonresident or  
12 part-year resident who is married to a full-year resident, housing allowances  
13 provided to members of the clergy, the amount by which a resident manager's rent  
14 is reduced, nontaxable income of an American Indian, nontaxable income from  
15 sources outside this state and nontaxable deferred compensation. Intangible drilling  
16 costs, depletion allowances and depreciation, including first-year depreciation  
17 allowances under section 179 of the internal revenue code, amortization,  
18 contributions to individual retirement accounts under section 219 of the internal  
19 revenue code, contributions to Keogh plans, net operating loss carry-backs and  
20 carry-forwards, capital loss carry-forwards, and disqualified losses deducted in  
21 determining Wisconsin adjusted gross income shall be added to "income". "Income"  
22 does not include gifts from natural persons, cash reimbursement payments made  
23 under title XX of the federal social security act, surplus food or other relief in kind  
24 supplied by a governmental agency, the gain on the sale of a personal residence  
25 deferred under section 1034 of the internal revenue code or nonrecognized gain from

1 involuntary conversions under section 1033 of the internal revenue code. Amounts  
2 not included in adjusted gross income but added to “income” under this subsection  
3 in a previous year and repaid may be subtracted from income for the year during  
4 which they are repaid. Scholarship and fellowship gifts or income that are included  
5 in Wisconsin adjusted gross income and that were added to household income for  
6 purposes of determining the credit under this subchapter in a previous year may be  
7 subtracted from income for the current year in determining the credit under this  
8 subchapter. A marital property agreement or unilateral statement under ch. 766 has  
9 no effect in computing “income” for a person whose homestead is not the same as the  
10 homestead of that person’s spouse.

11 **SECTION 98.** 71.58 (7) (a) of the statutes is amended to read:

12 71.58 (7) (a) For an individual, means income as defined under s. 71.52 (6), plus  
13 nonfarm business losses, plus amounts under s. 46.27, 2017 stats., less net operating  
14 loss carry-forwards, less first-year depreciation allowances under section 179 of the  
15 internal revenue code and less the first \$25,000 of depreciation expenses in respect  
16 to the farm claimed by all of the individuals in a household.

17 **SECTION 99.** 102.07 (20) of the statutes is amended to read:

18 102.07 (20) An individual who is performing services for a person participating  
19 in the self-directed services option, as defined in s. 46.2897 (1), for a person receiving  
20 long-term care benefits under s. 46.27, 46.275, or 46.277 or under any children’s  
21 long-term support waiver program on a self-directed basis, or for a person receiving  
22 the Family Care benefit, as defined in s. 46.2805 (4), or benefits under the Family  
23 Care Partnership program, as described in s. 49.496 (1) (bk) 3., on a self-directed  
24 basis and who does not otherwise have worker’s compensation coverage for those

1 services is considered to be an employee of the entity that is providing financial  
2 management services for that person.

3 **SECTION 100.** 108.02 (13) (k) of the statutes is amended to read:

4 108.02 (13) (k) "Employer" does not include a county department, an aging  
5 unit, or, under s. 46.2785, a private agency that serves as a fiscal agent or contracts  
6 with a fiscal intermediary to serve as a fiscal agent under s. 46.27 (5) (i), 46.272 (7)  
7 (e), or 47.035 as to any individual performing services for a person receiving  
8 long-term support services under s. ~~46.27 (5) (b)~~, 46.272 (7) (b), 46.275, 46.277,  
9 46.278, 46.2785, 46.286, 46.495, 51.42, or 51.437 or personal assistance services  
10 under s. 47.02 (6) (c).

