



1995 ASSEMBLY BILL 244

March 23, 1995 - Introduced by Representatives FREESE, OLSEN, GUNDERSON, WARD, SERATTI, ZIEGELBAUER, RYBA, KAUFERT, KREIBICH, GARD, ALBERS, DUFF, FOTI, GOETSCH, HUBER, HARS DORF, GROTHMAN, BRANDEMUEHL, HAHN, SCHNEIDERS, TRAVIS, KRUSICK, SILBAUGH, LEHMAN, OTT, GREEN, MURAT, WOOD, WALKER, VRAKAS, LADWIG, OURADA, KLUSMAN, OTTE, LAZICH, SKINDRUD, OWENS, MUSSER, WIRCH, MEYER and REYNOLDS, cosponsored by Senators BUETTNER, RUDE, ROSENZWEIG, PANZER, DARLING, FARROW, SCHULTZ, BRESKE, BURKE, PETAK, WEEDEN, DRZEWIECKI and COWLES. Referred to Committee on Health.

1 **AN ACT to renumber and amend** 55.06 (13); and **to amend** 51.001 (1), 51.42 (1)
2 (b), 51.42 (3) (ar) 4. (intro.), 51.437 (4) (a), 51.437 (4m) (a), 51.61 (1) (e) and (f),
3 55.001 and 55.06 (9) (a) of the statutes; **relating to:** limiting required funding
4 for protective placements or protective services and mental health services and
5 expanding factors to be considered in making protective placements.

Analysis by the Legislative Reference Bureau

Under current law, the protective placement or mental health admission or commitment of a person must be in the least restrictive environment or treatment alternative that is consistent with the person's needs. Although certain mental health laws limit required funding for services to persons with mental disabilities, including mental illness, developmental disabilities, alcoholism or drug abuse, to available state and federal funds and matching county funds, no identical or similar limitation on required funding exists in current law for protective placements. In addition, current law specifies that a person has the right to the least restrictive conditions necessary to achieve the purposes of mental health admission or commitment or of protective placement and to receive certain appropriate treatment and services. In *Protective Placement of D.E.R.*, 155 Wis. 2d 240 (1990), the Wisconsin supreme court found that the mental health funding limitations do not expressly apply to protective placements. The court concluded that the right of a protectively placed person to a protective placement that is in the least restrictive environment consistent with the person's needs is not limited by funds available from the state and federal governments and matching county funds. Thus, under the court's decision, a county could be required to provide funding in addition to federal, state and matching county funds in order to protectively place a person in an environment that is the least restrictive, consistent with his or her needs.

This bill limits the funding obligation of a county to provide protective placements or protective services to programs, services and resources that the

county board of supervisors is reasonably able to provide within the limits of available state and federal funds and of county funds that are required to be appropriated to match state funds. The bill also applies the limitations of this required funding to the rights of protectively placed persons to placement or admission or commitment in the least restrictive conditions necessary and to receipt of prompt and adequate treatment, rehabilitation and educational services appropriate to their conditions. The bill further qualifies the requirement under current law that protective placement be made in the least restrictive environment consistent with the needs of the person to be placed by adding that the least restrictive environment also be consistent with the placement resources of the county board. Further, the bill expands factors that are required to be considered in making the protective placement to include the reasonableness of the placement given the cost and the benefits to the person and given the number or projected number of necessary protective placements and the limited funds available. Lastly, the bill prohibits requiring a county to provide funding in addition to its funds required to match state funds, to protectively place a person. The bill also applies the limitations of the required funding to the responsibility of county boards of supervisors for the well-being, treatment and care of mentally ill, developmentally disabled or alcoholic or other drug dependent county residents. Correspondingly, the bill limits the rights of persons receiving services for mental illness, developmental disability, alcoholism or drug dependency to the least restrictive conditions necessary to achieve the purposes of admission or commitment under the limits of available state and federal funds and required county matching 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.** 51.001 (1) of the statutes is amended to read:

2 51.001 (1) It is the policy of the state to assure the provision of a full range of
3 treatment and rehabilitation services in the state for all mental disorders and
4 developmental disabilities and for mental illness, alcoholism and other drug abuse.

