

CHAPTER 46

SOCIAL SERVICES

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46.001 Purposes of chapter. The purposes of this chapter are to conserve human resources in Wisconsin; to provide a just and humane program of services to children in need of protection or services and nonmarital children; to prevent dependency, mental illness, developmental disability, mental infirmity, delinquency, crime and other forms of social maladjustment by a continuous attack on causes; to provide effective aid and services to all persons in need thereof and to assist such persons to achieve or regain self-dependence at the earliest possible date; to provide a just, humane and efficient program for the rehabilitation of juvenile delinquents and other offenders; to avoid duplication and waste of effort and money on the part of public and private agencies; and to coordinate and integrate a social welfare program.

History: 1977 c. 354; 1983 a. 447.

46.011 Definitions. In chs. 46 to 51 and 53 to 58, unless the context requires otherwise:

(1) "Department" means the department of health and social services.

(2) "Prisoner" means any person who is either arrested, incarcerated, imprisoned or otherwise detained in excess of 12 hours by any law enforcement agency of this state, except

when detention is pursuant to s. 51.15, 51.20, 51.45 (11) (b) or 55.06 (11) (a).

(3) "Secretary" means the secretary of health and social services.

(4) "State health planning and development agency" means the department, as designated under s. 140.82 (1).

History: 1975 c. 39, 430; 1977 c. 29; 1979 c. 221; 1985 a. 29 s. 3202 (23).

46.014 Secretary, powers and duties. (1) INVENTORIES. On or before July 1 in each year, the secretary shall cause full and complete inventories and appraisals to be made of all the property of each institution administered by the department, which shall be recorded and so classified as to show separately the amount, kind and value of such property.

(2) **VISITATION.** The secretary shall cause each of said institutions to be visited and inspected at least once a month to ascertain whether the officers and employes therein are competent and faithful in the discharge of their duties, all inmates properly cared for and governed, all accounts, books and vouchers properly kept, and all the business affairs properly conducted.

(3) **POWERS AND DUTIES.** The secretary shall plan for and establish within the department a program of research

designed to determine the effectiveness of the treatment, curative and rehabilitative programs of the various institutions and divisions of the department. The secretary may inquire into any matter affecting social welfare and hold hearings and subpoena witnesses and make recommendations to the appropriate agencies, public or private, thereon.

(4) **REPORTS.** At least annually, the secretary shall report to the presiding officer of each house of the legislature concerning activities of community action agencies under s. 46.30 and their effectiveness in promoting social and economic opportunities for poor persons.

History: 1975 c. 39; 1983 a. 27.

46.016 Cooperation with federal government. The department may cooperate with the United States in carrying out federal acts concerning public assistance, social security, child welfare and youth services, mental hygiene and corrections, services for the blind, vocational rehabilitation, and in other matters of mutual concern pertaining to public welfare.

46.017 Legal actions. The department may sue and be sued.

46.018 Disbursement of funds and facsimile signatures. Withdrawal or disbursement of moneys deposited in a public depository, as defined in s. 34.01 (5), to the credit of the department or any of its divisions or agencies shall be by check, share draft or other draft signed by the secretary or by one or more persons in the department designated by written authorization of the secretary. Such checks, share drafts and other drafts shall be signed personally or by use of a mechanical device adopted by the secretary or his or her designees for affixing a facsimile signature. Any public depository shall be fully warranted and protected in making payment on any check, share draft or other draft bearing such facsimile signature notwithstanding that the facsimile may have been placed thereon without the authority of the secretary or his or her designees.

History: 1983 a. 189 s. 329 (21); 1983 a. 368, 538.

46.02 Agency powers and duties. Any institution which is subject to chs. 46 to 51 and 53 to 58 and to regulation under ch. 150 shall, in cases of conflict between chs. 46 to 51 and 53 to 58 and ch. 150, be governed by ch. 150. The department shall establish rules and procedures for resolving any such controversy.

History: 1977 c. 29; 1979 c. 89; 1985 a. 29 s. 3202 (23).

46.03 Department, powers and duties. The department shall:

(1) **INSTITUTIONS GOVERNED.** Maintain and govern the Mendota and the Winnebago mental health institutes, the Waupun correctional institution, the Columbia correctional institution, the Menomonee Valley correctional institution, the Oshkosh correctional institution, the Fox Lake correctional institution, the Green Bay correctional institution, the Taycheedah correctional institution, the minimum security correctional institutions, the Dodge correctional institution, the Ethan Allen school, the Kettle Moraine correctional institution, the Lincoln Hills school, the Wisconsin workshop for the blind until the date specified in the contract with a nonprofit corporation under s. 47.03 (1m) (a), and the centers for the developmentally disabled.

(2) **SUPERVISION OVER PROPERTY.** Supervise, manage, preserve and care for the buildings, grounds and other property pertaining to said institutions, and promote the objects for which they are established.

(2a) **GIFTS.** The department may accept gifts, grants or donations of money or of property from private sources to be

administered by the department for the execution of its functions. All moneys so received shall be paid into the general fund and are appropriated therefrom as provided in s. 20.435 (9) (i).

(3) **TRUSTEE DUTY.** Take and hold in trust (whenever it deems acceptance advantageous) all property transferred to the state to be applied to any specified purpose, use or benefit pertaining to any of the institutions under its control or the inmates thereof, and apply the same in accordance with the trust; and when ordered by the court, act as trustee of funds paid for the support of any child if appointed by the court or family court commissioner under s. 767.475 (7).

(4) **EDUCATION AND PREVENTION.** (a) Develop and maintain such programs of education and prevention as it deems proper.

(b) 1. The department, in order to discharge more effectively its responsibilities under this chapter and ch. 48 and other relevant provisions of the statutes, is authorized to study causes and methods of prevention and treatment of juvenile delinquency, mental illness, mental deficiency, mental infirmity, and related social problems, including establishment of demonstration projects to apply and evaluate such methods in actual cases. The department is directed and authorized to utilize all powers provided by the statutes, including the authority under sub. (2a), to accept grants of money or property from federal, state or private sources, and to enlist the co-operation of other appropriate agencies and state departments; it may enter into agreements with local government subdivisions, departments and agencies for the joint conduct of such projects; and it may purchase services when deemed appropriate.

(5) **MENTAL HYGIENE.** (a) Execute the laws relating to the custody, care and treatment of mentally ill, mentally infirm and mentally deficient persons, inebriates and drug addicts. It shall examine all institutions, public and private, authorized to receive and care for such persons, and inquire into the method of government and the management of persons therein, and examine into the condition of buildings, grounds and other property connected with any such institution and into matters relating to its management.

(b) Direct the psychiatric field work, aftercare and community supervision and exercise such powers in relation to prevention as the department deems appropriate.

(c) On or before January 30 of each year, report to the joint committee on finance and to the presiding officer of each house of the legislature for referral to the appropriate standing committees on all of the following:

1. The number of prisoners transferred to a mental health institute under s. 51.20 (13) (a) 4 and their average length of stay and the number of prisoners transferred to a mental health institute on a voluntary basis and their average length of stay.

2. The number of prisoners being treated with psychotropic drugs on both a voluntary and involuntary basis and the types of drugs being used.

3. A description of the mental health services available to prisoners on both a voluntary and involuntary basis.

(6) **CORRECTIONS.** (a) Execute the laws relating to the detention, reformation and correction of delinquents.

(b) Supervise the custody and discipline of all prisoners and the maintenance of state penal and correctional institutions and the industries therein.

(c) Administer parole and probation matters and establish a parole board, which shall be headed by a chairperson.

(cn) Monitor compliance with deferred prosecution agreements under s. 971.39.

(d) If requested by the governor, make recommendations as to pardons or commutations of sentence.

(e) Examine all institutions authorized by law to receive and detain witnesses or prisoners or convicted persons and places of juvenile detention, and inquire into their methods and the management of persons therein, and examine the condition of buildings and grounds and other property connected with any such institution and all matters relating to its management.

(f) Direct the aftercare of and supervise all delinquents under its jurisdiction and exercise such functions as it deems appropriate for the prevention of crime and delinquency.

(g) Direct the penal and correctional psychiatric service in all correctional and penal institutions, making its services available to those committed to the department as delinquent children or as convicted criminals.

(h) Direct the educational programs in all correctional schools and correctional and penal institutions.

(i) Supervise criminal defendants accepted into the custody of the department under s. 969.02 (3) (a) or 969.03 (1) (a). The department shall charge the county which is prosecuting the defendant a fee for providing this supervision. The department shall set the fee by rule.

(7) CHILDREN AND YOUTH. (a) Promote the enforcement of laws for the protection of developmentally disabled children, delinquent children, children in need of protection or services and nonmarital children; and to this end cooperate with courts assigned to exercise jurisdiction under ch. 48 and licensed child welfare agencies and institutions (public and private) and take the initiative in all matters involving the interests of such children where adequate provision therefor has not already been made, including the establishment and enforcement of standards for services provided under ss. 48.34 and 48.345 (1) and (5).

(b) When notified of the birth or expected birth of a child who is or is likely to be a nonmarital child, see to it (through advice and assistance to the mother or independently) that the interests of the child are safeguarded, that steps are taken to establish its paternity and that there is secured for the child (as near as possible) the care, support and education that would be given if he or she were a marital child.

(bm) Maintain a file containing records of artificial inseminations under s. 891.40 and records of declarations of paternity under s. 891.41 (1) (b) 1. The department shall release these records only upon an order of the court except that the department may use nonidentifying information concerning artificial inseminations for the purpose of compiling statistics and except that records relating to declarations of paternity may be used without a court order upon the written request of the department pursuant to its program responsibilities under s. 46.25.

(c) Administer the laws relating to child care centers, day nurseries and nursery schools.

(cm) Promote the establishment of adequate child care facilities in this state by providing start-up grants to newly operating day care facilities under rules promulgated by the department.

(d) With the assistance of the judicial conference, develop simplified forms for filing petitions for child abuse restraining orders and injunctions under s. 813.122. The department shall provide these forms to clerks of circuit court without cost.

(7m) FOSTER CARE. For the federal fiscal years commencing October 1, 1986, and October 1, 1987, respectively, ensure that there are no more than 2,641 and 2,619 children in foster care placements for more than 24 months, consistent with the best interests of each child. Services provided in connection

with this requirement shall comply with the requirements under P.L. 96-272.

(8) PUBLIC ASSISTANCE. Administer public assistance, as provided in ch. 49.

(9) BLIND PERSONS. Administer the Wisconsin workshop for the blind until the date specified in the contract with a nonprofit corporation under s. 47.03 (1m) (a) and perform other functions prescribed in ch. 47.

(10) TRAINING STAFF. In its discretion, conduct a training program of in-service training and staff development; and, in cooperation with educational institutions, provide facilities for work experience for students, including subsistence.

(12) VOCATIONAL REHABILITATION. Execute the laws relating to the vocational rehabilitation of handicapped persons as provided in ch. 47.

(13) CHARGES. In compliance with the compensation plan established under s. 230.12 (3), have authority to make and determine charges for meals, living quarters, laundry and other services furnished to employes of the several institutions and members of the employe's family maintained as such. All moneys received from each person on account of these services shall be used for operation of the institutions under s. 20.435 (2) (a) and (3) (a).

(a) When a chaplain employed in any state institution is not furnished a residence by the state, \$1,800 or 20 per cent of his salary, whichever is greater, shall be deemed to constitute the amount to be paid to him in lieu of such residence.

(14) VENDING STANDS. Establish and maintain a revolving fund not exceeding \$60,000 in any of the state institutions administered by the department, for the education, recreation and convenience of the patients, inmates and employes, to be used for the operation of vending stands, canteen operations, reading clubs, musical organizations, religious programs, athletics and similar projects. The funds are exempt from s. 20.906, but are subject to audit by the department and the legislative audit bureau in its discretion.

(15) COMMISSARY. Pursuant to its rules the department may, with the approval of the governor and the director of personnel, provide employes in its institutions with laundry, food, housing and necessary furnishings.

(16) DRIVERS' EDUCATION. The department shall establish a drivers' education program in the Ethan Allen school to provide drivers' education to inmates of the institution who are about to become eligible to qualify for an operator's license.

(17) PURCHASE OF CARE AND SERVICES. Be empowered to contract with public or voluntary agencies or others:

(a) To purchase in full or in part care and services which it is authorized by any statute to provide as an alternative to providing such care and services itself.

(b) To purchase or provide in full or in part the care and services which county agencies may provide or purchase under any statute and to sell to county agencies such portions thereof as the county agency may desire to purchase.

(c) To contract with public, private or voluntary agencies for the purchase of goods, care and services for persons committed or sentenced to a state correctional or penal institution, placed on probation to the department by a court of record, or released from a state correctional or penal institution. Services shall include, but are not limited to, diagnostic services, evaluation, treatment, counseling, referral and information, day care, inpatient hospitalization, transportation, recreation, special education, vocational training, work adjustment, sheltered employment, special living arrangements and legal and protective services.

(cm) To contract with one public, private or voluntary agency for the supervision, maintenance and operation of one

minimum security correctional institution in a county having a population of 500,000 or more. To be eligible, an agency must have prior relevant experience.

(d) To sell services, under contract, which the department is authorized to provide by statute, to any federally recognized tribal governing body.

(18) UNIFORM FEE SCHEDULE, LIABILITY AND COLLECTIONS.

(a) The department of health and social services shall establish a uniform system of fees for services provided or purchased by the department of health and social services, a county department under s. 46.215, 46.22, 51.42 or 51.437, except for services relating to adoption, or services provided to courts, for provision of child support and paternity establishment services to recipients of aid to families with dependent children or for outreach, information and referral services, or where as determined by the department of health and social services, a fee is administratively unfeasible or would significantly prevent accomplishing the purpose of the service. A county department under s. 46.215, 46.22, 51.42 or 51.437 shall apply the fees which it collects under this program to cover the cost of such services. The department of health and social services shall report to the joint committee on finance no later than January 31 of each year on the number of children placed for adoption by the department of health and social services and the costs to the state for services relating to such adoptions.

(am) Paragraph (a) does not prevent the department from charging and collecting the cost of adoptive placement investigations and child care as authorized under s. 48.837 (7).

(b) Any person receiving services provided or purchased under par. (a) or the spouse of the person and, in the case of a minor, the parents of the person, and, in the case of a foreign child described in s. 48.839 (1) who became dependent on public funds for his or her primary support before an order granting his or her adoption, the resident of this state appointed guardian of the child by a foreign court who brought the child into this state for the purpose of adoption, shall be liable for the services in the amount of the fee established under par. (a). If a minor receives services without consent of a parent or guardian under s. 51.47, the department shall base the fee solely on the minor's ability to pay.

(c) The department shall make collections from the person who in the opinion of the department is best able to pay, giving due regard to the present needs of the person or of his or her lawful dependents. The department may bring action in the name of the department to enforce the liability established under par. (b). The department may not collect from the parent of a minor receiving treatment for alcohol or drug abuse, except as provided in s. 51.47. This paragraph does not apply to the recovery of fees for the care and services specified under s. 46.10.

(d) The department may compromise or waive all or part of the liability for services received. The sworn statement of the collection and deportation counsel appointed under s. 46.10 (7) or the department secretary, shall be evidence of the services provided and the fees charged for such services.

(e) The department may delegate to county departments under s. 46.215, 46.22, 51.42 or 51.437 and other providers of care and services the powers and duties vested in the department by pars. (c) and (d) as it deems necessary to efficiently administer this subsection, subject to such conditions as the department deems appropriate.

(f) Notwithstanding par. (a), any person who submits to an assessment or driver safety plan under s. 30.80 (6) (d), 343.16 (2) (a), 343.30 (1q) or 343.305 (9) shall pay a reasonable fee therefor to the appropriate county department under s. 51.42

or traffic safety school under s. 345.60. The fee for the driver safety plan may be reduced or waived if the person is unable to pay the complete fee, but no fee for assessment or attendance at a traffic safety school under s. 345.60 may be reduced or waived.

(fm) Notwithstanding par. (a), any person who submits to an assessment under s. 161.472 shall pay a fee to the appropriate county department under s. 51.42. The department of health and social services shall set fees for each county department under s. 51.42 designed to offset all the costs to the county in providing the assessment program. The department of health and social services shall provide for the reduction or waiver of the fee for persons who are unable to pay the complete fee.

(g) The department shall return to county departments under s. 46.215, 46.22, 51.42 or 51.437 50% of collections made by the department on and after January 1, 1978, for delinquent accounts previously delegated under par. (e) and then referred back to the department for collections.

