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Joint Committee on Finance

Paper #356

Mendota Mental Health Institute Forensic Unit Staffing (Health Services -- Care and Treatment Services)

[LFB 2017-19 Budget Summary: Page 232, #4]

CURRENT LAW

The Department of Health Services operates the state's two mental health hospitals, the Mendota Mental Health Institute in Madison and the Winnebago Mental Health Institute in Oshkosh. Persons are committed to one of the mental health institutes either as the result of a criminal process or a civil process. Persons who have been committed as the result of a criminal proceeding, known as forensic patients, fall in one of three categories: (a) persons found not guilty of a crime by reason of mental disease or defect; (b) persons who have been deemed not competent to stand trial for a criminal charge as the result of mental illness and for whom the court has ordered treatment to restore competency; and (c) persons who are undergoing evaluation to determine competency to stand trial. Persons who are admitted to one of the mental health institutes under a civil process have been found to be dangerous to themselves or others as the result of mental illness or drug addiction. This can be done on an emergency, time-limited basis, a process known as emergency detention, or on a longer-term basis, known as civil commitment.

The Mendota Mental Health Institute is used almost exclusively for the treatment of male forensic patients, but also has a unit for civil patients who require geriatric care. Winnebago is used for adult and adolescent emergency detention and civil commitment patients, and female forensic patients. Mendota currently has 273 beds for forensic patients and 15 geriatric civil beds. Winnebago has a total of 184 beds, of which approximately 75 beds are used for female forensic patients and the remaining beds are used for civil patients.

Mental health institute facility and operations costs associated with forensic patients are funded primarily with a GPR appropriation, although some costs can be billed separately to

Medicaid or other third-party insurance. Costs associated with civil patients are primarily the responsibility of the patient's county of residence, although, like forensic patients, some costs can be billed to third parties. Payments received from counties and other parties are deposited in a program revenue appropriation for institution costs.

Mendota has a base budget (principal operations) of \$65,134,200 (\$57,929,100 GPR and \$7,205,100 PR) and 671.07 positions (608.03 GPR and 63.04 PR). Winnebago has a base budget of \$52,521,200 (\$18,135,100 GPR and \$34,386,100 PR) and 593.06 positions (196.14 GPR and 396.92 PR).

GOVERNOR

Provide \$7,190,500 PR and 73.0 PR positions in 2017-18 and \$3,610,000 GPR and \$3,610,000 PR and 36.5 GPR and 36.5 PR positions in 2018-19 to staff two forensic patient units with a total of 34 beds.

DISCUSSION POINTS

1. This paper includes two sections. The first provides a general background and discussion of the policy issues underlying the decision to open two forensic units. The second section provides a discussion of the funding sources used for the forensic units.

Forensic Units

2. The funding and positions provided by the bill would be used to operate two forensic units. DHS opened one of the two units, with 14 beds, in August, 2016, in previously vacant space located in the same building that houses the Mendota Juvenile Treatment Center (MJTC). The Department has used temporary position authority and funding drawn from the unappropriated balance in the PR appropriation for the mental health institutes to open the unit. This budget item would provide permanent positions and budget authority to enable DHS to continue to operate that unit.

3. The administration is proceeding with plans to open the second forensic unit, with 20 beds, using vacant space at the Department's Sand Ridge Secure Treatment Center, near Mauston. Sand Ridge currently has unused bed capacity, stemming from a facility expansion project that was approved in the 2007-09 budget. The expansion project was undertaken to meet anticipated need for additional space for commitments under the state's laws for civil commitment of sexually violent persons. However, the rate of growth in the Sand Ridge population has been somewhat slower than anticipated, meaning that the facility currently has room to accommodate the temporary forensic unit. Since the Department is doing preparatory work related to opening this unit at Sand Ridge, the Department expects to be able to open the unit in July of 2017 if the initiative is approved.

4. The administration's intent is to eventually move both units into space in the west wing of Mendota's Lorenz Hall, once renovations on that building have been completed. Lorenz Hall was historically used to house civil patients, but was vacated in 2010. The west wing renovations would

be the second phase of a two-phase project.

5. The first phase of the Lorenz Hall project is currently underway and involves upgrades to two 20-bed units in the east wing of the building. The 2013-15 budget provided \$5.7 million in general fund-supported bonds for these renovations. In February, 2016, the Joint Committee on Finance approved a request under s. 16.515 of the statutes for an additional \$1.0 million for this project, drawing from the unappropriated balance in the PR appropriation for the mental health institutes. The first phase of the renovation project is expected to be completed in the spring of 2018.