11 **SECTION 101.** 108.22 (10) of the statutes is amended to read:

12 108.22 (10) A private agency that serves as a fiscal agent under s. 46.2785 or  
13 contracts with a fiscal intermediary to serve as a fiscal agent under s. ~~46.27 (5) (i)~~,  
14 46.272 (7) (e), or 47.035 as to any individual performing services for a person  
15 receiving long-term support services under s. ~~46.27 (5) (b)~~, 46.272 (7) (b), 46.275,  
16 46.277, 46.278, 46.2785, 46.286, 46.495, 51.42, or 51.437 or personal assistance  
17 services under s. 47.02 (6) (c) may be found jointly and severally liable for the  
18 amounts owed by the person under this chapter, if, at the time the person's quarterly  
19 report is due under this chapter, the private agency served as a fiscal agent for the  
20 person. The liability of the agency as provided in this subsection survives  
21 dissolution, reorganization, bankruptcy, receivership, assignment for the benefit of  
22 creditors, judicially confirmed extension or composition, or any analogous situation  
23 of the person and shall be set forth in a determination or decision issued under s.  
24 108.10. An appeal or review of a determination under this subsection shall not  
25 include an appeal or review of determinations of amounts owed by the person.

1           **SECTION 102.** 632.697 of the statutes is amended to read:

2           **632.697 Benefits subject to department's right to recover.** Death  
3 benefits payable under a life insurance policy or an annuity are subject to the right  
4 of the department of health services to recover under s. 46.27 (7g), 2017 stats.,  
5 49.496, 49.682, or 49.849 an amount equal to the medical assistance that is  
6 recoverable under s. 49.496 (3) (a), an amount equal to aid under s. 49.68, 49.683,  
7 49.685, or 49.785 that is recoverable under s. 49.682 (2) (a) or (am), or an amount  
8 equal to long-term community support services under s. 46.27, 2017 stats., that is  
9 recoverable under s. 46.27 (7g) (c) 1., 2017 stats., and that was paid on behalf of the  
10 deceased policyholder or annuitant.

11           **SECTION 103.** 701.0508 (1) (b) 1. of the statutes is amended to read:

12           701.0508 (1) (b) 1. The claim is a claim based on tort, on a marital property  
13 agreement that is subject to the time limitations under s. 766.58 (13) (b) or (c), on  
14 Wisconsin income, franchise, sales, withholding, gift, or death taxes, or on  
15 unemployment compensation contributions due or benefits overpaid; a claim for  
16 funeral or administrative expenses; a claim of this state under s. 46.27 (7g), 2017  
17 stats., 49.496, 49.682, or 49.849; or a claim of the United States.

18           **SECTION 104.** 705.04 (2g) of the statutes is amended to read:

19           705.04 (2g) Notwithstanding subs. (1) and (2), the department of health  
20 services may collect, from funds of a decedent that are held by the decedent  
21 immediately before death in a joint account or a P.O.D. account, an amount equal to  
22 the medical assistance that is recoverable under s. 49.496 (3) (a), an amount equal  
23 to aid under s. 49.68, 49.683, 49.685, or 49.785 that is recoverable under s. 49.682 (2)  
24 (a) or (am), or an amount equal to long-term community support services under s.

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1 46.27, 2017 stats., that is recoverable under s. 46.27 (7g) (c) 1., 2017 stats., and that  
2 was paid on behalf of the decedent or the decedent's spouse.

3 **SECTION 105.** 766.55 (2) (bm) of the statutes is amended to read:

4 766.55 (2) (bm) An obligation incurred by a spouse that is recoverable under  
5 s. 46.27 (7g), 2017 stats., 49.496, 49.682, or 49.849 may be satisfied from all property  
6 that was the property of that spouse immediately before that spouse's death.

7 **SECTION 106.** 859.02 (2) (a) of the statutes is amended to read:

8 859.02 (2) (a) It is a claim based on tort, on a marital property agreement that  
9 is subject to the time limitations under s. 766.58 (13) (b) or (c), on Wisconsin income,  
10 franchise, sales, withholding, gift, or death taxes, or on unemployment insurance  
11 contributions due or benefits overpaid; a claim for funeral or administrative  
12 expenses; a claim of this state under s. 46.27 (7g), 2017 stats., 49.496, 49.682, or  
13 49.849; or a claim of the United States; or

14 **SECTION 107.** 859.07 (2) (a) 3. of the statutes is amended to read:

15 859.07 (2) (a) 3. The decedent or the decedent's spouse received services  
16 provided as a benefit under a long-term care program, as defined in s. 49.496 (1) (bk),  
17 medical assistance under subch. IV of ch. 49, long-term community support services  
18 funded under s. 46.27 (7), 2017 stats., or aid under s. 49.68, 49.683, 49.685, or 49.785.