(19) PROTECTIVE SERVICES. Administer the statewide program of protective services under ch. 55.

(20) PAYMENT OF BENEFITS. (a) The department may make payments directly to recipients of public assistance or to such persons authorized to receive such payments in accordance with law and rules of the department on behalf of the counties. The department may charge the counties for the cost of operating public assistance systems which make such payments.

(b) The department may make social service payments directly to recipients, vendors or providers in accordance with law and rules of the department on behalf of the counties which have contracts to have such payments made on their behalf.

(c) The county department under s. 46.215, 46.22 or 46.23 shall provide the department with information which the department shall use to determine each person's eligibility and amount of payment. The county department under s. 46.215, 46.22 or 46.23 shall provide the department all necessary information in the manner prescribed by the department.

(d) The department shall disburse from state or federal funds or both the entire amount and charge the county for its share under s. 49.52.

(21) DAY CARE STANDARDS. Promulgate rules establishing standards for the certification of day care providers under s. 48.651.

(22) COMMUNITY LIVING ARRANGEMENTS. (a) "Community living arrangement" means any of the following facilities licensed or operated, or permitted under the authority of the department: child welfare agencies under s. 48.60, group homes for children under s. 48.02 (7) and community-based residential facilities under s. 50.01; but does not include day care centers, nursing homes, general hospitals, special hospitals, prisons and jails.

(b) Community living arrangements shall be subject to the same building and housing ordinances, codes and regulations of the municipality or county as similar residences located in the area in which the facility is located.

(c) The department shall designate a subunit to keep records and supply information on community living arrangements under ss. 59.97 (15) (f), 60.63 (7) and 62.23 (7) (i) 6. The subunit shall be responsible for receiving all complaints regarding community living arrangements and for coordinating all necessary investigatory and disciplinary actions under the laws of this state and under the rules of the department relating to the licensing of community living arrangements.

(d) A community living arrangement with a capacity for 8 or fewer persons shall be a permissible use for purposes of any deed covenant which limits use of property to single-family or 2-family residences. A community living arrangement with a capacity for 15 or fewer persons shall be a permissible use for purposes of any deed covenant which limits use of property to more than 2-family residences. Covenants in deeds which expressly prohibit use of property for community living arrangements are void as against public policy.

(e) If a community living arrangement is required to obtain special zoning permission, as defined in s. 59.97 (15) (g), the department shall, at the request of the unit of government responsible for granting the special zoning permission, inspect the proposed facility and review the program proposed for the facility. After such inspection and review, the department shall transmit to the unit of government responsible for granting the special zoning permission a statement that the proposed facility and its proposed program have been examined and are either approved or disapproved by the department.

(23) **UNIFORM MANUAL.** Adopt policies and procedures and a uniform county policy and procedure manual to minimize unnecessary variations between counties in the administration of the aid to families with dependent children program. The department shall also require each county to use the manual in the administration of the program.

(24) **COMPUTER REPORTING NETWORK.** Periodically report to the joint committee on finance regarding progress made in implementing the computer reporting network.

(25) **UNIFORM REGULATION AND LICENSING.** The department shall promulgate rules to establish licensing and program compliance standards for care and residential facilities, hospitals, hotels, restaurants and the vending of food and beverages after due consideration of the relationship of a licensing code to other related licensing codes, the need for uniform administration, the need to maximize the use of federal funds and the need to encourage the development and operation of needed facilities statewide. In establishing licensing standards designed to ensure that the facility qualifies for federal financial participation, the department shall establish federal regulations as the base requirement. The department may promulgate such additional health and safety standards as it determines to be in the public interest.

(26) **DATA PROCESSING PROJECTS.** Report each December 31 to the joint committee on finance and the appropriate standing committees on health and social services of each house of the legislature, as determined by the presiding officer thereof, regarding the data processing projects under development. The report shall include:

- (a) The schedule for implementation;
- (b) Estimates of development and operating costs; and
- (c) Proposed methods of determining charges for service where applicable.

(28) **DISABILITY DETERMINATIONS.** The department shall maintain an agreement with the secretary of the U.S. department of health and human services under 42 USC 421 to make disability determinations. The agreement required by this subsection shall terminate effective March 31, 1981, unless the joint committee on finance approves a later termination date.

(29) **MEDIA PHOTO.** The department may use in the media a picture or description of a child in the guardianship of the department for the purpose of finding adoptive parents for that child.

(30) **PRIMARY PSYCHIATRIC CARE CONTRACTS.** (a) To provide for an orderly reduction of state institutional primary psychiatric services the department may approve the insti-

tutes entering into contracts with county departments under s. 51.42 for providing primary psychiatric care. If excess capacity exists at state operated mental health institutes, the department shall explore whether such excess facilities may be sold or leased to a county department under s. 51.42.

(b) No contract may be approved for a period of time greater than one year, and no contract shall be approved for care to be provided after June 30, 1975, except under par. (c).

(c) The counties where the mental health institutes are located may contract with the institutes for primary psychiatric care on an ongoing basis, which contracts shall be approved by the department and shall be renewed annually.

(31) **PRISON INDUSTRIES.** Report to the joint committee on finance with a proposal to address negative cash balances associated with closed industries or other corrections programs through the use of moneys appropriated under s. 20.435 (3) as of the date of the proposal.

(32) **REIMBURSEMENT TO VISITING FAMILIES.** The department may reimburse families visiting girls at Lincoln Hills. If the department decides to provide the reimbursement, it shall establish criteria for the level of reimbursement, which shall include family income and size and other relevant factors.

(33) **RELIEF; AMERICAN INDIANS.** The department may negotiate and enter into an agreement with any appropriate agency of the federal government for provision of relief to needy American Indians.

(34) **FETAL ALCOHOL SYNDROME PAMPHLETS.** The department shall acquire, without cost if possible, pamphlets that describe the causes and effects of fetal alcohol syndrome and shall distribute the pamphlets free of charge to each county clerk in sufficient quantities so that each county clerk may provide pamphlets to marriage license applicants under s. 765.12 (1).

(35) **EMPLOYMENT OF AID RECIPIENTS.** Assist state agencies in efforts under s. 230.147 to employ recipients of aid under s. 49.19.

History: 1971 c. 270 s. 104; 1973 c. 90; 1973 c. 284 ss. 2, 32; 1973 c. 333; 1975 c. 39, 82; 1975 c. 189 s. 99 (1), (2); 1975 c. 224, 377, 413, 422; 1977 c. 29, 193; 1977 c. 196 s. 131; 1977 c. 203, 205, 271, 354; 1977 c. 418 ss. 287 to 289m, 924 (18) (d); 1977 c. 447, 449; 1979 c. 32 s. 92 (1); 1979 c. 34; 1979 c. 175 s. 46; 1979 c. 221, 331, 352; 1981 c. 20, 81; 1981 c. 314 s. 144; 1981 c. 390; 1983 a. 27, 193; 1983 a. 435 s. 7; 1983 a. 447, 474; 1983 a. 532 s. 36; 1985 a. 19, 29, 120, 176, 234, 285, 328, 331; 1985 a. 332 s. 251 (3).

Legislative intent underlying (22) (d) cited in support of holding that community living arrangement with capacity of 10 persons was not barred by deed covenant limiting use to single-family residence. *Crowley v. Knapp*, 94 W (2d) 421, 288 NW (2d) 815 (1980).

Sections 46.03 (18) and 46.10 do not constitute an unlawful delegation of legislative power. In *Matter of Guardianship of Klisurich*, 98 W (2d) 274, 296 NW (2d) 742 (1980).

See note to Art. I, sec. 7, citing 63 Atty. Gen. 176.

"Prisons and jails" as used in (22) (a) defined. 69 Atty. Gen. 52.

46.031 County social service and mental hygiene budget and contract. (1) **BUDGET.** (a) Each county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 shall submit its proposed budget for services directly provided or purchased to the department by September 30 annually.

(b) The department shall submit a model of the contract under sub. (2g) (a) to each county department under s. 46.215, 46.22, 46.23, 51.42 and 51.437 by May 1 annually.

(2) **ASSESSMENT OF NEEDS.** Before developing and submitting a proposed budget to the county executive or county administrator or the county board, the county departments listed in sub. (1) shall assess needs and inventory resources and services, using an open public participation process.

(2g) **CONTRACT.** (a) The department shall annually submit to the county board of supervisors in a county with a single-county department or the county boards of supervisors in counties with a multicounty department a proposed written contract containing the allocation of funds and such administrative requirements as necessary. The contract as approved

may contain conditions of participation consistent with federal and state law. The contract may also include provisions necessary to ensure uniform cost accounting of services. Any changes to the proposed contract shall be mutually agreed upon. The county board of supervisors in a county with a single-county department or the county boards of supervisors in counties with a multicounty department shall approve the contract before January 1 of the year in which it takes effect unless the department grants an extension. The county board of supervisors in a county with a single-county department or the county boards of supervisors in counties with a multicounty department may designate an agent to approve addenda to any contract after the contract has been approved.

(b) The department may not approve contracts for amounts in excess of available revenues. The county board of supervisors in a county with a single-county department or the county boards of supervisors in counties with a multicounty department may appropriate funds not used to match state funds under ss. 49.52(1) and 51.423. Actual expenditure of county funds shall be reported in compliance with procedures developed by the department, and shall comply with standards guaranteeing quality of care comparable to similar facilities.

(c) The joint committee on finance may require the department to submit contracts between county departments under ss. 46.215, 46.22, 46.23, 51.42 and 51.437 and providers of service to the committee for review and approval.

(2r) WITHHOLDING FUNDS. (a) The department, after reasonable notice, may withhold a portion of the appropriation allocated to a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 if the department determines that that portion of the allocated appropriation:

1. Is for services which duplicate or are inconsistent with services being provided or purchased by the department or other county departments receiving grants-in-aid or reimbursement from the department.

2. Is inconsistent with state or federal statutes, rules or regulations, in which case the department may also arrange for provision of services by an alternate agency. The department may not arrange for provision of services by an alternate agency unless the joint committee on finance or a review body designated by the committee reviews and approves the department's determination.

3. Is for the treatment of alcoholics in treatment facilities which have not been approved by the department in accordance with s. 51.45(8).

4. Is for inpatient treatment in excess of an average of 21 days, as provided in s. 51.423(12), excluding care for patients at the centers for the developmentally disabled.

5. Is inconsistent with the provisions of the county department's contract under sub. (2g).

(b) If the department withholds a portion of the allocable appropriation under par. (a), the county department affected by the action of the department may submit to the county board of supervisors in a county with a single-county department or to its designated agent or the county boards of supervisors in counties with a multicounty department or their designated agents a plan to rectify the deficiency found by the department. The county board of supervisors or its designated agent in a county with a single-county department or the county boards of supervisors in counties with a multicounty department or their designated agents may approve or amend the plan and may submit for departmental approval the plan as adopted. If a multicounty department is administering a program, the plan may not be submitted unless each county board of supervisors which participated in

the establishment of the multicounty department, or its designated agent, adopts it.

(3) OPEN PUBLIC PARTICIPATION PROCESS. (a) *Citizen advisory committee.* Except as provided in par. (b), the county board of supervisors of each county or the county boards of supervisors of 2 or more counties jointly shall establish a citizen advisory committee to the county departments under ss. 46.215, 46.22, 46.23, 51.42 and 51.437. The citizen advisory committee shall advise in the formulation of the budget under sub. (1). Membership on the committee shall be determined by the county board of supervisors in a county with a single-county committee or by the county boards of supervisors in counties with a multicounty committee and shall include representatives of those persons receiving services, providers of service and citizens. A majority of the members of the committee shall be citizen and service consumers. At least one member of the committee shall be chosen from the governing or administrative board of the community action agency serving the county or counties under s. 46.30, if any. The committee's membership may not consist of more than 25% county supervisors, nor of more than 20% service providers. The chairperson of the committee shall be appointed by the county board of supervisors establishing it. In the case of a multicounty committee, the chairperson shall be nominated by the committee and approved by the county boards of supervisors establishing it. The county board of supervisors in a county with a single-county committee or the county boards of supervisors in counties with a multicounty committee may designate an agent to determine the membership of the committee and to appoint the committee chairperson or approve the nominee.

(b) *Alternate process.* The county board of supervisors or the boards of 2 or more counties acting jointly may submit a report to the department on the open public participation process used under sub. (2). The county board of supervisors may designate an agent, or the boards of 2 or more counties acting jointly may designate an agent, to submit the report. If the department approves the report, establishment of a citizen advisory committee under par. (a) is not required.

(c) *Yearly report.* The county board of supervisors or its designated agent, or the boards of 2 or more counties acting jointly or their designated agent, shall submit to the department a list of members of the citizen advisory committee under par. (a) or a report on the open public participation process under par. (b) on or before July 1 of each year.

History: 1977 c. 29 ss. 543, 544b; 1977 c. 418; 1979 c. 34 s. 2102(20)(b); 1979 c. 221 ss. 337 to 347m, 2202(20); 1979 c. 336, 355; 1981 c. 20 ss. 741 to 745, 2202(20)(a); 1983 a. 27; 1985 a. 29 ss. 808, 3200(56), 3202(23); 1985 a. 120, 176, 332.

46.032 Income maintenance administration. County departments under ss. 46.215, 46.22 and 46.23 shall annually enter into a contract with the department detailing the reasonable cost of administering the income maintenance programs under ss. 49.046, 49.19, 49.45 to 49.47 and 49.50(7g) when so appointed by the department. Contracts created under this section control the distribution of payments under s. 20.435(4)(de) 1 and (nL) in accordance with the reimbursement method established under s. 49.52(1)(ag). The department may reduce its payment to any county under s. 20.435(4)(de) 1 and (nL) if federal reimbursement is withheld due to audits, quality control samples or program reviews.

History: 1977 c. 29; 1981 c. 20; 1983 a. 27; 1985 a. 29, 176.

46.033 Authority to establish services integration and coordination pilot programs. (1) The department, in order to discharge more effectively its responsibilities under this chapter and chs. 48, 51, 140 and 141 and other relevant provisions of the statutes, may establish community human services

pilot programs for the study, implementation and evaluation of improved human services delivery systems. In the implementation of such pilot programs, the requirement of state-wide uniformity with respect to the organization and governance of human services shall not apply. The department and local governmental bodies may establish such departments, boards, committees, organizational structures and procedures as may be needed to implement the pilot programs. Such departments, boards, committees and organizational structures may assume responsibilities currently assigned by statute to the departments, boards, committees or organizational structures which are to be replaced.

(2) The number of pilot programs shall be limited by the department's capacity to coordinate and adequately monitor pilot activities and by the availability of state and federal funds.

(3) With the agreement of the affected county board of supervisors in a county with a single-county department or boards of supervisors in counties with a multicounty department, effective for the contract period beginning January 1, 1980, the department may approve a county with a single-county department or counties participating in a multicounty department to administer a single consolidated aid consisting of the state and federal financial aid available to that county or those counties from appropriations under s. 20.435 (4) (b) and (o) for services provided and purchased by county departments under ss. 46.215, 46.22, 46.23, 51.42 and 51.437. Under such an agreement, in the interest of improved service coordination and effectiveness, the county board of supervisors in a county with a single-county department or county boards of supervisors in counties with a multicounty department may reallocate among county departments under ss. 46.215, 46.22, 46.23, 51.42 and 51.437 funds that otherwise would be specified for use by a single county department. The budget under s. 46.031 (1) shall be the vehicle for expressing the proposed use of the single consolidated fund by the county board of supervisors in a county with a single-county department or county boards of supervisors in counties with a multicounty department. Approval by the department of this use of the fund shall be in the contract under s. 46.031 (2g). Counties that were selected by the department to pilot test consolidated aids for contract periods beginning January 1, 1978, may continue or terminate consolidation with the agreement of the affected county board of supervisors in a county with a single-county department or county boards of supervisors in counties with a multicounty department.

History: 1975 c. 39; 1977 c. 29, 418; 1979 c. 34; 1981 c. 20, 390; 1983 a. 27 s. 2202 (20); 1985 a. 120, 176, 332.

46.035 Department, additional powers to provide structures, facilities and permanent improvements. (1) As used in this section unless the context requires otherwise:

(a) The term "existing building" in relation to any conveyance, lease or sublease made under sub. (2) (a) 1, 2 and 3 means all detention, treatment, administrative, recreational, infirmary, hospital, vocational and academic buildings; all dormitories and cottages; all storage facilities, heating plants, sewage disposal plants, and such other buildings, structures, facilities and permanent improvements as in the judgment of the secretary are needed or useful for the purposes of the department, and all equipment therefor and all improvements and additions thereto which were erected, constructed or installed prior to the making of such conveyance, lease or sublease.