5 There shall be a unified system of prevention of such conditions and provision of
6 services which will assure all people in need of care access to the least restrictive
7 treatment alternative appropriate to their needs, and movement through all
8 treatment components to assure continuity of care, within the limits of available

1 state and federal funds and of county funds required to be appropriated to match
2 state funds.

3 **SECTION 2.** 51.42 (1) (b) of the statutes is amended to read:

4 51.42 (1) (b) *County liability.* The county board of supervisors has the primary
5 responsibility for the well-being, treatment and care of the mentally ill,
6 developmentally disabled, alcoholic and other drug dependent citizens residing
7 within its county and for ensuring that those individuals in need of such emergency
8 services found within its county receive immediate emergency services. This
9 primary responsibility is limited to the programs, services and resources that the
10 county board of supervisors is reasonably able to provide within the limits of
11 available state and federal funds and of county funds required to be appropriated to
12 match state funds. County liability for care and services purchased through or
13 provided by a county department of community programs established under this
14 section shall be based upon the client's county of residence except for emergency
15 services for which liability shall be placed with the county in which the individual
16 is found. For the purpose of establishing county liability, "emergency services"
17 includes those services provided under the authority of s. 51.15, 51.45 (11) (a) or (b)
18 or (12), 55.05 (4) or 55.06 (11) (a) for not more than 72 hours. Nothing in this
19 paragraph prevents recovery of liability under s. 46.10 or any other statute creating
20 liability upon the individual receiving a service or any other designated responsible
21 party, or prevents reimbursement by the department of health and social services for
22 the actual cost of all care and services from the appropriation under s. 20.435 (7) (da),
23 as provided in s. 51.22 (3).

24 **SECTION 3.** 51.42 (3) (ar) 4. (intro.) of the statutes is amended to read:

1 51.42 (3) (ar) 4. (intro.) Within the limits of available state and federal funds
2 and of county funds required to be appropriated to match state funds, provide for the
3 program needs of persons suffering from mental disabilities, including mental
4 illness, developmental disabilities, alcoholism or drug abuse, by offering the
5 following services:

6 **SECTION 4.** 51.437 (4) (a) of the statutes is amended to read:

7 51.437 (4) (a) The county board of supervisors has the primary governmental
8 responsibility for the well-being of those developmentally disabled citizens residing
9 within its county and the families of the developmentally disabled insofar as the
10 usual resultant family stresses bear on the well-being of the developmentally
11 disabled citizen. This primary governmental responsibility is limited to the
12 programs, services and resources that the county board of supervisors is reasonably
13 able to provide within the limits of available state and federal funds and of county
14 funds required to be appropriated to match state funds.

15 **SECTION 5.** 51.437 (4m) (a) of the statutes is amended to read:

16 51.437 (4m) (a) Within the limits of available state and federal funds and of
17 county funds ~~appropriate~~ required to be appropriated to match state funds, establish
18 a county developmental disabilities services program. Such services shall be
19 provided either directly or by contract.

20 **SECTION 6.** 51.61 (1) (e) and (f) of the statutes are amended to read:

21 51.61 (1) (e) ~~Have the right to the least restrictive conditions necessary to~~
22 ~~achieve the purposes of admission, commitment or placement, except~~ Except in the
23 case of a patient who is admitted or transferred under s. 51.35 (3) or 51.37 or under
24 ch. 971 or 975, have the right to the least restrictive conditions necessary to achieve
25 the purposes of admission, commitment or protective placement, under programs,

1 services and resources that the county board of supervisors is reasonably able to
2 provide within the limits of available state and federal funds and of county funds
3 required to be appropriated to match state funds.

4 (f) Have a right to receive prompt and adequate treatment, rehabilitation and
5 educational services appropriate for his or her condition, under programs, services
6 and resources that the county board of supervisors is reasonably able to provide
7 within the limits of available state and federal funds and of county funds required
8 to be appropriated to match state funds.