19 **SECTION 108.** 867.01 (3) (am) 4. of the statutes is amended to read:

20 867.01 (3) (am) 4. Whether the decedent or the decedent's spouse received  
21 services provided as a benefit under a long-term care program, as defined in s. 49.496  
22 (1) (bk), medical assistance under subch. IV of ch. 49, long-term community support  
23 services funded under s. 46.27 (7), 2017 stats., or aid under s. 49.68, 49.683, 49.685,  
24 or 49.785.

25 **SECTION 109.** 867.01 (3) (d) of the statutes is amended to read:

1           867.01 (3) (d) *Notice.* The court may hear the matter without notice or order  
2 notice to be given under s. 879.03. If the decedent or the decedent's spouse received  
3 services provided as a benefit under a long-term care program, as defined in s. 49.496  
4 (1) (bk), medical assistance under subch. IV of ch. 49, long-term community support  
5 services funded under s. 46.27 (7), 2017 stats., or aid under s. 49.68, 49.683, 49.685,  
6 or 49.785, the petitioner shall give notice by certified mail to the department of  
7 health services as soon as practicable after filing the petition with the court.

8           **SECTION 110.** 867.02 (2) (am) 6. of the statutes is amended to read:

9           867.02 (2) (am) 6. Whether the decedent or the decedent's spouse received  
10 services provided as a benefit under a long-term care program, as defined in s. 49.496  
11 (1) (bk), medical assistance under subch. IV of ch. 49, long-term community support  
12 services funded under s. 46.27 (7), 2017 stats., or aid under s. 49.68, 49.683, 49.685,  
13 or 49.785.

14           **SECTION 111.** 867.03 (1g) (c) of the statutes is amended to read:

15           867.03 (1g) (c) Whether the decedent or the decedent's spouse ever received  
16 services provided as a benefit under a long-term care program, as defined in s. 49.496  
17 (1) (bk), medical assistance under subch. IV of ch. 49, long-term community support  
18 services funded under s. 46.27 (7), 2017 stats., or aid under s. 49.68, 49.683, 49.685,  
19 or s. 49.785.

20           **SECTION 112.** 867.03 (1m) (a) of the statutes is amended to read:

21           867.03 (1m) (a) Whenever an heir, trustee, person named in the will to act as  
22 personal representative, or person who was guardian of the decedent at the time of  
23 the decedent's death intends to transfer a decedent's property by affidavit under sub.  
24 (1g) and the decedent or the decedent's spouse ever received services provided as a  
25 benefit under a long-term care program, as defined in s. 49.496 (1) (bk), medical

**SECTION 112**

1 assistance under subch. IV of ch. 49, long-term community support services funded  
2 under s. 46.27 (7), 2017 stats., or aid under s. 49.68, 49.683, 49.685, or 49.785, the  
3 heir, trustee, person named in the will to act as personal representative, or person  
4 who was guardian of the decedent at the time of the decedent's death shall give notice  
5 to the department of health services of his or her intent. The notice shall include the  
6 information in the affidavit under sub. (1g) and the heir, trustee, person named in  
7 the will to act as personal representative, or person who was guardian of the  
8 decedent at the time of the decedent's death shall give the notice by certified mail,  
9 return receipt requested.

10 **SECTION 113.** 867.03 (1m) (b) of the statutes is amended to read:

11 867.03 (1m) (b) An heir, trustee, person named in the will to act as personal  
12 representative, or person who was guardian of the decedent at the time of the  
13 decedent's death who files an affidavit under sub. (1g) that states that the decedent  
14 or the decedent's spouse received services provided as a benefit under a long-term  
15 care program, as defined in s. 49.496 (1) (bk), medical assistance under subch. IV of  
16 ch. 49, long-term community support services funded under s. 46.27 (7), 2017 stats.,  
17 or aid under s. 49.68, 49.683, 49.685, or 49.785 shall attach to the affidavit the proof  
18 of mail delivery of the notice required under par. (a) showing the delivery date.