(b) The term "new building" in relation to any conveyance, lease or sublease made under sub. (2) (a) 1, 2 and 3 means all detention, treatment, administrative, recreational, infirmary,

hospital, vocational and academic buildings; all dormitories and cottages; all storage facilities, heating plants, sewage disposal plants, and such other buildings, structures, facilities and permanent improvements as in the judgment of the secretary are needed or useful for the purposes of the department, and all equipment therefor and all improvements and additions thereto which are erected, constructed or installed after the making of such conveyance, lease or sublease.

(c) The term "nonprofit corporation" means a nonstock, nonprofit corporation organized under ch. 181 or any law amendatory thereof or supplemental thereto.

(2) The department shall have and may exercise the powers and duties provided in this section.

(a) In order to provide new buildings and to enable the construction and financing thereof, to refinance indebtedness hereafter created by a nonprofit corporation for the purpose of providing a new building or buildings or additions or improvements thereto which are located on land owned by, or owned by the state and held for, the department or on lands of the institutions under the jurisdiction of the department or by the nonprofit corporation, or for any one or more of said purposes, but for no other purpose unless authorized by law, the department has the following powers and duties:

1. Without limitation by reason of any other provisions of the statutes, the power to sell and to convey title in fee simple to a nonprofit corporation any land and any existing buildings thereon owned by, or owned by the state and held for, the department or of any of the institutions under the jurisdiction of the department for such consideration and upon such terms and conditions as in the judgment of the secretary are in the public interest.

2. The power to lease to a nonprofit corporation for a term or terms not exceeding 50 years each any land and any existing buildings thereon owned by, or owned by the state and held for, the department or of any of the institutions under the jurisdiction of the department upon such terms and conditions as in the judgment of the secretary are in the public interest.

3. The power to lease or sublease from such nonprofit corporation, and to make available for public use, any such land and existing buildings conveyed or leased to such nonprofit corporation under subs. 1 and 2, and any new buildings erected upon such land or upon any other land owned by such nonprofit corporation, upon such terms, conditions and rentals, subject to available appropriations, as in the judgment of the secretary are in the public interest. With respect to any property conveyed to such nonprofit corporation under subd. 1, such lease from such nonprofit corporation may be subject or subordinated to one or more mortgages of such property granted by such nonprofit corporation.

4. The duty to submit the plans and specifications for all such new buildings and all conveyances, leases and subleases made under this section to the department of administration and the governor for written approval before they are finally adopted, executed and delivered.

5. The power to pledge and assign all or any part of the revenues derived from the operation of such new buildings as security for the payment of rentals due and to become due under any lease or sublease of such new buildings under subd. 3.

6. The power to covenant and agree in any lease or sublease of such new buildings made under subd. 3 to impose fees, rentals or other charges for the use and occupancy or other operation of such new buildings in an amount calculated to produce net revenues sufficient to pay the rentals due and to become due under such lease or sublease.

7. The power to apply all or any part of the revenues derived from the operation of existing buildings to the payment of rentals due and to become due under any lease or sublease made under subd. 3.

8. The power to pledge and assign all or any part of the revenues derived from the operation of existing buildings to the payment of rentals due and to become due under any lease or sublease made under subd. 3.

9. The power to covenant and agree in any lease or sublease made under subd. 3 to impose fees, rentals or other charges for the use and occupancy or other operation of existing buildings in an amount calculated to produce net revenues sufficient to pay the rentals due and to become due under such lease or sublease.

10. The power and duty, upon receipt of notice of any assignment by any such nonprofit corporation of any lease or sublease made under subd. 3, or of any of its rights under any such sublease, to recognize and give effect to such assignment, and to pay to the assignee thereof rentals or other payments then due or which may become due under any such lease or sublease which has been so assigned by such nonprofit corporation.

(b) The state shall be liable for accrued rentals and for any other default under any lease or sublease made under par. (a) 3, and may be sued therefor on contract as in other contract actions pursuant to ch. 775, except that it shall not be necessary for the lessor under any such lease or sublease or any assignee of such lessor or any person or other legal entity proceeding on behalf of such lessor to file any claim with the legislature prior to the commencement of any such action.

(c) Nothing in this section empowers the secretary or the department to incur any state debt.

(d) All conveyances, leases and subleases made pursuant to this section shall be made, executed and delivered in the name of the department and shall be signed by the secretary and sealed with the seal of the department.

(e) All laws, except ch. 150, conflicting with any provisions of this section, are, insofar as they conflict with this section and no further, superseded by this section.

History: 1975 c. 39 ss. 341, 732 (2); 1977 c. 29; 1979 c. 32 s. 92 (5).

46.036 Purchase of care and services. (1) All care and services purchased by the department or by a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 shall be authorized and contracted for under the standards established under this section. For purchases of \$10,000 or less the requirement for a written contract may be waived by the department. No contract is required for care provided by foster homes required to be licensed under s. 48.62. When the department directly contracts for services, it shall follow the procedures in this section in addition to meeting purchasing requirements established in s. 16.75.

(2) All care and services purchased shall meet standards established by the department and other requirements specified by purchaser in the contract. Based on these standards the department shall establish standards for cost accounting and management information systems that shall monitor the utilization of such services, and document the specific services in meeting the service plan for the client and the objective of the service.

(3) (a) Purchase of service contracts shall be written in accordance with rules and procedures established by the department. Contracts for client services shall show the total dollar amount to be purchased and for each service the number of clients to be served, number of client service units, the unit rate per client service and the total dollar amount for each service.

(b) Payments under a contract may be made on the basis of actual allowable costs or on the basis of a unit rate per client service multiplied by the actual client units furnished each month. The contract may be renegotiated when units vary from the contracted number. The purchaser shall determine actual marginal costs for each service unit less than or in addition to the contracted number.

(c) For proprietary agencies, contracts may include a percentage add-on for profit according to rules promulgated by the department.

(d) Reimbursement to an agency may be based on total costs agreed to by the parties regardless of the actual number of service units to be furnished, when the agency is entering into a contract for a new or expanded service that the purchaser recognizes will require a start-up period not to exceed 180 days. Such reimbursement applies only if identified client needs necessitate the establishment of a new service or expansion of an existing service.

(e) If the purchaser finds it necessary to terminate a contract prior to the contract expiration date for reasons other than nonperformance by the provider, actual cost incurred by the provider may be reimbursed for an amount determined by mutual agreement of the parties.

(f) Advance payments of up to one-twelfth of an annual contract may be allowed under the contract. If the advance payment exceeds \$10,000, the provider shall supply a surety bond for an amount equal to the amount of the advance payment applied for. No surety bond is required if the provider is a state agency. The cost of the surety bond shall be allowable as an expense.

(4) For purposes of this section and as a condition of reimbursement, each provider under contract shall:

(a) Except as provided in this subdivision, maintain a uniform double entry accounting system and a management information system which are compatible with cost accounting and control systems prescribed by the department. The department shall establish a simplified double entry book-keeping system for use by family-operated group homes. Each purchaser shall determine whether a family-operated group home from which it purchases services shall use the double entry accounting system or the simplified system and shall include this determination in the purchase of service contract. In this paragraph, "family-operated group home" means a group home licensed under s. 48.66 for which the licensee is one or more individuals who operate not more than one group home.

(b) Cooperate with the department and purchaser in establishing costs for reimbursement purposes.

(c) Unless waived by the department, biennially, or annually if required under federal law, provide the purchaser with a certified financial and compliance audit report. The audit shall follow standards that the department prescribes. A purchaser may waive the requirements of this paragraph for any family-operated group home, as defined under par. (a), from which it purchases services.

(d) Transfer a client from one category of care or service to another only with the approval of the purchaser.

(e) Charge a uniform schedule of fees as defined under s. 46.03 (18) unless waived by the purchaser with approval of the department. Whenever providers recover funds attributed to the client, such funds shall offset the amount paid under the contract.

(5) The purchaser shall recover from provider agencies money paid in excess of the conditions of the contract from subsequent payments made to the provider.

(6) Contracts may be renegotiated by the purchaser under conditions specified in the contract.

(7) The service provider under this section may appeal decisions of the purchaser in accordance with terms and conditions of the contract and ch. 68 or 227.

History: 1973 c. 90, 333; 1975 c. 39; 1975 s. 198 s. 65; 1977 c. 29, 418; 1981 c. 20; 1983 a. 27, 116, 192; 1985 a. 176; 1985 a. 332 s. 251 (3).

46.037 Rates for residential child care centers. (1) Each residential child care center shall establish a per client rate for its services and shall charge all purchasers the same rate.

(2) A residential child care center shall notify the department of the rate it charges and of any change in that rate before a charge is made to any purchaser.

(3) The department may require an audit of any residential child care center for the purpose of collecting federal funds.

History: 1981 c. 20.

46.041 Children's consultation service; establishment; purposes. (1) A program to be known as the "children's consultation service" shall be provided. The service shall be established at Mendota mental health institute or Winnebago mental health institute, or at both institutions. The service shall:

(a) Provide for the temporary residence and evaluation of children referred from courts assigned to exercise jurisdiction under ch. 48, the institutions and services under the jurisdiction of the department, university of Wisconsin hospital and clinics, county departments under s. 46.215, 46.22 or 46.23, private child welfare agencies, schools for the deaf and visually handicapped, and mental health facilities within the state at the discretion of the superintendent.

(b) Promote the development of preventive mental health services to children in communities by participating in the training of mental health personnel, by demonstration of methods of evaluation, care and treatment, by assisting in the assessment of community services and the development of the most effective coordination between the institution and the community, and by offering services when community resources need to be supplemented.

History: 1973 c. 90 s. 560 (3); 1977 c. 418 s. 924 (50); 1977 c. 447 s. 206; 1977 c. 449; 1985 a. 29, 176.

46.042 Treatment program for emotionally disturbed children. The department shall establish a program for the intensive treatment of emotionally disturbed children. The program shall be operated by Mendota mental health institute and be subject to all federal and state laws, rules and regulations which apply to the institute. Operational planning shall provide close interrelationship between the department and the university of Wisconsin medical school for conduct of educational and research programs.

History: 1975 c. 224; 1977 c. 29.

46.043 Correctional and related institutions; environmental impact. (1) The department shall perform an environmental assessment to determine if an environmental impact statement is required relating to the construction, expansion or establishment of a correctional institution or resource center under s. 46.056.

(2) If the department prepares an environmental impact statement, it shall hold a hearing, after proper public notice, within 90 days of completion of the statement. For contested case hearings, the department shall apply s. 227.46 (1). For noncontested case hearings, the department may apply s. 227.46 (1) (a), (c), (e), (g) and (i). At a hearing, the hearing examiner shall observe, where necessary and appropriate, the limiting of repetitive testimony and consolidation of testimony. The hearing examiner may require parties to a hearing to specify, in advance and in writing, the issues they wish to have considered at the hearing.

(3) Any person aggrieved by the department's decision relating to the construction, expansion or establishment of a correctional institution or resource center under s. 46.056 because of the department's failure to comply with s. 1.11 may seek judicial review only under s. 227.53.

(4) Any court petitioned to issue an injunction or restraining order relating to the construction, expansion or establishment of a correctional institution or resource center under s. 46.056 because of the department's failure to comply with s. 1.11 shall issue a decision on the petition within 30 days after it is filed.

(5) This section does apply to the construction or establishment of the medium/maximum security institution under s. 46.05 (1).

(6) This section does not apply to the construction or establishment of any new metropolitan correctional institution, as defined under s. 46.0435 (1), or to activities or actions subject to s. 46.0435 or 1983 Wisconsin Act 27, section 2020 (32m).

History: 1981 c. 20; 1983 a. 27; 1985 a. 182 s. 57.

46.0435 New metropolitan correctional institution; review; injunctive relief. (1) DEFINITION. In this section, "new metropolitan correctional institution" means any correctional institution in a city having a population of 500,000 or more the site for which is designated by the legislature by statute on or after July 2, 1983, but prior to January 1, 1985.

(2) **JUDICIAL REVIEW.** Any person aggrieved by a department's decision relating to the construction, expansion or establishment of any new metropolitan correctional institution because of the department's failure to comply with s. 1.11 or 1983 Wisconsin Act 27, section 2020 (32m) may seek judicial review. The review procedure under ch. 227 applies except the review shall be given preference over other cases.

(3) **INJUNCTIONS AND OTHER REMEDIES.** Any court petitioned to grant an injunction, temporary restraining order, stay or other provisional remedy or any extraordinary remedy with respect to a department's decision under sub. (2) may grant the remedy or other relief only if the petitioner proves by clear and convincing evidence that any defects in a department's compliance with s. 1.11 or 1983 Wisconsin Act 27, section 2020 (32m) cannot be remedied during the construction phase of the project.

History: 1983 a. 27.

Sub. (3) violates constitutional guarantee of equal protection. *Milwaukee Brewers v. DH&SS*, 130 W (2d) 79, 387 NW (2d) 254 (1986)

46.044 State psychiatric institute. There is established the state psychiatric institute to be maintained as a department of the university of Wisconsin-Madison. The statutes relating to admission, commitment, placement, transfer, custody and discharge of mentally ill persons are applicable to the psychiatric institute.

History: 1975 c. 430; 1977 c. 26.

46.045 Minimum security correctional institutions. The department may establish and operate minimum security correctional institutions. The secretary may allocate and reallocate existing and future facilities as part of these institutions. The institutions are subject to s. 46.03 (1) and are state prisons as defined in s. 53.01. Inmates from Wisconsin state prisons may be transferred to these institutions and they shall be subject to all laws pertaining to inmates of other penal institutions of the state. Officers and employees of the institutions shall be subject to the same laws as pertain to other penal institutions. Inmates shall not be received on direct commitment from the courts. In addition to the exemptions under s. 13.48 (13), construction or establishment of facilities at institutions which are community correctional

residential centers initially established prior to July 2, 1983, shall not be subject to the ordinances or regulations relating to zoning, including zoning under ch. 91, of the county and municipality in which the construction or establishment takes place.

History: 1977 c. 418; 1983 a. 27; 1985 a. 29.

46.047 Medium security prison. The department may construct a medium security prison to be known as the Fox Lake correctional institution on state-owned land known as prison farm 10 in Dodge county. Inmates from the Wisconsin state prisons may be transferred to this institution and they shall be subject to all laws pertaining to inmates of other penal institutions of this state. Officers and employes of the institutions shall be subject to the same laws as pertain to other penal institutions. Inmates shall not be received on direct commitment from the courts.

History: 1977 c. 418 s. 924 (18) (b).

46.048 Central Wisconsin center for the developmentally disabled. There is established a new institution to be located near the city of Madison and to be known as the central Wisconsin center for the developmentally disabled. The department, with the approval of the governor, is authorized to purchase lands for a suitable site and to erect and equip such buildings as it deems necessary from funds appropriated for the long-range building program. Such institution when constructed shall be maintained and operated by the department and all laws pertaining to the care of mentally deficient patients shall apply.

History: 1975 c. 189 s. 99 (2); 1975 c. 430 s. 78.

46.049 Training school for delinquent boys. The department, with the approval of the governor, may purchase or accept a gift of land for a suitable site for an additional training school for delinquent boys and erect and equip such buildings as it deems necessary at such time as funds may be allocated for that purpose by the building commission. Such training school or other additional facilities for delinquent boys financed by the authorized 1965-67 building program shall be located north of a line between La Crosse and Manitowoc. Such institution when constructed shall be maintained and operated by the department for the treatment of delinquent boys committed to the department under s. 48.34. All laws pertaining to the care of children received under s. 48.34 shall apply. Officers and employes of the institution are subject to the same laws as apply to other facilities described in s. 48.52.

46.05 Medium/maximum security prison; medium security prison. (1) The department shall construct or establish an adult medium/maximum security institution or an adult medium security institution or both.

(1m) The medium security institution under sub. (1) shall be the Oshkosh correctional institution and shall be located north of Oshkosh, north of Snell road and south of Sunyview road at the site which, on July 31, 1981, is the site of the Winnebago correctional farm.