9 **SECTION 7.** 55.001 of the statutes is amended to read:

10 **55.001 Declaration of policy.** The legislature recognizes that many citizens
11 of the state, because of the infirmities of aging, chronic mental illness, mental
12 retardation, other developmental disabilities or like incapacities incurred at any age,
13 are in need of protective services. These services should, to the maximum degree of
14 feasibility under programs, services and resources that the county board of
15 supervisors is reasonably able to provide within the limits of available state and
16 federal funds and of county funds required to be appropriated to match state funds,
17 allow the individual the same rights as other citizens, and at the same time protect
18 the individual from exploitation, abuse and degrading treatment. This chapter is
19 designed to establish those services and assure their availability to all persons when
20 in need of them, and to place the least possible restriction on personal liberty and
21 exercise of constitutional rights consistent with due process and protection from
22 abuse, exploitation and neglect.

23 **SECTION 8.** 55.06 (9) (a) of the statutes is amended to read:

24 55.06 (9) (a) The court may order protective services under s. 55.05 (2) (d) as
25 an alternative to placement. When ordering placement, the court, on the basis of the

1 evaluation and other relevant evidence shall order placement through the
2 appropriate board designated specified under s. 55.02 or an agency designated by it
3 to protectively place the individual. Placement by the appropriate board or
4 designated agency shall be made in the least restrictive environment consistent with
5 the needs of the person to be placed and with the placement resources of the
6 appropriate board specified under s. 55.02. Factors to be considered in making
7 protective placement shall include the needs of the person to be protected for health,
8 social or rehabilitative services and; the level of supervision needed; the
9 reasonableness of the placement given the cost and the actual benefits in the level
10 of functioning to be realized by the individual; the limits of available state and
11 federal funds and of county funds required to be appropriated to match state funds;
12 and the reasonableness of the placement given the number or projected number of
13 individuals who will need protective placement and given the limited funds
14 available. The county may not be required to provide funding, in addition to its funds
15 that are required to be appropriated to match state funds, in order to protectively
16 place an individual. Placement under this section does not replace commitment of
17 a person in need of acute psychiatric treatment under s. 51.20 or 51.45 (13).
18 Placement may be made to such facilities as nursing homes, public medical
19 institutions, centers for the developmentally disabled under the requirements of s.
20 51.06 (3), foster care services and other home placements, or to other appropriate
21 facilities but may not be made to units for the acutely mentally ill. The prohibition
22 of placements in units for the acutely mentally ill does not prevent placement by a
23 court for short-term diagnostic procedures under par. (d). Placement in a locked unit
24 shall require a specific finding of the court as to the need for such action. A placement

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

3 **SECTION 9.** 55.06 (13) of the statutes is renumbered 55.045 and amended to
4 read:

5 **55.045** (title) **Funding.** Reasonable The appropriate county department
6 designated under s. 55.02 shall, within the limits of available state and federal funds
7 and of county funds required to be appropriated to match state funds, provide for the
8 reasonable program needs of persons who are protectively placed or who receive
9 protective services under this chapter, including reasonable expenses for the
10 evaluations required by sub. (8) shall be assumed by the appropriate board making
11 recommendations for placement subject to any reimbursement which may be
12 available from federal or other sources. The boards shall seek appropriate
13 reimbursement for such evaluations. Payment and collections for protective
14 placement or protective services provided in public facilities specified in s. 46.10 shall
15 be governed in accordance with s. 46.10. The appropriate board shall be charged for
16 the cost of care and custody resulting from placement under this section. The
17 department may require that a person who is protectively placed or receives
18 protective services under this chapter provide reimbursement for services or care
19 and custody received, based on the ability of the person to be protected to pay for such
20 costs.

21 **SECTION 10. Initial applicability.**

22 (1) This act first applies to a cause of action that arises on the effective date
23 of this subsection.

24

(END)