6. The second phase of the Lorenz Hall project would include the west wing renovation, as well as general building security improvements and the conversion of space previously used for classrooms and administrative purposes to program space. The Building Commission's 2017-19 capital budget amendment would provide \$18.0 million in general fund-supported bonds for this project. If the project is approved, the Department anticipates that the renovated units would be ready for occupancy in April, 2020, meaning that the new forensic units, if approved, would operate in temporary space for approximately three years. The second phase of the project would complete the renovation of the building, allowing Lorenz Hall to accommodate a total of 80 forensic beds in four maximum and medium security units.

7. In addition to including capital funding for the first phase of building renovations, the 2013-15 budget included funding and positions to open two forensic units, with a total of 40 beds, in the unrenovated space in the east wing of Lorenz Hall. The first of these units opened in April of 2013 (prior to the passage of the budget) and the other opened in April of 2014. Those units are currently used primarily for low and medium security patients. During the east wing renovation project, these patients will be moved temporarily to other space, including the unrenovated west wing units.

8. The forensic bed initiative was undertaken in response to an increase in the number of persons referred by courts for competency evaluation and treatment to competency, as well as the number of persons found not guilty by reason of mental disease. Since the second of the two Lorenz Hall east wing units opened in April 2014, Mendota has generally operated at or near peak capacity. Within six months of that time the admissions waiting list had risen to 15 to 20 persons. The waiting list continued to increase, exceeding 40 persons in October of 2015, and has not fallen below that level since then. Over the past 18 months, the average time that a person remains on the waiting list is 39 days.

9. Persons who require inpatient competency evaluations or treatment to competency, but for whom no bed space is available, remain in the county jail while waiting for admission. While counties have some capacity to manage persons with mental health conditions, the Department maintains that jails are not appropriate for persons with severe mental illness and that a lengthy stay in the jail environment may worsen their condition, ultimately increasing the time needed for treatment.

10. DHS is statutorily required to accept all forensic patients committed by the court. The Department asserts that it is vulnerable to lawsuits from individuals or their families if a person is

not promptly admitted for treatment. This risk is particularly acute in cases where a person attempts or commits suicide in the county jail while awaiting admission. In the interest of fulfilling its legal responsibilities to provide prompt treatment in an inpatient setting for forensic patients who require a secure environment, the Department asserts that an increase in the bed capacity at Mendota is needed.

11. The Department identifies several strategies that are used to control the size of the inpatient forensic population. Among these are the development and expansion of the outpatient competency restoration program, which allows the Department to avoid inpatient admissions in some cases, or else shorten the length of inpatient treatment in other cases. The Department also points to its court liaison program, which works to expedite competency hearings with the goal of shortening the length of time that a person must remain at one of the mental health institutes following treatment to competency. Finally, the conditional release program allows persons to be discharged from the mental health institutes and continue treatment in the community if approved by the court. The Department believes, nevertheless, that these measures are not sufficient to limit the size of the male forensic population to the existing capacity at Mendota.

12. The following table shows the positions that would be provided by the bill for the forensic units. The Department anticipates that 25 positions would be assigned to the unit at the MJTC facility, while 48 positions would be assigned to the leased space.

Proposed Forensic Unit Positions

<u>Position Type</u>	<u>Number</u>
Psychiatric Care Technician	40
Nurse Clinician	10
Nursing Supervisor	2
Office Operations Associate	2
Psychiatrist	2
Psychologist	2
Social Worker	3
Occupational Therapist	2
Recreation Leader	4
Teacher	2
Correctional Officer	<u>4</u>
Total	73

13. Initially, all of the costs associated with both units would be funded with program revenue, utilizing existing unexpended balances in the PR appropriation account for the mental health institutes. In 2018-19, the costs would be split equally between the PR appropriation and GPR. The following table provides detail of the administration's estimated cost of each unit, by function and fund source.