(1o) (a) In addition to the institutions under sub. (1), the department shall establish a correctional institution located in Milwaukee in the area bounded on the north by highway I 94, on the south and west by the Menomonee river and on the east by 35th street on property owned by the Milwaukee road railroad on March 28, 1983. The department may acquire additional land owned by the Milwaukee road railroad on March 28, 1983, on the west and south sides of and contiguous to the Menomonee river. The department may proceed to acquire the property specified under this subsection, except that if s. 85.09 applies the department shall proceed in

cooperation with the department of transportation under s. 85.09 (4g) (b). The department shall not acquire any additional property for a correctional institution in the city of Milwaukee prior to January 1, 1985, unless the site is designated by the legislature by statute.

(b) In the selection of classified service employes of the institution specified in par. (a), the appointing authority shall, whenever possible, use the expanded certification program under rules of the administrator of the division of merit recruitment and selection in the department of employment relations to ensure that employes of the institution reflect the general population of the surrounding community in the city in which the institution is located. The administrator of the division of merit recruitment and selection in the department of employment relations shall provide guidelines for the administration of this selection procedure.

(1p) Inmates from the Wisconsin state prisons may be transferred to the institutions under this section and they shall be subject to all laws pertaining to inmates of other penal institutions of this state. Officers and employes of the institutions shall be subject to the same laws as pertain to other penal institutions. Inmates shall not be received on direct commitment from the courts.

(2) Construction or establishment of the institutions shall be in compliance with all state laws except s. 32.035 and ch. 91 and except as provided under s. 46.0435 and 1983 Wisconsin Act 27, section 2020 (32m).

(3) In addition to the exemptions under s. 13.48 (13), construction or establishment of the institutions shall not be subject to the ordinances or regulations relating to zoning, including zoning under ch. 91, of the county and municipality in which the construction or establishment takes place.

History: 1979 c. 221; 1981 c. 20, 317, 387; 1983 a. 16; 1983 a. 27 ss. 953p, 953r, 2200 (15); 1985 a. 29.

See note to Art. IV, sec. 18, citing *Milwaukee Brewers v. DH&SS*, 130 W (2d) 79, 387 NW (2d) 254 (1986).

46.051 Contracts with Minnesota. (1) The department may enter into one or more contracts with the state of Minnesota for the transfer and confinement in Minnesota of prisoners who have been committed to the custody of the department. Any such contract shall provide for all of the following:

(a) A termination date.

(b) Provisions concerning the costs of prisoner maintenance, extraordinary medical and dental expenses and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment, including those costs not reasonably included as part of normal maintenance.

(c) Provisions concerning any participation in programs of inmate employment if any, the disposition or crediting of any payments received by inmates on account of employment, and the crediting of proceeds from or disposal of any products resulting from employment.

(d) Delivery and retaking of inmates.

(e) Waiver of extradition by Minnesota and Wisconsin.

(f) Retention of jurisdiction of the prisoners transferred by Wisconsin.

(g) Regular reporting procedures by Minnesota officials on Wisconsin prisoners.

(h) Provisions concerning procedures for probation, parole and discharge.

(i) The same standards of reasonable and humane care as the prisoners would receive in an appropriate Wisconsin institution.

(j) Any other matters as are necessary and appropriate to fix the obligations, responsibilities and rights of Minnesota and Wisconsin.

(2) Inmates from Wisconsin state prisons while in Minnesota institutions are subject to all provisions of law and regulation concerning the confinement of persons committed for violations of the laws of Minnesota, except as otherwise provided for by any contract entered into under sub. (1).

(3) Any hearing to consider parole to which an inmate confined under this contract may be entitled by the laws of Wisconsin will be conducted by the Wisconsin parole board under rules of the department.

(4) Sections 16.75 and 46.036 do not apply to contracts entered into under sub. (1).

(5) The provisions of this section are severable, as provided in s. 990.001 (11). The provisions of any contract entered into under sub. (1) are severable. If any provision of such a contract is invalid, or if the application of a provision of the contract to any person or circumstance is invalid, the invalidity does not affect other provisions or applications which can be given effect without the invalid provision or application.

(6) This section constitutes legislative approval for purposes of s. 53.26.

History: 1981 c. 20; 1983 a. 27.

46.052 Correctional and other institutions; expansion and establishment of facilities. (1) On or after July 31, 1981, the department shall:

(a) Provide the facilities necessary for at least 25 additional beds at Camp Flambeau.

(am) Provide the facilities necessary to operate Hughes hall at the Winnebago mental health institute with 160 beds. The facilities may be used for forensic patients and persons transferred under ch. 51 or 53.

(b) Provide the facilities necessary for at least 45 additional beds for a corrections drug abuse treatment program on the grounds of the Winnebago mental health institute.

(bp) Provide the facilities necessary for not more than 300 beds at the correctional institution under s. 46.05 (1m).

(bx) Provide the facilities necessary for the correctional institution under s. 46.05 (1o).

(d) Provide the facilities necessary for at least 40 additional beds at the Green Bay work release center.

(e) Provide the facilities necessary for at least 20 additional beds at Black river camp.

(f) Provide the facilities necessary for at least 20 additional beds at the Oregon camp.

(g) Provide the facilities necessary for housing to alleviate overcrowding.

(2) In addition to the exemptions under s. 13.48 (13), construction or establishment of facilities necessary to comply with sub. (1) shall not be subject to the ordinances or regulations relating to zoning, including zoning under ch. 91, of the county and municipality in which the construction or establishment takes place.

(3) For compliance with this section, the department may expend moneys authorized under chapter 29, laws of 1977, section 1606c (1) (b) relating to the correctional system which have not been expended or encumbered or moneys available under residual existing general fund supported borrowing, not to exceed \$1,500,000.

(4) Any purchase, lease or construction of additional correctional facilities is subject to prior approval by the building commission and the joint committee on finance.

(5) This section constitutes enumeration in the authorized state building program for purposes of s. 20.924.

(6) The building commission is encouraged and authorized to utilize the most economical and expeditious construction

alternatives available to effectuate completion of the construction projects.

History: 1981 c. 20; 1983 a. 27; 1985 a. 29.

46.053 State-local shared correctional facilities. In cooperation with any county or group of counties, the department may contract for the establishment and operation of state-local shared correctional facilities under s. 53.45. Except as provided in s. 53.45 (4), the secretary may allocate and reallocate existing and future facilities as state-local shared correctional facilities. The shared facilities shall be institutions under s. 46.03 (1) and shall be prisons under s. 53.01. Inmates from Wisconsin state prisons may be transferred to these facilities and, except as to any separate rules established in the contract governing a shared facility, shall be subject to all laws pertaining to inmates of other penal institutions of this state. Officers and employes of the facilities shall be subject to the same laws as pertain to other penal institutions. Inmates may not be received on direct commitment from the courts.

History: 1983 a. 332.

NOTE: 1983 Wisconsin Act 332, which created this section, contains a long prefatory note explaining the bill. See 1983 Session Laws.

46.054 Prison population ceilings. (1) On and after January 1, 1982, the prisoner populations at the following institutions shall not exceed any of the following bed capacities:

(a) The Waupun correctional institution shall not exceed a 915-bed capacity.

(b) The Green Bay correctional institution shall not exceed a 648-bed capacity.

(c) The Fox Lake correctional institution shall not exceed a 585-bed capacity.

(d) The Kettle Moraine correctional institution shall not exceed a 387-bed capacity.

(e) The Dodge correctional institution shall not exceed a 359-bed capacity.

(2) (a) In this section, "regular housing bed" means a single occupancy cell bed, dormitory bed or reception bed. "Regular housing bed" does not include a medical service bed or segregation cell bed.

(b) In determining the prisoner population under sub. (1), any prisoner who is physically located at any of the institutions under sub. (1) (a) to (e) and assigned to a regular housing bed shall be included, regardless of whether he or she has been assigned to another institution and is awaiting transfer.

(3) The bed capacities under sub. (1) may be exceeded if an emergency exists. After the emergency ceases to exist, the department shall again comply with this section. The department shall promulgate a rule defining "emergency" for application under this subsection.

History: 1979 c. 221; 1981 c. 20; 1983 a. 16, 272; 1985 a. 29.

46.056 Wisconsin resource center. The department shall establish the Wisconsin resource center on the grounds of the Winnebago mental health institute near Oshkosh. The subunit of the department responsible for community services shall have responsibility for inmates transferred under s. 53.055.

History: 1981 c. 20.

Rights and responsibilities of counties in prisoner transfers to Wisconsin resource center discussed. 71 Atty Gen. 170.

46.057 Training of correctional officers. (1) In this section, "correctional officer" means any person classified as a correctional officer employed by the state whose principal duty is the supervision of inmates at a prison, as defined in s. 53.01.

(2) (a) Correctional officers serving under permanent appointment prior to July 31, 1981 are not required to meet any

requirement under par. (b) as a condition of continued employment. Failure of any such correctional officer to fulfill those requirements does not make that person ineligible for any promotional examination for which he or she is otherwise eligible. Those correctional officers may voluntarily participate in this program.

(b) No person may be permanently appointed as a correctional officer unless the person has satisfactorily completed a preservice training program approved by the department.

History: 1981 c. 20.

46.058 Bonds of employes; police powers; investigation of complaints.

(1) The steward of each institution shall execute and file an official bond in such sum and with such sureties as the secretary prescribes. He shall also require any other officer or other person having the possession or custody of any money or property belonging to the state or any institution under its control or supervision to give an official bond, and from time to time renew the same. The secretary may require a position bond whenever it appears to him advisable, such position bond to have the same coverage as the official bond.

(2) The warden and the superintendent of all the state charitable, curative, penal and reformatory institutions and of county hospitals and county homes, and such employes under them to whom they delegate police power, may arrest any person within or upon the grounds of such institutions whom they have reason to believe guilty of any offense against the laws or regulations governing the same; and for such purpose they shall possess the powers of constables.

(3) The department shall investigate complaints against any institution under its jurisdiction or against the officers or employes thereof. For that purpose the secretary and such officers and employes as the secretary authorizes may summon and swear witnesses, take testimony and compel the production of books and papers. The department may, on its own initiative, investigate the affairs of any institution. Any written communication or complaint addressed to the secretary by any inmate, employe or subordinate of any such institution shall be forthwith forwarded unopened to the addressee.

History: 1975 c. 39; 1975 c. 199 s. 138; 1979 c. 221 s. 352.

46.059 Minimum security corrections institutions. The department may, with the approval of the joint committee on finance, increase staffing levels at minimum security institutions sufficiently to allow temporary placement of medium security inmates at existing minimum security institutions as may be necessary to relieve medium security overcrowding. The temporary placement under this section may constitute a partial use of the institution.

History: 1981 c. 20.

46.06 Lands; condemnation, easements, leases, sales, purchases.

(1) CONDEMNATION. When the department is authorized and desires to acquire land and is unable to agree with the owner upon the terms of purchase, or when such agreement cannot be had without unreasonable delay, the department may condemn the land in the manner prescribed in ch. 32.

(2) EASEMENTS. The department may grant easements for the extension of municipal and public utilities onto the lands of the institutions under its jurisdiction, for the purpose of connecting railroads, roads, waterworks, sewers, electric lines and similar facilities, to serve such institutions.

(3) LEASES. The department may rent additional lands for the operation of the institutions under its jurisdiction.

(3a) LEASE OF LANDS FOR RADIO RANGE STATION. The department may lease state owned lands under its control situated in section 16, town 24 north, range 18 east, Seymour township, Outagamie county, not exceeding 2 acres in extent, to the United States of America, to be used by the civil aeronautics administration for a radio range station. The terms of the lease shall be determined by the department and may grant to the lessee authority to erect navigational aids and other structures on such lands. Such lease shall not be effective unless approved by the governor in writing.

(4) SALES. The department may, with the approval of the building commission, sell and convey such lands under the jurisdiction of the department as the secretary deems to be in excess of the present or future requirements of the department for either the operation of its facilities or programs, for the maintenance of buffer zones adjacent to its facilities or for other public purposes. The proceeds of such sales shall be credited to the state building trust fund.

(5) PURCHASES. The department may, with the approval of and release of state building trust fund by the building commission, acquire by purchase such lands, together with such improvements as are situated thereon, as the secretary deems necessary for the department's farm programs, or for the purpose of providing adequate buffer zones to its existing facilities, or for the purpose of eliminating flexuous boundaries in cooperation with owners of lands adjoining lands under the department's jurisdiction.

History: 1973 c. 12 s. 10; 1973 c. 90; 1975 c. 39 ss. 346, 732 (2).

46.062 Payment for damaged employe clothing, etc. The department in which an employe is employed shall pay the cost of repairing eye glasses, watches or articles of clothing damaged in the line of duty where such damage results from any act of a person committed to or confined in any state facility, or institution of the state under the jurisdiction of the department. If the eye glasses, watches or clothes are damaged beyond repair, the department shall pay the actual value of such eye glasses or clothing as determined by the rules of the department, and the actual value of watches but not to exceed \$50 each. The value of such articles shall be determined as of the time of the damage thereto.

46.064 Client wages, allowances and release payments.

The department may pay a wage or an allowance and a release payment to clients at its institutions. The department shall prescribe the amounts of pay and such hours, health and other conditions in connection with employment as are reasonable.

History: 1971 c. 125, 215; 1973 c. 333.

46.065 Wages to prisoners. The department may provide for assistance of prisoners on their discharge; for the support of their families while in confinement; or for the payment, either in full or ratably, of their obligations acknowledged by them in writing or which have been reduced to judgment by the allowance of moderate wages, to be paid from the operation, maintenance, farm and construction appropriations of the institution in which they are confined. Until the prisoner's final discharge, the funds arising from the wages shall be under the control of the officer in charge of the institution and shall be used for the crime victim and witness assistance surcharge under s. 973.045 (4) and the benefit of the prisoner, the prisoner's family and other obligations specified in this section. Earnings by inmates working in the prison industries and the retention and distribution thereof shall be governed by s. 56.01 (4) and (8).

History: 1975 c. 396, 421; 1977 c. 29; 1983 a. 27.

46.066 Freedom of worship; religious ministrations. (1) Subject to reasonable exercise of the privilege, clergymen of all religious faiths shall be given an opportunity to conduct religious services within the state institutions at least once each week, attendance at such services to be voluntary.

(2) Religious ministrations and sacraments according to his faith shall be allowed to every inmate who requests them.

(3) Every inmate who requests it shall have the use of the Bible.

The state must make copies of the Quran available to prisoners to the same extent that Bibles are made available. *Pitts v. Knowles*, 339 F Supp. 1183.

46.07 Property of inmates and probationers; deposit and distribution. (1) PROPERTY DELIVERED TO STEWARD; CREDIT AND DEBIT. All money including wages under ss. 46.064, 46.065 and 53.12 and other property delivered to an officer or employe of any institution for the benefit of an inmate shall forthwith be delivered to the steward, who shall enter the same upon the steward's books to the credit of the inmate. The property shall be used only under the direction and with the approval of the superintendent or warden and for the crime victim and witness assistance surcharge under s. 973.045 (4) or the benefit of the inmate. If the money remains uncalled for for one year after the inmate's death or departure from the institution, the superintendent shall deposit the same in the general fund. If any inmate leaves property, other than money, uncalled for at an institution for one year, the superintendent shall sell the property, and the proceeds shall be deposited in the general fund. If any person satisfies the department, within 5 years after the deposit, of his or her right to the deposit, the department shall direct the department of administration to draw its warrant in favor of the claimant and it shall charge the same to the appropriation made by s. 20.913 (3) (c).

(1m) CENTRAL RECEPTION UNIT; EXCEPTION. Notwithstanding sub. (1) and s. 53.13, an inmate account need not be opened or maintained for an inmate placed at the central reception unit at the Dodge correctional institution.

(2) PROPERTY DELIVERED TO OFFICER OR EMPLOYEE. (a) All money or other property paid or delivered to a probation officer or employe of the department by or for the benefit of any person on probation or parole shall be immediately transmitted to the department and it shall enter the same upon its books to his credit. Such property shall be used only under the direction of the department.

(b) If he absconds, the money shall be credited to the revolving fund created by s. 57.075; and other property if not called for within one year shall be sold by the department and the proceeds shall be credited to said fund.

(c) If any person, within 5 years after such crediting of funds, satisfies the department that he is entitled thereto, the department shall certify the amount thereof to the department of administration for payment to the claimant from the appropriation made by s. 20.435 (3) (g).

History: 1979 c. 221 s. 2202 (20); 1983 a. 27.