19 **SECTION 114.** 867.03 (2g) (b) of the statutes is amended to read:

20 867.03 (2g) (b) Property transferred under this section to or by an heir, trustee,  
21 person named in the will to act as personal representative, or person who was  
22 guardian of the decedent at the time of the decedent's death is subject to the right of  
23 the department of health services to recover under s. 46.27 (7g), 2017 stats., 49.496,  
24 49.682, or 49.849 an amount equal to the medical assistance that is recoverable  
25 under s. 49.496 (3) (a), an amount equal to aid under s. 49.68, 49.683, 49.685, or



1 49.785 that is recoverable under s. 49.682 (2) (a) or (am), or an amount equal to  
2 long-term community support services under s. 46.27, 2017 stats., that is  
3 recoverable under s. 46.27 (7g) (c) 1., 2017 stats., and that was paid on behalf of the  
4 decedent or the decedent's spouse. Upon request, the heir, trustee, person named in  
5 the will to act as personal representative, or person who was guardian of the  
6 decedent at the time of the decedent's death shall provide to the department of health  
7 services information about any of the decedent's property that the heir, trustee,  
8 person named in the will to act as personal representative, or person who was  
9 guardian of the decedent at the time of the decedent's death has distributed and  
10 information about the persons to whom the property was distributed.

11 **SECTION 115.** 893.33 (4r) of the statutes is amended to read:

12 893.33 (4r) This section applies to liens of the department of health services  
13 on real property under ss. 46.27 (7g), 2017 stats., 49.496, 49.682, and 49.849.

14 **SECTION 9119. Nonstatutory provisions; Health Services.**

15 (1) **RULES; FUNCTIONAL ELIGIBILITY FOR LONG-TERM CARE PROGRAMS.** The  
16 department of health services shall update, by rule, criteria used to determine  
17 functional eligibility for the family care program and other long-term care programs,  
18 especially criteria used to determine whether or not an individual is at a nursing  
19 home level of care. The department of health services may promulgate emergency  
20 rules to update functional eligibility criteria under this subsection.  
21 Notwithstanding s. 227.24 (1) (c) and (2), any emergency rules promulgated under  
22 this subsection remain in effect until the date on which permanent rules take effect  
23 or July 1, 2023, whichever is sooner. Notwithstanding s. 227.24 (1) (a) and (3), the  
24 department of health services is not required to provide evidence that promulgating  
25 a rule under this subsection as an emergency rule is necessary for the preservation

**SECTION 9119**

1 of the public peace, health, safety, or welfare and is not required to provide a finding  
2 of emergency for a rule promulgated under this subsection.

3

(END)

1           INSERT ANALYSIS

**HEALTH AND HUMAN SERVICES**

**MEDICAL ASSISTANCE**

This bill generally makes changes to certain long-term care programs that receive funding under the Medical Assistance program. The Family Care program concluded its expansion statewide replacing the Community Options Program, known as COP. The bill eliminates the statutory language for the COP program, a requirement that DHS certify availability of an aging and disability resource center, and a requirement that aging and disability resource centers perform outreach in new Family Care program counties. The bill requires aging and disability resource centers to provide information and assistance on the self-directed services option, known as IRIS; the Family Care Partnership program; and the program of all-inclusive care for the elderly, known as PACE, in addition to the current requirement to provide information and assistance on the Family Care program. The bill eliminates regional long-term care advisory committees, which, among other things, evaluate the care management organizations that administer the Family Care program.

Current law specifies a 45-day deadline by which an applicant for or recipient of Medical Assistance must file an appeal of his or her eligibility determination. The bill specifies that for appeals of the adverse benefit determinations described in the bill made by a care management organization, the Medical Assistance recipient has 120 days to appeal. The bill also specifies that the individual seeking an appeal must exhaust the internal appeal procedures of the care management organization first.

2           END INSERT ANALYSIS

## Dodge, Tamara

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**From:** Stinebrink, Cory R - DOA  
**Sent:** Thursday, February 14, 2019 11:59 AM  
**To:** Dodge, Tamara  
**Subject:** LRB-0584  
**Attachments:** LTC MC Stat Language (OPIB Edits).pdf; LTC MC Stat Language Comments.docx

**Follow Up Flag:** FollowUp  
**Flag Status:** Flagged

Tami-

I got some feedback on draft LRB-0584/P2 from the department. It is attached in 2 separate formats. The Word file includes my reaction to each of the department's suggestions. Let me know if you have any questions.

