



2005 ASSEMBLY BILL 296

April 4, 2005 - Introduced by Representatives LEMAHIEU, KESTELL, VOS, OTT, KRAWCZYK, PETTIS, HUNDERTMARK, LOTHIAN, TOWNSEND, KAUFERT, GRONEMUS, GUNDERSON, HAHN, GOTTLIEB, GIELOW, ALBERS, VAN AKKEREN, NISCHKE and FREESE, cosponsored by Senators ROESSLER, GROTHMAN, BROWN, KAPANKE, LAZICH, SCHULTZ and OLSEN. Referred to Committee on Aging and Long-Term Care.

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

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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.

This bill 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.

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
11 individual would not reasonably be able to provide community-based care in
12 accordance with the plan within the limits of available state and federal funds and
13 county funds required to be appropriated to match state funds, taking into account

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1 information presented by all affected parties. An intermediate facility to which an
2 individual who has a developmental disability applies for admission shall, within 5
3 days after receiving the application, notify the county department that is
4 participating in the program under s. 46.278 of the county of residence of the
5 individual who is seeking admission concerning the application.

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

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

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(END)