46.09 Purchases, bills, audits, payments. (1) STEWARD AS BUSINESS MANAGER. The steward of each institution shall be the local business manager and requisitioning officer, subject to the direction and the rules and regulations of the department, and within the limits of the approved monthly estimates shall purchase (as provided in ss. 16.70 to 16.82) all necessary materials and supplies. He shall have the immediate charge of all books, accounts, papers and records relating to its financial management, shall keep detailed accounts of all receipts and expenditures, and shall be responsible for the safekeeping and economical use of all stores and supplies.

(2) BUTTER AND CHEESE. No butter or cheese not made wholly and directly from pure milk or cream, salt and harmless coloring matter shall be used in any of the institutions of the state.

(3) PUBLIC WELFARE INSTITUTIONS PREAUDIT; PAYMENTS. Unless otherwise provided by law, no bills may be incurred in the management of such institutions nor be paid until they have been audited by the department of health and social services under the supervision of the department of administration. All payments shall be made on the warrant of the department of administration drawn in accordance with the certificate of the proper designated officer of the department of health and social services. All claims and accounts before being certified to the department of administration by the department of health and social services, shall be verified and approved in the same manner as provided in s. 16.53.

History: 1973 c. 335 s. 13; 1985 a. 176.

46.10 Cost of care and maintenance, liability; collection and deportation counsel; collections; court actions; recovery. (1) Liability and the collection and enforcement of such liability for the care, maintenance, services and supplies specified in this section is governed exclusively by this section.

(2) Except as provided in sub. (2m), any person, including but not limited to a person admitted, committed or placed under ss. 48.34 (4m), 51.10, 51.13, 51.15, 51.20, 51.35 (3), 51.37 (5), 51.45 (10), (11), (12) and (13), 55.05, 55.06, 971.14 (2) and (5), 971.17 (1), 975.01, 1977 stats., 975.02, 1977 stats., 975.06 and 975.17, 1977 stats., receiving care, maintenance, services and supplies provided by any institution in this state including university of Wisconsin hospital and clinics, in which the state is chargeable with all or part of the person's care, maintenance, services and supplies, and any person receiving care and services from a county department established under s. 51.42 or 51.437 or from a facility established under s. 49.175, and the person's property and estate, including the homestead, and the spouse of the person, and the spouse's property and estate, including the homestead, and, in the case of a minor child, the parents of the person, and their property and estates, including their homestead, and, in the case of a foreign child described in s. 48.839 (1) who became dependent on public funds for his or her primary support before an order granting his or her adoption, the resident of this state appointed guardian of the child by a foreign court who brought the child into this state for the purpose of adoption, and his or her property and estate, including his or her homestead, shall be liable for the cost of the care, maintenance, services and supplies in accordance with the fee schedule established by the department under s. 46.03 (18). If a spouse, widow or minor, or an incapacitated person may be lawfully dependent upon the property for their support, the court shall release all or such part of the property and estate from the charges that may be necessary to provide for those persons. The department shall make every reasonable effort to notify the liable persons as soon as possible after the beginning of the maintenance, but the notice or the receipt thereof is not a condition of liability.

(2m) The liability specified in sub. (2) shall not apply to tuberculosis patients receiving care, maintenance, services and supplies under s. 58.06 and ch. 149, to persons 18 and older receiving care, maintenance, services and supplies provided by prisons named in s. 53.01 or to parents of a minor who receives care for alcohol or drug abuse under s. 51.47 (1) without consent of the minor's parent or guardian.

(3) After investigation of the liable persons' ability to pay, the department shall make collection from the person who in the opinion of the department under all of the circumstances

is best able to pay, giving due regard to relationship and the present needs of the person or of the lawful dependents. However, the liability of relatives for maintenance shall be in the following order: first, the spouse of the patient; then, in the case of a minor, the parent or parents.

(4) Upon the failure of any person liable under sub. (2) to make payment or enter into or comply with an agreement for payment, the department may bring an action to enforce the liability or may apply to the circuit court of the county in which the patient or liable person resides for an order to compel payment.

(5) (a) Upon receiving an application under sub. (4) to compel payment, the circuit court shall hear the allegations and proofs of the parties and shall by order require payment of maintenance by the person liable therefor, if of sufficient ability, having due regard to the present needs of the person and his or her lawful dependents. The order shall specify an amount for maintenance to be paid periodically during a specified period or until the further order of the court. Notice of hearing on the application shall be served upon the liable person at least 10 days prior to the hearing in the manner of service of a summons in that court. Upon application of any interested party, and upon like notice and procedure, the court may modify the order. Any party aggrieved by the order or by the judgment of the court may appeal therefrom in the manner provided by law. If an appeal is taken by the department, an undertaking need not be filed.

(b) If a person subject to an order under par. (a) fails to comply with the order, the department may commence an action to recover the amount due.

(6) The sworn statement of the collection and deportation counsel, or of the secretary, shall be evidence of the fee and of the care and services received by the patient.

(7) The department shall administer and enforce this section. It shall appoint an attorney to be designated "collection and deportation counsel" and other necessary assistants. The department may delegate to such counsel such other powers and duties as it deems advisable. He or any of his assistants may administer oaths, take affidavits and testimony, examine public records, subpoena witnesses and the production of books, papers, records, and documents material to any matter of proceeding relating to payments for the cost of maintenance. The department shall encourage agreements or settlements with the liable person, having due regard to ability to pay and the present needs of lawful dependents.

(8) The department may:

(a) Appear for the state in any and all collection and deportation matters arising in the several courts, and may commence suit in the name of the department to recover the cost of maintenance against the person liable therefor.

(b) Determine whether any patients are subject to deportation; and on behalf of this state enter into reciprocal agreements with other states for deportation and importation of persons who are public charges, upon such terms as will protect the state's interests and promote mutual amicable relations with other states.

(c) From time to time investigate the financial condition and needs of persons liable under sub. (2), their ability to presently maintain themselves, the persons legally dependent upon them for support, the protection of the property and investments from which they derive their living and their care and protection, for the purpose of ascertaining the person's ability to make payment in whole or in part.

(d) After due regard to the case and to a spouse and minor children who are lawfully dependent on the property for support, compromise or waive any portion of any claim of

the state or county for which a person specified under sub. (2) is liable, but not any claim payable by an insurer under s. 632.89 (2) or (2m) or by any other 3rd party.

(e) Make an agreement with a person who is liable under sub. (2), or who may be willing to assume the cost of maintenance of any patient, providing for the payment of such costs at a specified rate or amount.

(f) 1. Make adjustment and settlement with the several counties for their proper share of all moneys collected.

(h) Ensure that all moneys collected under sub. (12) on and after January 1, 1974, be credited under ss. 46.036 and 51.423.

(i) Pay quarterly from the appropriation under s. 20.435 (2) (gk) and (4) (gg) the collection moneys due county departments under ss. 51.42 and 51.437. Payments shall be made as soon after the close of each quarter as is practicable.

(8m) For county departments under s. 51.42 or 51.437, the department shall:

(a) Deduct 100% of all money collected on or after January 1, 1975, from the chargeable cost of care at the mental health institutes;

(am) 1. Deduct 100% of all money collected prior to January 1, 1982, from the chargeable cost of care at the centers for the developmentally disabled under s. 51.437 (4rm) (c) 1; and

2. Deduct or remit, through the appropriation under s. 20.435 (2) (gk), all money collected for persons ineligible for medical assistance benefits and who lack other means of full payment for care provided on or after January 1, 1982, by centers for the developmentally disabled. The deduction or remittance under this subdivision may not exceed the amount chargeable under s. 51.437 (4rm) (c) 2. a.

(b) Return to boards 70% of all collections made for county hospitals; and

(c) Return to boards 50% of collections made by the department for services other than those specified under par. (a), (am) or (b).

(d) Paragraphs (a) and (am) do not apply to primary psychiatric care, which shall be billed on the basis of total chargeable cost. Collections for primary care shall be deducted from the chargeable cost of other types of care provided at the institutes.

(9) Any person who wilfully testifies falsely as to any material matter in an investigation or proceeding under this section shall be guilty of perjury. Banks, insurers, savings and loan associations, brokers and fiduciaries, upon request of the department, shall furnish in writing and duly certified, full information regarding the property, earnings or income or any funds deposited to the credit of or owing to any person liable under sub. (2). Such certified statement shall be admissible in evidence in any action or proceeding to compel payment under this section, and shall be evidence of the facts therein stated, provided a copy of such statement be served upon the party sought to be charged not less than 3 days before the hearing.

(10) The department shall make all reasonable and proper efforts to collect all claims for maintenance, to keep payments current, and to periodically review all unpaid claims.

(11) (a) Except as provided in par. (b), in any action to recover from a person liable under this section, the statute of limitations may be pleaded in defense.

(b) If a person who is liable under this section is deceased, a claim may be filed against the decedent's estate and the statute of limitations specified in s. 859.01 shall be exclusively applicable. This paragraph applies to liability incurred on or after July 20, 1985.

(12) The district attorney or his or her assistants in a county having a population of 500,000 or more shall, in

matters pertaining to the recovery of the cost of maintenance of persons in county institutions in that county, have the same authority as granted in this section to the department.

(13) This section does not impair any rights or liability existing prior to June 19, 1947.

(14) Liability of a person specified in sub. (2) or s. 46.03 (18) for inpatient care and maintenance of persons under 18 years of age at community mental health centers, a county mental health center under s. 51.08, the centers for the developmentally disabled, Mendota mental health institute and Winnebago mental health institute or care and maintenance of persons under 18 years of age in residential, non-medical facilities such as group homes and foster care, child care and juvenile correctional institutions is determined in accordance with the cost-based fee established under s. 46.03 (18). The department shall bill the liable person up to any amount of liability not paid by an insurer under s. 632.89 (2) or (2m) or by other 3rd party benefits, subject to rules which include formulas governing ability to pay promulgated by the department under s. 46.03 (18). Any liability of the patient not payable by any other person terminates when the patient reaches age 18, unless the liable person has prevented payment by any act or omission.

(16) The department shall delegate to county departments under ss. 51.42 and 51.437 or the local providers of care and services meeting the standards established by the department under s. 46.036, the responsibilities vested in the department under this section for collection of patient fees for services other than those provided at state facilities if such county departments or providers meet the conditions deemed appropriate by the department. The department may delegate to county departments under ss. 51.42 and 51.437 the responsibilities vested in the department under this section for collection of patient fees for services provided at the state facilities if the necessary conditions are met.

History: 1971 c. 125; 1971 c. 213 s. 5; 1973 c. 90 ss. 223, 223m, 560 (3); 1973 c. 198, 333; 1975 c. 39 ss. 347 to 350, 734; 1975 c. 41, 94; 1975 c. 189 s. 99 (2); 1975 c. 198, 199, 224; 1975 c. 413 s. 18; 1975 c. 428; 1975 c. 430 ss. 6, 8, 80; 1977 c. 29, 203; 1977 c. 418 ss. 294 to 295, 924 (50), 929 (18); 1977 c. 428; 1977 c. 447 s. 206; 1977 c. 449 ss. 75, 497; 1979 c. 34; 1979 c. 102 ss. 236 (4), 237; 1979 c. 117, 221, 331; 1981 c. 20 ss. 755 to 758, 2202 (20) (f), (n); 1981 c. 81; 1983 a. 27 ss. 955m, 2202 (20); 1985 a. 29, 176, 281, 332.

Before there can be recovery by the department for care and hospitalization of an individual committed to one of its institutions by reason of lack of competency to stand trial, the nature of the confinement must be changed to a civil commitment. Conservatorship of Grams, 63 W (2d) 194, 216 NW (2d) 889.

Liability under (2) for cost of institutionalization is constitutional. In Matter of Guardianship of Nelson, 98 W (2d) 261, 296 NW (2d) 736 (1980).

Sections 46.03 (18) and 46.10 do not constitute an unlawful delegation of legislative power. In Matter of Guardianship of Klisurich, 98 W (2d) 274, 296 NW (2d) 742 (1980).

Statute imposing liability for costs of care and services on persons committed to state institutions did not apply to persons committed in violation of due process. Jankowski v. Milwaukee County, 104 W (2d) 431, 312 NW (2d) 45 (1981).

46.11 Transfer of inmates. (1) When an inmate of a state or county institution is lawfully moved from one institution to another by the department, the superintendent of the institution from which he is removed shall notify the committing court of the removal.

(2) The department may designate in the removal order a person to make the transfer. The person designated shall receive no compensation, but shall be paid necessary traveling expenses, including those of the inmate and of any necessary assistant, to be adjusted by the department and charged to the current expense fund of the institution from which the removal is made as part of the inmate's maintenance costs.

History: 1983 a. 36.

46.13 Wassermann tests. The department may arrange with the laboratory of hygiene to secure the Wassermann test for any person confined in any state or county institution.

46.14 Reports of state institutions. (1) MONTHLY. The officer in charge of each state institution under the control of the department shall report monthly to the department, an itemized statement of all receipts and disbursements, and of the daily number of inmates, officers, teachers and employes, and of the wages paid to each.

(2) BIENNIAL. On July 1 in each even-numbered year such officer shall report to the department, covering the preceding biennial fiscal term, a summarized statement of the management of every department of the institution and of all receipts and disbursements, and such other information as may be required by the department.

46.15 Institutions subject to chapter 150. Nursing homes or hospitals under ss. 46.16, 46.17, 46.175, 46.20 and 46.205 are subject to ch. 150.

History: 1977 c. 29; 1983 a. 27.

46.16 General supervision and inspection by department.

(1) GENERALLY. The department shall investigate and supervise all the charitable, curative, reformatory and penal institutions, including county infirmaries of every county and municipality (except tuberculosis sanatoriums); all detention homes and shelter care facilities for children and all industrial schools, hospitals, asylums and institutions, organized for the purpose set forth in s. 58.01, and familiarize itself with all the circumstances affecting their management and usefulness.

(2) CHILD WELFARE AGENCIES; FOSTER HOMES; CHILD CARE CENTERS; DAY NURSERIES; NURSERY SCHOOLS. It may license and revoke licenses of and exercise supervision over all child welfare agencies and the placement of children in foster homes, and grant permits to foster homes, child care centers, day nurseries and nursery schools. In the discharge of this duty it may inspect the records of child welfare agencies, child care centers, day nurseries, nursery schools and visit all institutions conducted by them and all foster homes in which children are placed.

(3) COUNTY HOMES, POOR RELIEF. It shall visit the county homes and ascertain the number of each sex and the number of mentally ill, mentally deficient, deaf or blind persons, and children supported in each, at what cost and under what circumstances affecting their health, comfort, morals and education; collect statistics of the cost of support, and other important facts, of the poor relieved at public expense outside of county homes; and collect information as to the adequacy and efficiency of existing laws for the support and relief of the poor, and the causes of pauperism in the state.

(4) PRISONS. It shall visit all places in which persons convicted or suspected of crime or mentally ill persons are confined, and ascertain their arrangement for the separation of the hardened criminals from juvenile offenders and persons suspected of crime or detained as witnesses; collect statistics concerning the inmates, their treatment, employment and reformation; and collect information of other facts and considerations affecting the increase or decrease of crime and mental illness.

(5) INSPECTIONS. It shall inquire into the methods of treatment, instruction, government and management of inmates of the institutions mentioned in this section; the conduct of their trustees, managers, directors, superintendents and other officers and employes; the condition of the buildings, grounds and all other property pertaining to said institutions, and all other matters pertaining to their usefulness and management; and recommend to the officers in charge such changes and additional provisions as it deems proper.

(6) FREQUENCY OF INSPECTIONS. It shall inspect and investigate each institution annually, or oftener; and, when directed

by the governor, it shall make special investigation into its management, or anything connected therewith, and report to him the testimony taken, the facts found and conclusions thereon.

(7) **ENFORCEMENT BY ATTORNEY GENERAL AND DISTRICT ATTORNEYS.** Upon request of the department, the attorney general or the district attorney of the proper county shall aid in any investigation, inspection, hearing or trial had under the provisions of this chapter, or those sections of ch. 48 relating to powers of the department, and shall institute and prosecute all necessary actions or proceedings for the enforcement of such provisions and for the punishment of violations of the same. The attorney general or district attorney so requested shall report or confer with the department regarding the request, within 30 days after the receipt of such request.

(8) **OPPORTUNITY TO INSPECT.** All trustees, managers, directors, superintendents and other officers or employees of such institutions shall at all times afford to every member of the department and its agents, unrestrained facility for inspection of and free access to all parts of the buildings and grounds and to all books and papers of such institutions; and shall give, either verbally or in writing, such information as the department requires; and if any person offends against this requirement he shall forfeit not less than \$10 nor more than \$100.