Thanks,

Cory R Stinebrink  
Executive Policy and Budget Analyst  
Health Services and Insurance Team  
(608)267-9546  
[Cory.Stinebrink@wisconsin.gov](mailto:Cory.Stinebrink@wisconsin.gov)

**1. P.2 INTRO.**

The timeframe should be changed to 90 days.

CMS issued a Notice of Proposed Rule-Making revising some aspects of the 2016 Medicaid Managed Care Rule, including moving from a specific 120 day time period for managed care members to request a fair hearing to a more lenient range of between 90 days to 120 days. DHS recommends a statutory change to 90 days, or 'not to exceed 120 days as determined by federal law', for both Medicaid managed care members and Medicaid fee-for-service member adverse benefit determination appeals.

CRS Comment: This is just the summary, it would presumably be updated to reflect changes anyway.

**2. SECTION 1: P. 2, Lines 2-5**

Should the IRIS program be listed here?

CRS Comment: Does "the family care program" include IRIS? Would that have to be identified here, or not?

**3. SECTION 34: P. 11, Lines 2-7**

This is technically correct, but the following suggested edits may provide greater clarity. The final decision is up to the drafter:

"Assistance to a person with respect to the person's choice of whether or not to enroll in the self-directed services option, as defined in s. 46.2899(1), or a care management organization for the Family Care program, Family Care Partnership program, or the program of all-inclusive care for the elderly and, if so, which available long-term care program or care management organization would best meet his or her needs.

CRS: I don't think this really does anything of importance. This only seems to re-order the terms and adds "program" in a few places. Once in place of "benefit". If you feel like this clarifies things, feel free. Otherwise, it looks like it's just re-arranging deck chairs.

**4. SECTION 48: P. 12, Line 20 and Line 23**

The correct timeframe is 90 days.

CRS Comment: This is a substantive change, and one that we would need to have changed and, thus, re-drafted.

**5. SECTION 49: P. 14, Drafter's note after Line 13**

The use of two different terms for the same thing is an inconsistency by DHS. It is fine to stick with the term 'care management organization' throughout statutes if the drafter prefers. However, regarding DHS's long-term managed care programs (Family Care, Family Care Partnership, and PACE), DHS would prefer that the statutes used the term 'managed care organization' rather than 'care management organization'. Managed care is a federal descriptor for the system of care DHS uses for

both Family Care and BadgerCare. 'Care management' is a single type of service within Medicaid, and although it is central to long-term managed care, it may also be authorized by fee-for-service Medicaid (as targeted case management).

There may have been a reason behind the choice to use 'care management organization' when the original statutory language was drafted for Family Care; however, 'managed care organization' would really be the more accurate terminology today.

If the drafter would be open to making this change, that would be great. However, that's a lot of work. Additionally, it would be very important to ensure that such a change would not result in any substantive changes in the meaning and applicability of statutes.

CRS: If this is more a clean-up than a substantive change, I am indifferent to it. I realize it'd be more work for you, and probably more sections of the compiled bill for me to claim at the end of the process. If you think this results in an actual substantive change, then I think I would be hesitant to go forward with it.

**6. SECTION 57: P. 16, Lines 1 and 3**

The correct timeframe is 90 days.

CRS: See comment above under Section 48.

**SECTION 57: P. 16, Drafter's note after Line 5**

Yes, the language should be drafted such that the 90-day timeframe applies to both long-term care MCOs and BadgerCare (acute/primary care) HMOs. For examples, the drafter could provide clarification by referring to both 'care management organizations' for FC/PACE/Partnership and 'managed care organizations' for BC+ HMOs.

CRS: No additional comments

**SECTION 69: P. 19, Line 25**

Should this citation remain with the historical reference to 2017 statutes to cover situations in which there was past program eligibility?

CRS: I will defer to you.

**SECTION 70: P. 19, Lines 10-11**

Should this citation remain with the historical reference to 2017 statutes to cover situations in which there was past program eligibility?

CRS: I will defer to you.