Estimated Forensic Unit Funding, by Unit, Function, and Fund Source

	<u>2017-18</u>	<u>2018-19</u>		
	<u>PR</u>	<u>GPR</u>	<u>PR</u>	<u>Total</u>
Mendota Unit				
Salary and Fringe Benefits	\$1,710,700	\$855,300	\$855,300	\$1,710,600
Position Supplies and Services	275,000	137,500	137,500	275,000
Food and Nonfood Supplies and Services	<u>606,800</u>	<u>318,200</u>	<u>318,200</u>	<u>636,400</u>
Mendota Unit Subtotal	\$2,592,500	\$1,311,000	\$1,311,000	\$2,622,000
Sand Ridge Unit				
Salary and Fringe Benefits	\$2,741,400	\$1,370,700	\$1,370,700	\$2,741,400
Position Supplies and Services	528,000	264,000	264,000	528,000
Lease and Supplies Costs	<u>1,328,600</u>	<u>664,300</u>	<u>664,300</u>	<u>1,328,600</u>
Sand Ridge Subtotal	\$4,598,000	\$2,299,000	\$2,299,000	\$4,598,000
Both Units Total	\$7,190,500	\$3,610,000	\$3,610,000	\$7,220,000

14. The care of forensic patients is the Department's statutory responsibility. Given the current waitlist for admission already exceeds the total capacity of the proposed units, and has been at that level for well over one year, a case could be made that the state must address the deficiency in its forensic capacity. In this case, the Governor's proposal to provide funding and positions for the two units could be approved (Alternative A1).

15. The administration's estimates of the cost of the 20-bed unit were developed before the Department had selected Sand Ridge as the site for the unit. As shown in the table above, the budget estimate included space lease costs, to account for the possibility that the Department would seek private space for the unit. Since the Department owns the Sand Ridge facility, there would be no expenses associated with a lease, and overall costs would be lower. The Department indicates that if the Governor's funding recommendation were approved, funding that would have otherwise been allocated to lease costs would be used for other purposes. Some of the funding would be used for retrofit costs at Sand Ridge, as well as to account for small changes in the estimated cost of supplies and services, but most of the funding would be used to replace steam lines at Goodland Hall, a maximum security forensic unit at Mendota.

16. Although the Department indicates that the Goodland Hall project is a high priority capital project, it would be unrelated to the budget bill's forensic unit initiative. If the Committee determines that capital projects such as the steam line replacement at Goodland Hall should proceed through the capital project approval process, the funding that the Department would allocate toward this project could be deleted, reducing funding by \$1,157,300 PR in 2017-18 and \$628,100 PR and \$628,100 GPR in 2018-19 (Alternative A2).

17. If the Committee has concerns about the Department operating a forensic unit outside the grounds of the mental health institutes, a decision could be made to approve funding and positions for the 14-bed unit currently operating at Mendota, but delay the opening of the other unit until the completion of the Lorenz Hall west wing project (Alternative A3). Under this alternative, funding and positions for the Sand Ridge unit could be deleted, a reduction of \$4,598,000 PR and

48.0 PR positions in 2017-18 and \$2,299,000 GPR and \$2,299,000 PR and 24.0 GPR and 24.0 PR positions in 2018-19. Since the Mendota unit is currently operating, this alternative would not add to the existing capacity for forensic patients and there would be no reduction to the existing waiting list.

18. The Committee could also make a decision to delete the proposal (Alternative A4). In this case, the Department would not have ongoing funding and positions to continue the operation of the existing 14-bed unit at Mendota and would not be able to open the second unit.

Funding Source

19. By statute, forensic patients are committed to the care of the state, and so the cost of their care is normally paid with state moneys, through a general fund appropriation. By contrast, civil patients are committed, by statute, to the care of their county of residence. If civil patients are admitted to one of the mental health institutes, the state charges the county for the cost of their care. The county collections, along with collections from other sources, such as medical assistance and private insurance, are the revenue source of the mental health institutes PR appropriation. By funding forensic patient costs with program revenues collected primarily for the care of civil patients, the bill would depart from the state's normal policy for allocating forensic and civil patient costs according to which entity has statutory responsibility for their care.

20. The bill would utilize an existing unappropriated balance in the mental health institutes program revenue account to fund the forensic units. The Department estimates that the unappropriated PR balance at the close of 2016-17 will be approximately \$15 million. This balance has accumulated as the result of two principal factors. First, the high number of civil patients admitted to the Winnebago Mental Health Institute in recent years has meant that the facility operates at or above capacity most of the time. Under these circumstances, collections from counties can exceed actual operating costs. Second, in 2013-14 the Department received Medicaid payments, totaling \$13.5 million, representing several prior years of costs settlement payments (difference between provisional payment and actual billed costs).