(9) **TESTIMONIAL POWER; EXPENSES.** The director or any person delegated by him may administer oaths and take testimony; and may cause depositions to be taken. All expenses of the investigations, including fees of officers and witnesses, shall be charged to the appropriation for the department.

(10) **STATISTICS TO BE FURNISHED.** Wherever the department is required to collect statistics, the person or agency shall furnish the required statistics on request.

This section does not convey authority to the department to order methods of operation, numbers and qualifications of staff, standards for food service, and the nature of treatment and training programs in local places of confinement. Section 46.17 relates to construction and maintenance of confinement buildings and provides no additional authority to the department under this section. 63 Atty. Gen. 267.

Department is authorized by this section to compel county and local officers to provide jail information. 67 Atty. Gen. 242.

46.17 County buildings; establishment, approval, inspection. (1) The department shall fix reasonable standards and regulations for the design, construction, repair and maintenance of county homes, county infirmaries, county hospitals, mental health facilities, houses of correction, reforestation camps maintained under s. 56.07, jails as defined in s. 53.30, extensions of jails under s. 59.68 (7), rehabilitation facilities under s. 59.07 (76), lockup facilities as defined in s. 53.30 and, on or after January 1, 1985, Huber facilities under s. 56.09, and juvenile detention homes and shelter care facilities, with respect to their adequacy and fitness for the needs which they are to serve.

(2) The selection and purchase of the site, and the plans, specifications and erection of buildings for such institutions shall be subject to the review and approval of the department. Department review shall include review of the proposed program to be carried out by the institution and the program's ability to meet the mental health service requirements of the county and the area it serves.

(3) Before any such building is occupied, and annually or oftener thereafter, the department shall inspect it with respect to safety, sanitation, adequacy and fitness, and report to the authorities conducting the institution any deficiency found, and order the necessary work to correct it or a new building. If within 6 months thereafter such work is not commenced, or not completed within a reasonable period thereafter, to the satisfaction of the department, it shall suspend the allowance

of state aid for, and prohibit the use of such building until said order is complied with.

History: 1971 c. 125, 215; 1983 a. 254.

46.175 County institutions: minimum standards. Notwithstanding any other provision of law, any county currently operating an institution established under s. 49.14, 49.16, 49.171, 51.08 or 51.09 may, by resolution of the county board, designate such institution or distinct part of such institution as a facility to be operated under s. 50.02, 50.03 or 50.33. Any county institution or part thereof, where so designated, shall be required to meet those licensure standards established by the department for the type of facility designated by the county. Any designation under this section may be made only if such designation will not result in any additional cost to the state.

History: 1971 c. 215; 1975 c. 413 s. 18; 1975 c. 430 s. 80.

46.18 Trustees of county institutions. (1) **TRUSTEES.** Every county home, infirmary, hospital, tuberculosis hospital or sanatorium, or similar institution, or house of correction established by any county whose population is less than 500,000 shall, subject to regulations approved by the county board, be managed by a board of trustees, electors of the county, chosen by ballot by the county board. At its annual meeting, the county board shall appoint an uneven number of trustees, from 3 to 9 at the option of the board, for staggered 3-year terms ending the first Monday in January. Any vacancy shall be filled for the unexpired term by the county board; but the chairperson of the county board may appoint a trustee to fill the vacancy until the county board acts.

(2) **ELIGIBILITY.** No trustee is eligible, during the term for which he or she was elected, to the office of superintendent or administrator of the institution in his or her charge.

(3) **REMOVAL OF TRUSTEE.** Any trustee may be removed from office for misconduct or neglect, by a two-thirds vote of the county board, on due notice in writing and hearing of the charges against him.

(4) **OATH OF OFFICE, BOND, EXPENSES, PAY.** Each trustee shall take and file the official oath and execute and file an official bond to the county, in the amount determined by the county board, and the sufficiency of the sureties shall be approved by the chairperson of the board. Each trustee shall be reimbursed for traveling expenses necessarily incurred in the discharge of the duties, and shall receive the compensation fixed by the county board, unless otherwise provided by law.

(5) **OFFICERS.** The trustees shall elect a president. The superintendent of the institution shall be the secretary.

(6) **MONTHLY AUDIT; SUITS.** At least once each month the trustees shall audit all claims against the county incurred on behalf of said institutions, when presented to them verified under oath by the claimant or his agent and, when allowed, the president and secretary shall certify such claims to the county clerk who shall thereupon issue county orders for their payment. The trustees may sue and defend in the name of the county any cause for action involving the interest of said institution and may employ counsel for that purpose. All receipts on account of said institutions shall be paid into the county treasury within one week after receipt.

(7) **FISCAL YEAR.** The fiscal year of each institution shall commence July 1 and end June 30 of the following year.

(8) **BOOKKEEPING.** The department shall formulate a system of keeping the books, accounts and records, and shall furnish blanks for reports, and reports shall be made accordingly.

(9) **REPORTS; ACCOUNTS.** The trustees shall install a system of accounting and reporting, under the supervision of the

department, and shall conduct its business in conformity therewith; and the department may from time to time audit the books, records, documents, accounts and transactions of each institution.

(10) ANNUAL REPORT. On July 1 of each year the trustees shall prepare a report for the preceding fiscal year and shall transmit a copy to the department, a copy to the county clerk, and keep a copy on file at the institution. Such report shall be accompanied by an inventory of all properties on hand on the last day of the fiscal year, an estimate of the receipts and expenditures for the current fiscal year, and the reports of the superintendent and visiting physician, of the institution.

(11) COUNTY APPROPRIATION. The county board shall annually appropriate for operation and maintenance of each such institution not less than the amount of state aid estimated by the trustees to accrue to said institution; or such lesser sum as may be estimated by the trustees to be necessary for operation and maintenance.

(12) ADDITIONAL DUTIES. The county board may provide that the trustees and superintendent of any institution shall be the trustees and superintendent of any other institution.

(13) BUILDING RESERVE FUND. The county board shall maintain as a segregated cash reserve an annual charge of 2% of the original cost of new construction or purchase or of the appraised value of existing infirmary structures and equipment. If the infirmary or any of its equipment is replaced, any net cost of replacement in excess of the original cost is subject to an annual charge of 2%. No contributions to the cash reserve in excess of the amount required under this subsection may be included in the calculation under s. 49.173 (1). The county board may from time to time appropriate from such reserve sums to be expended solely for the enlargement, modernization or replacement of such infirmary and its equipment.

(14) INCENTIVE PAYMENTS TO PATIENTS IN MENTAL HOSPITALS. The county board may authorize the board of trustees of any county mental hospital to establish a program of incentive payments so as to provide incentive and encouragement to patients by the disbursement of small weekly payments but not restricted to work allowances. Incentive payments paid to inmates shall not be included as costs in arriving at the per capita rate for state aids or charges to other counties and the state for care of inmates. In counties having a population of 500,000 or more the county board of supervisors may establish a similar program.

History: 1971 c. 50; 1971 c. 108 s. 6; 1979 c. 34, 110; 1981 c. 329; 1983 a. 192; 1985 a. 29.

County board in county having county executive could require that 4 of 7 trustees be county supervisors. 70 Atty. Gen. 181.

County board, not board of trustees, determines disposition of bequest made to institution under this section. 73 Atty. Gen. 125.

46.19 Officers and employes of county institutions. (1) The trustees shall appoint a superintendent of each institution and may remove him for cause as defined in s. 17.16 (2) on due notice in writing and hearing of the charges against him.

(2) The trustees shall prescribe the duties of the superintendent. He shall execute and file an official bond with sureties approved by the trustees.

(3) Subject to the approval of the trustees, the superintendent shall appoint and prescribe the duties of necessary additional officers and employes of the institution, and may remove them at his discretion, subject to the county civil service law.

(4) The salaries of the superintendent, visiting physician and all necessary additional officers and employes shall be fixed by the county board.

46.20 Joint county institutions. (1) Any 2 or more counties may jointly, by majority vote of all the members of each county board, provide for a county home, infirmary, hospital, tuberculosis hospital or sanatorium, or similar institution, house of correction or juvenile detention home, which shall be established, maintained and operated pursuant to all the statutes relating to the establishment, maintenance and operation of similar institutions, respectively, by any single county whose population is less than 250,000, except as otherwise provided in this section; and in all respects, except as herein specified, each such institution shall be the county institution of each of the counties so joining.

(2) The county board of each such county shall elect 3 of its members to represent the county in a joint committee to select the site, anywhere within either of said counties, and prepare the plans and specifications of the buildings, for such institution; and said joint committee shall be vested with all functions, relative to the establishment of such institution, possessed by the county board relative to like county institutions.

(3) Upon approval of the site, plans and specifications, as provided in s. 149.01 as to tuberculosis sanatoriums and s. 46.17, as to other institutions the joint committee shall report to the several county boards the estimated cost of said site and buildings, and the amount thereof chargeable to each county on the basis set forth in sub. (6) (a), appending to each report a copy of the plans and specifications and all matter relating to said site and buildings; and if the said report shall be approved by each county board, the joint committee shall purchase said site and cause said buildings to be erected in accordance with the plans and specifications.

(4) The functions of the joint committee shall terminate upon completion of said buildings; and the board of trustees thereupon elected shall be composed of 2 electors from each county when 2 counties join, and of one elector from each county in all other cases; which trustees, except those elected at first elections, shall hold during terms of 4 years in the former case, and as many years as there are counties joining in the other cases. Trustees elected at first elections shall hold for terms beginning at once and so ending that the terms of one member only will expire on the first Monday of each succeeding January, beginning with January of the second year thereafter; which terms shall be allotted to the respective trustees at their first meeting. The county board of each county joining shall at an annual meeting elect a successor to any trustee from such county whose term will expire on the first Monday of the next following January. The trustees shall have the qualifications and functions and be subject to the limitations and restrictions of trustees elected pursuant to s. 46.18. They shall be reimbursed their traveling expenses necessarily incurred in the discharge of their functions, and shall receive compensation similar to that of the trustees, respectively, of like county institutions; and if the county board is empowered to fix the latter, the compensation of the joint trustees shall be fixed by joint action of the county boards.

(5) All receipts on account of such institution shall be paid into the treasury of the county in which said institution is located.

(6) Prior to the election of the trustees the joint committee, and thereafter the board of trustees, shall audit all claims against said counties on account of such institution; and all such claims shall, in the first instance, be certified to and paid by the county in which said institution is located, subject to apportionment and adjustment among the several counties as follows:

(a) All expenditures for the site, buildings, furniture, equipment, and permanent improvements, after deducting all

receipts therefor except county appropriations, shall immediately upon payment be apportioned by the clerk of the county in which the institution is located and certified to the clerks of the other counties, on the basis of the percentage which the valuation of the taxable property in each county bears to the valuation of the aggregate taxable property in all said counties, as determined pursuant to s. 70.57.

(b) All expenditures for repairs, maintenance, and operation, after deducting all receipts therefor except county appropriations, shall be so apportioned for each month, on the first day of the next succeeding month, on the basis of the percentage which the aggregate cost of keeping the inmates at public charge from each such county bears to the aggregate cost of keeping the inmates at public charge from all such counties, adopting as the unit of cost the total average cost per capita per week of keeping all the inmates, at public charge and otherwise, in said institution.

(c) Immediately upon receipt of such certified apportionment each such other county shall pay over to the county in which said institution is located its proportion of said expense.

(7) (a) If any net profit shall arise from the operation of said institution it shall be apportioned among the several counties on the basis prescribed in sub. (6) (b); and the county in which said institution is located shall pay over to the other counties, respectively, their proportions of such profit.

(b) The board of trustees shall maintain as a segregated cash reserve the 2% charge required under s. 46.18 (13). It may from time to time appropriate from such reserve sums to be expended solely for the enlargement, modernization or replacement of such infirmary and its equipment.

(8) The trustees shall transmit one copy of their annual report of the tuberculosis sanatorium to the department; and one copy of the report of other county institutions to the department, one copy to the clerk of each joint county, and shall file one copy at the institution. It shall be itemized with respect to the several counties and shall, in addition to the requirements of s. 46.18 (7) to (10), include an itemized statement showing the amounts of the receipts and profits credited and expenditures charged to the several counties for the past fiscal year, and an estimate of such amounts for the ensuing fiscal year; and each county board shall provide for meeting its estimated share of said expenditures.

(9) At any time after the organization of any such institution, any additional county or counties may join in the support and conduct thereof upon payment of such equitable proportion of the original cost of its establishment, and any joint county may withdraw upon such terms, as may be agreed upon among the county boards of the counties interested; and thereupon the board of trustees of such institution shall be reorganized, in such manner as may be determined by the county boards of the participating counties, to conform to sub. (4).

(10) Any county or counties maintaining a tuberculosis sanatorium may convey said property or any part thereof or any interest therein to any other county or counties upon such terms and conditions as the respective county boards thereof shall agree by a majority vote of all the members of each said county boards.

History: 1971 c. 108 s. 6; 1975 c. 413 s. 18; 1985 a. 29.

46.205 County home in adjoining county. The county board of any county may by a majority vote of all of its members provide for a home for the aged and physically disabled in an adjoining county and all bonds heretofore issued for the construction or other acquisition of such a home in any county or an adjoining county are hereby

validated and the proceeds from the bonds may be used in the construction or other acquisition of a home in such county or an adjoining county. When any county shall establish such home in an adjoining county it shall be maintained and operated under the same statutes which would be applicable to the maintenance and operation of the home if it were established in such first county.

History: 1977 c. 83.

46.206 Welfare services; supervisory functions of state department. (1) (a) The department shall supervise the administration of social services and aid to families with dependent children, including related employment and training programs. The department shall submit to the federal authorities state plans for the administration of social services and aid under s. 49.19 in such form and containing such information as the federal authorities require, and shall comply with all requirements prescribed to ensure their correctness.

(b) All records of the department and all county records relating to social services, aid to families with dependent children and aid under ss. 49.18, 49.20 and 49.61, 1971 stats., as affected by chapter 90, laws of 1973, shall be open to inspection at all reasonable hours by authorized representatives of the federal government. Notwithstanding s. 48.396 (2), all county records relating to the administration of such services and public assistance shall be open to inspection at all reasonable hours by authorized representatives of the department.

(bm) All records of the department relating to aid provided under s. 49.177, 49.19, 49.46 or 49.47 are open to inspection at reasonable hours by members of the legislature who require the information contained in the records in pursuit of a specific state legislative purpose. All records of any county relating to aid provided under s. 49.177, 49.19, 49.46 or 49.47 are open to inspection at reasonable hours by members of the board of supervisors of the county or the governing body of a city, village or town located in the county who require the information contained in the records in pursuit of a specific county or municipal legislative purpose. The right to records access provided by this paragraph does not apply if access is prohibited by federal law or regulation or if this state is required to prohibit such access as a condition precedent to participation in a federal program in which this state participates.

(c) The department may at any time audit all county records relating to the administration of such services and public assistance and may at any time conduct administrative reviews of county departments under ss. 46.215 and 46.22. If the department conducts such audit or administrative review in a county, it shall furnish a copy of the audit or administrative review report to the chairperson of the county board of supervisors and the county clerk in a county with a single-county department or to the county boards of supervisors and the county clerks in counties with a multicounty department, and to the director of the county department under s. 46.21 or 46.22.

(2) The county administration of all laws relating to social services and aid to families with dependent children shall be vested in the officers and agencies designated in the statutes.

History: 1973 c. 147; 1977 c. 271, 449; 1981 c. 329, 335; 1983 a. 27, 239, 487; 1985 a. 176.

46.208 General relief; functions of state department. (1) All records of the county relating to the administration of general relief, if the department reimburses the county under s. 49.035, shall be open to inspection at all reasonable hours by authorized representatives of the department.

(2) Before January 1, 1987, the department may at any time audit all records of the county or municipality relating to the administration of general relief, if the department reimburses the county or municipality under s. 49.035, and may at any time conduct administrative reviews of a municipality or of a county department under s. 46.215, 46.22 or 46.23. The department shall furnish a copy of the county audit or administrative review report to the chairperson of the county board of supervisors and the county clerk in a county with a single-county department or to the county boards of supervisors and the county clerks in counties with a multicounty department, and to the director of the county department under s. 46.215, 46.22 or 46.23. The department shall furnish a copy of the municipal audit or administrative review report to the municipal relief agency director.

(2m) After December 31, 1986, the department may at any time audit all records of the general relief agency relating to the administration of general relief, if the department reimburses the county under s. 49.035 and may at any time conduct administrative reviews of a county department under s. 46.215, 46.22 or 46.23. The department shall furnish a copy of the county audit or administrative review report to the chairperson of the county board of supervisors and the county clerk in a county with a single-county department or to the county boards of supervisors and the county clerks in counties with a multicounty department, and to the county director of the county department under s. 46.215, 46.22 or 46.23.

History: 1985 a. 29 ss. 831, 3200 (23); 1985 a. 120, 176.

46.21 Institutions and departments in populous counties.

(1) DEFINITIONS. In this section:

(a) "County board of supervisors" means the county board of supervisors in a county with a population of 500,000 or more.

(b) Unless the context requires otherwise, "county department" means the county department that administers the health and human service programs in a county with a population of 500,000 or more.

(c) "Director" means the director of a county department appointed under sub. (1m) (a).

(1m) APPOINTING A DIRECTOR. (a) The county executive shall appoint under ss. 63.01 to 63.17 a director of the county department. The appointment shall be made on the basis of recognized and demonstrated public interest in and knowledge of the problems of public welfare, and with due regard to training, experience, executive and administrative ability and efficiency, and general qualifications and fitness for performing the duties of the office. The director shall file an official oath and bond in the amount determined by the county board of supervisors. The county board of supervisors may create one or 2 positions of deputy director of the county department. The director shall be appointed by the county executive in the unclassified civil service and is subject to confirmation by the county board of supervisors under s. 59.031 (2) (bm).

(b) Provisions shall be made in the organization of the office of the director for the devolution of the director's authority in the case of his or her temporary absence, illness or other disability to act.

(2) POWERS AND DUTIES OF THE COUNTY BOARD OF SUPERVISORS. The county board of supervisors:

(a) Shall determine policy for the operation, maintenance and improvement by the director of the county hospital; the home for children; the detention center; the probation section of the children's court center; the provision and maintenance of the physical facilities for the children's court and its intake

section under the supervision and operation of the judges assigned to exercise jurisdiction under ch. 48 and as provided in s. 48.06 (1); the mental health complex; the county department under s. 46.215; the central service departments; and all buildings and land used in connection with any institution under this section. The powers and duties of the county board of supervisors are policy forming only, and not administrative or executive.

(b) May make such arrangements with the university of Wisconsin-Madison medical school or the medical college of Wisconsin, or any other duly accredited medical colleges and medical societies for teaching and research in such institutions as in its judgment will best promote the purpose of hospitals and sanitoriums under sub. (4m).

(c) May pay a reasonable fee and the actual travel expense of persons called into consultation by the county board of supervisors as to matters within the field of human services or health care delivery.

(g) Shall establish rules as may be necessary for the management and operation of the county institutions and departments specified in par. (a).

(i) May designate an amount as and appropriate funds for a work allowance to inmates at its institutions. The county board of supervisors shall prescribe the amount of such work allowance after the director determines reasonable hours and health and other conditions, as shall be observed in connection with the employment. Such employment is not within the provisions of ss. 63.01 to 63.17 nor is it subject to ch. 102. Work allowances or wages paid to inmates shall not be included as costs in arriving at the per capita rate for state aids or charges to other counties and the state for care of inmates.

(j) May exercise approval or disapproval power over contracts and purchases of the director that are for \$50,000 or more, except that the county board of supervisors may not exercise approval or disapproval power over any personal service contract or over any contract or purchase of the director which relates to community living arrangements or foster homes and which was entered into pursuant to a contract under s. 46.031 (2g), regardless of whether the contract mentions the provider, except as provided in par. (m). This paragraph does not preclude the county board of supervisors from creating a central purchasing department for all county purchases.

(jm) Shall provide for the appointment of department heads under sub. (4).

(k) Shall make sufficient appropriation annually for the support, maintenance, salaries, repairs and improvements to the institutions. The appropriations shall be used subject to the order of the director and as the rules of the county board of supervisors provide. The director may not incur any expense or contract for new buildings, additions to present buildings or the purchase of land until the county board of supervisors has appropriated or provided for the money to defray such expense.

(L) May establish and maintain a public health and medical dispensary and conduct same as may be proper and necessary for the preservation of the public health and the prevention of disease in the county.

(m) May establish and maintain in connection with such county hospital, an emergency unit or department for the treatment, subject to such rules as may be prescribed by the county board of supervisors, of persons in the county who may meet with accidents or be suddenly afflicted with illness not contagious; provided that medical care and treatment shall only be furnished in such unit or department until such time as the patient may be safely removed to another hospital

or to his or her place of abode, or regularly admitted to the county hospital. The county board of supervisors may also contract with any private hospital or nonprofit hospital within the county for the use of its facilities and for medical service to be furnished by a licensed physician or physicians to patients who require emergency medical treatment or first aid as a result of any accident, injury or sudden affliction of illness occurring within the county, except that reasonable compensation may only be authorized until the patient is regularly admitted as an inpatient or safely removed to another hospital or to his place of abode. In this paragraph, "hospital" includes, without limitation due to enumeration, public health centers, medical facilities and general, tuberculosis, mental, chronic disease and other types of hospitals and related facilities, such as laboratories, outpatient departments, nurses' home and training facilities, and central service facilities operated in connection with hospitals. In this paragraph, "hospital" does not include any hospital furnishing primarily domiciliary care. In this paragraph "nonprofit hospital" means any hospital owned and operated by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(n) May establish and maintain, in connection with the institutions and departments under the control of the county board of supervisors, a training school for nurses, to purchase and take over all property, to assume all obligations and to conduct any training school now operated in connection with those institutions or departments.

(o) To establish and maintain in connection with or separate from the county hospital a unit or department for the treatment, subject to the rules of the county board of supervisors, of persons in the county who may be afflicted with contagious diseases.

(p) May, on such terms as it prescribes, make its land, buildings, facilities and supportive services available to organizations for the construction and operation of medical, hospital and health-related activities at the site of the institutions under this section.

(3) DUTIES AND RESPONSIBILITIES OF THE DIRECTOR. (a) All of the administrative and executive powers and duties of managing, operating, maintaining and improving the several institutions and departments, specified in sub. (2) (a) and such other institutions and departments as may be placed by the county board of supervisors under the jurisdiction of the director, shall be vested in such director, to be administered by the director under the rules promulgated, subject to the policies and in accordance with the principles established by the county board of supervisors.

(c) The director shall administer the long-term support community options program under s. 46.27, if designated the administering agency under s. 46.27 (3) (b).

(4) DEPARTMENT HEADS, OFFICERS AND EMPLOYEES. (a) The county board of supervisors shall, by ordinance, authorize the director to appoint one or more department heads to operate, maintain and improve the public institutions listed in sub. (2) (a). Appointments of department heads by the director are subject to the confirmation of the county board of supervisors. The ordinance shall specify the powers and duties of and the compensation to be paid to each department head. The county board of supervisors may place more than one public institution under the management of any department head.

(b) Each department head appointed under par. (a) shall take and file an official oath and execute and file an official bond with the sureties approved and in the amount determined by the county board of supervisors.

(c) Each department head appointed under par. (a) may, subject to the approval of the director, appoint, discipline and remove, under the provisions of ss. 63.01 to 63.17 all officers and employes in his or her department. Each department head may at any time present communications to the county board of supervisors upon any matter through the director who shall present such communications to the county board of supervisors at its next meeting thereafter.

(d) Professional staff responsible for the care of patients under this section may submit bills for professional services under rules approved by the county board of supervisors.

(4m) HOSPITALS AND SANATORIUMS. The hospitals and sanatoriums of a county with a population of 500,000 or more shall be devoted to hospital service and the treatment of any person who would otherwise be unable to secure that service and treatment, but other persons may be admitted to the county hospitals upon such terms and conditions as the county board of supervisors establishes. Such hospitals and sanatoriums may be utilized for instruction of medical students, physicians and nurses and for scientific and clinical research as will promote the welfare of the patients and assist the application of science to the alleviation of human suffering.

(5) ADMISSION OF INMATES FOR PAY. (a) Any resident of this state, not indigent, may be received into an infirmary to be treated, cared for, and maintained upon such terms and conditions and at such rate of pay as may be established by the county board of supervisors; but indigent and destitute persons shall have preference in admission to and care in such institution.

(b) Sections 46.10, 49.08, 49.90 and 767.42 govern the support and maintenance of persons in any of the institutions specified in sub. (2) (a).

(6) REPORTS; EXPENDITURES. (a) Annually at anytime between July 1 and July 31, the director and the department heads appointed under sub. (4) shall submit annual reports to the county board of supervisors, including itemized statements of receipts and disbursements for the preceding calendar year. Such director and each department head shall maintain the uniform system of books, accounts, records and reports prescribed by the department, conforming in all respects with s. 46.18 (9) and requirements of the county auditor and county department of administration.

(c) Notwithstanding other statutes, expenditures chargeable to appropriations of the county board of supervisors shall be made upon certified vouchers, certified voucher schedules, and certified public assistance rolls to the county clerk. The county clerk shall issue county orders upon the county treasurer in payment of these certified instruments, provided that a single county order in favor of the county treasurer may be issued for the total amount authorized on a public assistance roll, in which case the county treasurer shall make individual payments by share drafts, bank checks or other drafts to parties listed on the public assistance rolls, provided further that the county board of supervisors may by ordinance adopt a different method of making disbursements consistent with sound accounting and auditing procedure.

History: 1973 c. 136, 153, 262; 1975 c. 224; 1975 c. 413 s. 18; 1977 c. 271, 272, 449; 1979 c. 34; 1981 c. 217, 329, 391; 1983 a. 27, 239, 368, 524; 1985 a. 29 s. 3202 (23); 1985 a. 120, 176, 332.

46.215 County department of social services in populous counties. (1) **CREATION; POWERS AND DUTIES.** In counties having a population of 500,000 or more the administration of welfare services shall be vested in a county department of social services. Each county department of social services may be placed under the jurisdiction of the county board of supervisors under s. 46.21 and in conformity with s. 49.50.

The county department of social services shall have the following functions, duties and powers, and such other welfare functions as may be delegated to it:

(a) To make investigations relating to relief or welfare administration and admissions to state and county institutions upon request of court, superintendent, district attorney, veterans' service commission or any other county official.

(b) To furnish services to families or persons other than the granting of financial or material aid where such services may prevent such families or persons from becoming public charges or restore them to a condition of self-support.

(c) To make certification or referral of eligibles for state or federal works or other assistance programs, eligibility for which is based on need, when designated to perform such certification or referral services.

(d) To make investigations which relate to welfare services upon request by the department of health and social services.

(e) To maintain administrative and reporting relationships with all pertinent state departments.

(f) Before January 1, 1987, to administer general relief under s. 49.02 and s. 49.03, 1983 stats., in the event that the county administers general relief under those sections.

(fm) After December 31, 1986, to administer general relief under s. 49.02.

(g) To administer aid to families with dependent children under s. 49.19.

(h) To administer child welfare services under ss. 48.56 and 48.57, to accept custody and guardianship of children upon the order of a competent court and to place children for adoption and to make recommendations relating to the adoption of children under s. 48.85.

(i) To make such investigations as are provided for in s. 48.88 (2) (a) and (c), if the court having jurisdiction so directs.

(j) To make payments in such manner as the department of health and social services may determine for training of recipients, former recipients and potential recipients of aid in programs established under s. 49.50 (7).

(k) To certify eligibility for and issue food coupons to needy households in conformity with the federal food stamp act of 1964 as amended, and, in addition, the county department of social services may certify eligibility for and distribute surplus commodities and food stuffs.

(L) Within the limits of available state and federal funds and of county funds appropriated to match state funds, to provide social services for persons eligible for or receiving benefits under the supplementary security income program under federal Title XVI, the supplemental payments program under s. 49.177 or aid to families with dependent children under s. 49.19.

(m) To administer the long-term support community options program under s. 46.27, if the county board of supervisors designates the county department of social services as the administrative agency.

(n) To collect and transmit information to the department of health and social services so that a federal energy assistance payment or weatherization services may be made to an eligible household; to receive applications from individuals seeking low-income energy assistance under s. 49.80 (4); to provide information on the income eligibility for weatherization of a recipient of low-income energy assistance to an entity with which the department of health and social services contracts for provision of weatherization under s. 49.80 (9); and to receive a request, determine a correct payment amount, if any, and provide payment, if any, for emergency assistance under s. 49.80 (8).

(o) To establish a community work experience program under 42 USC 609 if the county so elects and if the county

pays the administrative costs associated with the program that are not reimbursed by the federal government. Any person participating in a community work experience program in a county is an employe of that county for purposes of worker's compensation benefits only. A county operating a community work experience program shall assist a person under s. 49.19 (4) (ds) who is caring for a child whose age is more than 3 years but less than 6 years in obtaining child day care licensed under s. 48.65 (1) for the child.

(p) To establish and administer the child care program under s. 46.98.

(2) PURCHASE OF CARE AND SERVICES. (a) In order to ensure the availability of a full range of care and services, the county department of social services may contract, either directly or through the department of health and social services, with public or voluntary agencies or others to purchase, in full or in part, care and services which the county department of social services is authorized by any statute to furnish in any manner. Such services may be purchased from the department of health and social services if the department of health and social services has staff to furnish the services. If the county department of social services has adequate staff, it may sell the care and services directly to another county or state agency.

(b) A county department of social services may purchase development and training services from the department of health and social services or from other county agencies when such services are available. A county department of social services may sell such development and staff training services to another county or state agency if it has adequate staff to provide such services.

(c) A county department of social services shall submit to the department of health and social services plans and contracts for care and services to be purchased. The contracts shall be developed under s. 46.036. The department of health and social services shall review such contracts and approve them if they are consistent with s. 46.036 and if state or federal funds are available for such purposes. The joint committee on finance may require the department of health and social services to submit such contracts to the committee for review and approval. The department of health and social services may not make any payments to a county for programs included in a contract under review by the committee. The department of health and social services shall reimburse each county for such approved contracts from the appropriations under s. 20.435 (4) (b) and (o) or under s. 20.435 (4) (cd), as appropriate, under s. 49.52.

(3) PROGRAM BUDGETS. The county department of social services shall submit a proposed budget under s. 46.031 (1) for authorized services.

History: 1971 c. 218; 1973 c. 90, 147, 333, 336; 1975 c. 39, 307, 421; 1977 c. 29, 271, 418; 1979 c. 34; 1981 c. 20 ss. 867m to 870, 2202 (20) (j); 1981 c. 81, 329; 1983 a. 27 ss. 1080, 2202 (20); 1983 a. 190 s. 7; 1983 a. 193; 1985 a. 29, 120; 1985 a. 176 ss. 322 to 332.

Counties have authority to provide the funding of services under 49.51 (3) (c) [now 46.215 (2) (c)] on their own but are not required to do so when reimbursement is unavailable. 63 Atty. Gen. 584.

46.22 County social services. (1) COUNTY DEPARTMENT OF SOCIAL SERVICES. (a) *Creation.* Except as provided under s. 46.23 (3) (b), the county board of supervisors of any county with a population of less than 500,000, or the county boards of 2 or more contiguous counties each with a population of less than 500,000, shall establish a county department of social services on a single-county or multicounty basis. The county department of social services shall consist of a county social services board, a county social services director and necessary personnel.

(am) *Funding for multicounties.* State social services funding under s. 20.435 (4) (b) is not available to counties which establish a multicounty department of social services until the counties have drafted a contractual agreement, approved by the secretary, setting forth the plans for direct sponsorship and have drafted a proposed budget under par. (b) 8.