21. The Department charges counties daily rates that vary slightly depending upon the type of patient. For instance, the daily rate for an adult civil patient at Winnebago is \$1,039, while the daily adolescent rate is \$1,100. In addition to the daily rate, there are add-ons for certain services, such as a \$250 charge for each patient in emergency detention.

22. The Department indicates that the rates take into consideration the costs of care and additional services, and include an allocation of fixed facility costs. However, the allocation of fixed costs in the calculations do not necessarily assume that the facility will be full. As a result, when the facility is operating at full capacity, revenues may exceed costs.

23. In part because of the surplus, the Department has either held the rates constant or enacted only modest increases in recent years. The Department did not increase the daily rates for 2016-17, and the current adult daily rate has risen by just 4% in the four-year period since 2012-13.

24. The Department indicates that although the current rates are set at a level that may

generate revenues in excess of costs if the number of civil patients remains at or above capacity, the Department, for policy reasons, is reluctant to establish a rate that is lower. The Department indicates that, as a matter of current state policy, counties must provide a person with treatment in the least restrictive setting sufficient to meet his or her needs. As such, placing a person at one of the state mental health institutes should be the last option, used only when less restrictive means are not appropriate. The Department believes that counties should work to establish and utilize community-based treatment options, and the relatively high cost of admitting a person to one of the mental health institutes serves as an incentive to develop those alternatives.

25. The Department also notes that the current mental health institute rates are lower than rates charged by private hospitals for inpatient service and are also comparable to the rates charged by many county-operated facilities.

26. Although the mental health institutes program revenue appropriation is generally reserved for civil patient costs, there is recent precedent for using this source for costs related to serving the forensic patient population. In January, 2016, the administration submitted a request to the Committee under s. 16.515 of the statutes to increase the PR appropriation by \$200,000 in 2015-16 and \$15,578,300 in 2016-17, primarily for capital projects at the mental health institutes. The Committee approved the administration's request. Of these amounts, \$4.4 million was related to improvements on buildings that serve exclusively or primarily forensic patients. Another \$10.6 million was for institute-wide improvements to accommodate a conversion to electronic health records. Although these improvements are not specifically attributable to either forensic or civil patients, a significant share of these costs are related to serving forensic patients. Finally, \$0.6 million was provided to increase contracted treatment to competency services for forensic patients.

27. Under long-standing practice, the biennial budget bill normally adjusts the base level funding for the mental health institutes to reflect the anticipated proportional share of forensic and civil patients. If, for instance, forensic patients are expected to be 90% of the total patient population at Mendota, the institute funding split item would make budget neutral adjustments between Mendota's GPR and PR appropriations so that the GPR appropriation accounts for 90% of the total. Under the Governor's bill, the 2018-19 budget for the new forensic units would be split equally between PR and GPR sources. Since these units would serve only forensic patients, the institute split decision item in the 2019-21 budget would shift the PR-funded portion in the base to GPR funding. Consequently, if approved, the 2019-21 institute funding split item would include a \$3.6 million annual GPR increase to replace an equivalent amount of PR in the appropriation base.

28. If the Committee decides to approve the Governor's recommendation to provide funding and positions to open two new forensic units, but wishes to be consistent with the funding principle of using GPR for forensic costs, and reserving PR for civil patients, the bill could be amended to replace the PR funding and positions with GPR funding and positions. Accordingly, GPR funding and positions would be increased by \$7,190,500 GPR and 73.0 GPR positions in 2017-18 and \$3,610,000 GPR and 36.5 GPR positions in 2018-19, offset by corresponding PR funding and position decreases (Alternative B2).

29. In addition to the forensic units, the bill would utilize surplus mental health institutes PR funding for two other initiatives: a youth mental health crisis stabilization facility and a peer

respite center for veterans. Arguably, these initiatives could be viewed as improvements to the community-based mental health system and that these improvements benefit county human services departments and potentially reduce the need for emergency detention and civil commitment. The forensic unit initiative may help counties by reducing the amount of time forensic patients on the waiting list spend in county jails, but the units would offer little benefit to the counties' community-based mental health systems.

30. Since the mental health institute PR balance was generated largely from county payments, a case could be made that if there are surplus in these funds, it could be used to enhance county mental health systems, instead of for forensic patient costs. One alternative would be to delete the PR funding for the forensic units (\$10,800,500 over the biennium) and requiring, instead, that DHS make grants to counties using that funding. DHS currently distributes \$24,348,700 annually in mental health grants to counties as part of the community aids distribution. The one-time funding under this alternative could supplement this payment in 2018. In order to ensure that the funding is used to build capacity in the county community-based mental health system, the grant could include a maintenance of effort provision, requiring counties to demonstrate that the funding would be used to enhance their existing systems (Alternative B3).

ALTERNATIVES

A. Forensic Unit Initiative

[This set of alternatives shows the funding sources as shown in the bill. A separate decision on the funding source for the units could be made in the next set of alternatives.]

1. Approve the Governor's recommendation to provide positions and funding to open two forensic units. Provide \$7,190,500 PR and 73.0 PR positions in 2017-18 and \$3,610,000 GPR and \$3,610,000 PR and 36.5 GPR and 36.5 PR positions in 2018-19 for this purpose.

ALT A1	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
GPR	\$3,610,000	36.50	\$0	0.00
PR	<u>10,800,500</u>	<u>36.50</u>	<u>0</u>	<u>0.00</u>
Total	\$14,410,500	73.00	\$0	0.00

2. Modify the Governor's recommendation by deleting \$1,157,300 PR in 2017-18 and \$628,100 PR and \$628,100 GPR in 2018-19 to eliminate funding that the Department would use for the replacement of steam lines at Goodland Hall, a reallocation of a portion of the funding that the bill provided for facility lease costs.

ALT 2	Change to	
	Base	Bill
GPR	\$2,981,900	- \$628,100
PR	<u>9,015,100</u>	<u>- 1,785,400</u>
Total	\$11,997,000	- \$2,413,500

3. Modify the Governor's recommendation by deleting \$4,598,000 PR and 48.0 PR positions in 2017-18 and \$2,299,000 GPR and \$2,299,000 PR and 24.0 GPR and 24.0 PR positions in 2018-19 to reflect the elimination of funding and positions for the proposed forensic unit in leased space.

ALT A3	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
GPR	\$1,311,000	12.50	- \$2,299,000	- 24.00
PR	<u>3,903,500</u>	<u>12.50</u>	<u>- 6,897,000</u>	<u>- 24.00</u>
Total	\$5,214,500	25.00	- \$9,196,000	- 48.00

4. Delete \$7,190,500 PR and 73.0 PR positions in 2017-18 and \$3,610,000 GPR and \$3,610,000 PR and 36.5 GPR and 36.5 PR positions in 2018-19 to reflect the deletion of funding and positions for the two proposed forensic units.

ALT A4	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
GPR	\$0	0.00	- \$3,610,000	- 36.50
PR	<u>0</u>	<u>0.00</u>	<u>- 10,800,500</u>	<u>- 36.50</u>
Total	\$0	0.00	- \$14,410,500	- 73.00

B. Funding Source

[The fiscal effect of the first two alternatives in this set will depend upon the alternatives selected in the previous set, and so no boxes are shown. These alternatives could be selected in combination with A1, A2, or A3. The third alternative could be selected in combination with B2 or A4.]

1. Approve the Governor's recommendation to use PR funding and positions in 2018-18 and to split the 2018-19 funding and positions equally between PR and GPR.

2. Modify the bill to replace PR funding and positions with GPR funding and positions. [For Alternative A1, this would require GPR increases and corresponding PR decreases of \$7,190,500 and 73.0 positions in 2017-18 and \$3,610,000 and 36.5 positions in 2018-19. For Alternative A2, this would require GPR increases and corresponding PR decreases of \$6,033,200

and 73.0 positions in 2017-18 and \$2,981,900 and 36.5 positions in 2018-19. For Alternative A3, this would require GPR increases and corresponding PR decreases of \$2,592,500 and 25.0 positions in 2017-18 and \$1,311,000 and 12.5 positions in 2018-19.]

3. Provide \$10,800,500 PR in 2017-18 and direct DHS to increase mental health grants made to counties under community aids in 2018 from \$24,348,700 to \$35,149,200. Specify that in order to receive a grant with this supplemental funding, a county must demonstrate that it will utilize the funding to support community-based mental health services without displacing county funds normally allocated for that purpose.

ALT B3	Change to	
	Base	Bill
PR	\$10,800,500	\$0

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