(b) *Powers and duties.* The county department of social services shall have the following functions, duties and powers in accordance with the rules promulgated by the department of health and social services and subject to the supervision of the department of health and social services:

1. To administer aid to families with dependent children under s. 49.19.
2. To maintain administrative and reporting relationships with all pertinent state departments.
3. To make investigations which relate to welfare services upon request by the department of health and social services.
4. To administer relief to needy Indians under s. 49.046 when appointed by the department of health and social services under s. 49.046.
5. To certify eligibility for and issue food coupons to needy households in conformity with the federal food stamp act of 1964 as amended.
6. To make payments in such manner as the department of health and social services may determine for training of recipients, former recipients and potential recipients of aid in programs established under s. 49.50 (7).
7. Within the limits of available state and federal funds and of county funds appropriated to match state funds, to provide social services for:
 - a. Persons eligible for or receiving supplemental security aids under Title XVI of the social security act.
 - b. Persons eligible for or receiving state supplemental payments under s. 49.177.
 - c. Persons eligible for or receiving aid to families with dependent children under s. 49.19.
8. To submit a proposed budget in accordance with s. 46.031 (1) for services authorized in this section, except for the administration of and cost of aid granted under ss. 49.02, 49.19 and 49.45 to 49.47.
9. To administer the long-term support community options program singly under s. 46.27 (3) (b) 1 or jointly under s. 46.27 (3) (b) 5, as designated by the county board of supervisors in a county with a single-county department of social services or the county boards of supervisors in counties with a multicounty department of social services.
10. To collect and transmit information to the department of health and social services so that a federal energy assistance payment or weatherization services may be made to an eligible household; to receive applications from individuals seeking low-income energy assistance under s. 49.80 (4); to provide information on the income eligibility for weatherization of a recipient of low-income energy assistance to an entity with which the department of health and social services contracts for provision of weatherization under s. 49.80 (9); and to receive a request, determine a correct payment amount, if any, and provide payment, if any, for emergency assistance under s. 49.80 (8).
11. To establish a community work experience program under 42 USC 609 if the county so elects and if the county pays the administrative costs associated with the program that are not reimbursed by the federal government. Any person participating in a community work experience program in a county is an employe of that county for purposes of worker's compensation benefits only. A county operating a community work experience program shall assist a person under s. 49.19 (4) (ds) who is caring for a child whose age is

more than 3 years but less than 6 years in obtaining child day care licensed under s. 48.65 (1) for the child.

12. To establish and administer the child care program under s. 46.98.

13. To make certification or referral of eligibles for state or federal works or other assistance programs, eligibility for which is based on need.

14. To administer general relief under s. 49.02.

(c) *Other powers and duties.* The county board of supervisors in a county with a single-county department of social services and the county boards of supervisors in counties with a multicounty department of social services may provide that the county department of social services shall, in addition to exercising the mandatory functions, duties and powers under par. (b), have any or all of the following functions, duties and powers and such other welfare functions as may be delegated to it by the county board of supervisors in a county with a single-county department of social services and the county boards of supervisors in counties with a multicounty department of social services:

1. Make investigations in cooperation with the court, institution superintendent, district attorney and other agencies and officials operating in the welfare field regarding admissions to and release (or conditional release) from the following county and state institutions:

a. County institutions. County infirmary, home, hospital (for mental diseases, tuberculosis or otherwise) or asylum.

b. State institutions. Mendota mental health institute, Winnebago mental health institute, university of Wisconsin hospital and clinics, center for the developmentally disabled and Ethan Allen school.

2. Subdivision 1 does not authorize the county department of social services to make investigations regarding admission to or release from the Waupun correctional institution, the Columbia correctional institution, the Menomonee Valley correctional institution, the Oshkosh correctional institution, the Green Bay correctional institution, the Dodge correctional institution, the Taycheedah correctional institution, county houses of correction, jails, detention homes or reforestation camps.

4. Make investigations which are provided for under s. 48.88 (2) (a) and (c), if the court having jurisdiction so directs.

5. Perform the duties and functions prescribed in s. 48.08 when requested to do so by the judge assigned to exercise jurisdiction under ch. 48.

6. To furnish services to families or persons other than the granting of financial or material aid where such services may prevent such families or persons from becoming public charges or restore them to a condition of self-support.

7. To certify eligibility for and distribute surplus commodities and foodstuffs.

8. To administer child welfare services including services to children who are mentally retarded, dependent, neglected, delinquent, or nonmarital, and to other children who are in need of such services. In administering child welfare services the county department of social services shall be governed by the following:

a. The county department of social services may avail itself of the cooperation of any individual or private agency or organization interested in the social welfare of children in the county with a single-county department of social services or in the counties with a multicounty department of social services.

b. The county department of social services shall administer and expend such amounts as may be necessary out of any moneys which may be appropriated for child welfare purposes by the county board of supervisors in a county with a

single-county department of social services or by the county boards of supervisors in counties with a multicounty department of social services or donated by individuals or private organizations.

c. Upon the request of the judge assigned to exercise jurisdiction under ch. 48, the county department of social services shall investigate the home environment and other factors in the life of any child brought to the attention of the court for alleged dependency, neglect, or delinquency, and to assume guidance and supervision of any child placed on probation by that court.

d. Upon the request of the department of health and social services and under its direction, the county department of social services shall assume the oversight of any juvenile under parole from or otherwise subject to the supervision of any state institution.

e. The county department of social services shall have the powers and duties specified in s. 48.57.

9. The authority given to the county department of social services under subd. 8 to function as an authorized child welfare agency shall not be interpreted as excluding agencies licensed under s. 48.60 from also exercising such functions.

(d) *Merit system; records.* The county department of social services is subject to s. 49.50 (2) to (5). The county department of social services and all county officers and employees performing any duties in connection with the administration of aid to the blind, old-age assistance, aid to families with dependent children and aid to totally and permanently disabled persons shall observe all rules promulgated by the department of health and social services under s. 49.50 (2) and shall keep records and furnish reports as the department of health and social services requires in relation to their performance of such duties.

(e) *Purchase of care and services.* 1. In order to ensure the availability of a full range of care and services, a county department of social services may contract, either directly or through the department of health and social services, with public or voluntary agencies or others to purchase, in full or in part, care and services which the county department of social services is authorized by any statute to furnish in any manner. Such services may be purchased from the department of health and social services if the department of health and social services has staff to furnish the services. The county department of social services, if it has adequate staff, may sell such care and services directly to another county or state agency.

2. A county department of social services may purchase development and training services from the department of health and social services or from other county agencies if such services are available or sell such development and staff training services to another county or state agency if the county department of social services has adequate staff to provide such service.

3. A county department of social services shall submit to the department of health and social services plans and contracts for care and services to be purchased. Such contracts shall be developed under s. 46.036. The department of health and social services shall review such contracts and approve them if they are consistent with s. 46.036 and to the extent that state or federal funds are available for such purposes. The joint committee on finance may require the department of health and social services to submit the contracts to the committee for review and approval. The department of health and social services may not make any payments to a county for programs included in the contract which is under review by the committee. The department of health and social services shall reimburse each county for

such approved contracts from the appropriations under s. 20.435 (4) (o) or under s. 20.435 (4) (cd), according to s. 49.52, or from the appropriation under s. 20.435 (4) (b).

(1m) COUNTY SOCIAL SERVICES BOARD. (a) *Composition.* 1. In any single-county department of social services, the county social services board shall consist of 3, 5 or 7 residents of the county, as determined by the county board of supervisors.

2. In any multicounty department of social services, the county social services board shall be composed of 11 members plus 3 additional members for each county in a multicounty department of social services in excess of 2.

(b) *Appointment, election.* The members of the county social services board shall be elected or appointed either from members of the county board of supervisors or from the county at large, or both, on the basis of knowledge and interest in public welfare as follows:

1. In a single-county department of social services in a county without a county executive or county administrator, the county board of supervisors shall elect, or the chairperson of the county board of supervisors under rules of the county board of supervisors shall appoint, the county social services board.

2. In any county with a county executive or county administrator which has established a single-county department of social services, the county executive or county administrator shall appoint, subject to confirmation by the county board of supervisors, the county social services board, which shall be only a policy-making body determining the broad outlines and principles governing the administration of programs under this section.

3. The county boards of supervisors of the counties in a multicounty department of social services shall make appointments in a manner acceptable to the counties in a multicounty department of social services, but each of the counties in a multicounty department of social services may appoint to the county social services board not more than 3 members from its county board of supervisors.

(c) *Compensation, terms; removal.* The members of the county social services board shall receive compensation and hold office for a term as fixed by the county board of supervisors in a county with a single-county department or by the county boards of supervisors in counties with a multicounty department, except as follows:

1. A member of the county social services board appointed under par. (b) 2 may be removed by the county executive or county administrator for cause.

2. The term of office of any member of the county social services board appointed under par. (b) 3 shall be 3 years, but of the members first appointed, at least one-third shall be appointed for one year; at least one-third for 2 years; and the remainder for 3 years. Vacancies shall be filled for the residue of the unexpired term in the manner that original appointments are made. Any county social services board member may be removed from office for cause by a two-thirds vote of the appointing authority, on due notice in writing and hearing of the charges against the member.

(2) POWERS AND DUTIES OF COUNTY SOCIAL SERVICES BOARD IN CERTAIN COUNTIES. A county social services board elected or appointed under sub. (1m) (b) 1 and 3 shall:

(a) At the first meeting of the county social services board, elect from their number, a chairperson, a secretary and other officers as deemed necessary. Vacancies in these offices shall be filled for the unexpired terms. The chairperson presides at all meetings when present, and countersigns all actions taken by the county social services board. In case of the absence of the chairperson for any meeting the members present shall choose a temporary chairperson.

(b) Appoint the county social services director under sub. (3) subject to s. 49.50 (2) to (5) and the rules promulgated thereunder and subject to the approval of the county board of supervisors in a county with a single-county department of social services or the county boards of supervisors in counties with a multicounty department of social services.

(c) Supervise the working of the county department of social services and shall be a policy-making body determining the broad outlines and principles governing the administration of the functions, duties and powers assigned to the county department of social services under sub. (1) (b) and (c).

(d) As it determines necessary, appoint committees consisting of residents of the county, which shall advise the county social services board on any matters for which they are created. Members of such committees shall serve without compensation.

(e) Consult with the county social services director appointed under par. (b) concerning the preparation of the annual budget, the annual report of the operation of the county department of social services and the appointment of necessary personnel.

(f) Recommend program priorities, identify unmet service needs and prepare short-term and long-term plans and budgets for meeting such priorities and needs.

(g) Determine, subject to the approval of the county board of supervisors in a county with a single-county department of social services or the county boards of supervisors in counties with a multicounty department of social services and with the advice of the county social services director appointed under par. (b), whether services are to be provided directly by the county department of social services or contracted for with other providers and make such contracts. The county board of supervisors in a county with a single-county department of social services or the county boards of supervisors in counties with a multicounty department of social services may elect to require the approval of any such contract by the county board of supervisors in a county with a single-county department of social services or the county boards of supervisors in counties with a multicounty department of social services.

(h) Develop county social services board operating procedures.

(i) Comply with state requirements.

(j) Assist in arranging cooperative working agreements with persons providing health, education, vocational or welfare services related to services provided under this section.

(k) Establish priorities in addition to those mandated by the department.

(l) Evaluate services delivery.

(m) Cooperate to the extent feasible with the school board, health planning agencies, law enforcement agencies, and other human service agencies, committees and planning bodies in the geographic area served by the county department of social services.

(n) Assume the powers and duties of the county department of social services under sub. (1) (b) to (e).

(2g) POWERS AND DUTIES OF COUNTY SOCIAL SERVICES BOARD IN CERTAIN COUNTIES WITH A COUNTY EXECUTIVE OR COUNTY ADMINISTRATOR. A county social services board appointed under sub. (1m) (b) 2 shall:

(a) At the first meeting of the county social services board, elect from their number, a chairperson, a secretary and other officers as deemed necessary. Vacancies in these offices shall be filled for the unexpired terms. The chairperson presides at all meetings when present, and countersigns all actions taken by the county social services board. In case of the absence of

the chairperson for any meeting the members present shall choose a temporary chairperson.

(b) Appoint committees consisting of residents of the county to advise the county social services board as it deems necessary. Members of such committees shall serve without compensation.

(c) Recommend program priorities, identify unmet service needs and prepare short-term and long-term plans and budgets for meeting such priorities and needs.

(d) Prepare, with the assistance of the county social services director under sub. (3m) (b) 5, a proposed budget for submission to the county executive or county administrator and to the department of health and social services in accordance with s. 46.031 (1) for authorized services.

(e) Advise the county social services director under sub. (3m) (b) 3 regarding purchasing and providing services and the selection of purchase of service vendors, and make recommendations to the county executive or county administrator regarding modifications in such purchasing, providing and selection.

(f) Develop county social services board operating procedures.

(g) Comply with state requirements.

(h) Assist in arranging cooperative working agreements with persons providing health, education, vocational or welfare services related to services provided under this section.

(3) COUNTY SOCIAL SERVICES DIRECTOR IN CERTAIN COUNTIES. A county social services director appointed under sub. (2) (b) shall:

(a) Serve as the executive and administrative officer of the county department of social services.

(b) In consultation and agreement with the county social services board under sub. (2), prepare and submit to the county board of supervisors an annual budget of all funds necessary for the county department of social services, and prepare annually a full report of the operations and administration of the county department of social services. The county board of supervisors shall review and approve, reject or revise by majority vote the annual budget of the county department of social services.

(c) Recommend to the county social services board under sub. (2) the appointment of employees necessary to administer the functions of the county department of social services.

(d) Make recommendations to the county board of supervisors in a county with a single-county department of social services or the county boards of supervisors in counties with a multicounty department of social services who shall fix the salary of such employees.

(f) Comply with state requirements.

(g) Cooperate to the extent feasible with the school board, health planning agencies, law enforcement agencies, and other human service agencies, committees and planning bodies in the geographic area served by the county department of social services.

(3m) COUNTY SOCIAL SERVICES DIRECTOR IN CERTAIN COUNTIES WITH A COUNTY EXECUTIVE OR COUNTY ADMINISTRATOR.

(a) In any county with a county executive or a county administrator which has established a single-county department of social services, the county executive or county administrator, subject to s. 49.50 (2) to (5) and the rules promulgated thereunder, shall appoint and supervise the county social services director. The appointment is subject to the confirmation of the county board of supervisors unless the county board of supervisors, by ordinance, elects to waive confirmation or unless the appointment is made under a civil service system competitive examination procedure established under s. 59.07 (20) or ch. 63.

(b) A county social services director appointed under par. (a) shall:

1. Supervise and administer any program established by the county department of social services.

1m. Supervise the operations and administration of the county department of social services.

2. Determine administrative and program procedures.

3. Determine, subject to the approval of the county board of supervisors and with the advice of the county social services board under sub. (2g) (e), whether services are to be provided directly by the county department of social services or contracted for with other providers and make such contracts. The county board of supervisors may elect to require the approval of any such contract by the county board of supervisors.

5. Assist the county social services board in the preparation of the proposed budget required under sub. (2g) (d).

6. Make recommendations to the county executive or county administrator regarding modifications to the proposed budget prepared by the county social services board under sub. (2g) (d).

7. Evaluate service delivery.

9. Establish salaries and personnel policies of the county department of social services subject to approval of the county executive or county administrator and county board of supervisors.

10. Perform other functions necessary to manage, operate, maintain and improve programs.

11. Comply with state requirements.

12. Establish priorities in addition to those mandated by the department of health and social services.

13. Determine the number and location of outstations when appropriate to meet service demands.

15. Prepare annually a full report of the operations and administration of the county department of social services.

16. Cooperate to the extent feasible with the school board, health planning agencies, law enforcement agencies, and other human service agencies, committees and planning bodies in the geographic area served by the county department of social services.

17. In consultation with the county social services board under sub. (2g), prepare:

a. Intermediate-range plans and budget.

b. Such other reports as are required by the secretary and the county board of supervisors.

(4) CONSTRUCTION. (a) Any reference in any law to a county department of social services applies to a county department under s. 46.23 in its administration of the powers and duties of the county department of social services under s. 46.23 (3) (b).

(b) 1. Any reference in any law to a county social services director appointed under sub. (2) (b) applies to the director of a county department appointed under s. 46.23 (5) (f) in his or her administration of the powers and duties of that county social services director.

2. Any reference in any law to a county social services director appointed under sub. (3m) (a) applies to the director of a county department appointed under s. 46.23 (6m) (intro.) in his or her administration of the powers and duties of that county social services director.

(c) 1. Any reference in any law to a county social services board appointed under sub. (1m) (b) 1 and 3 applies to the board of a county department appointed under s. 46.23 (4) (b) 1 in its administration of the powers and duties of that county social services board.

2. Any reference in any law to a county social services board appointed under sub. (1m) (b) 2 applies to the board of

a county department appointed under s. 46.23 (4) (b) 2 in its administration of the powers and duties of that county social services board.

History: 1971 c. 164, 218; 1973 c. 90 ss. 226, 560 (3); 1973 c. 147, 333; 1975 c. 39; 1975 c. 189 s. 99 (1), (2); 1975 c. 224 ss. 52p, 146m; 1975 c. 307, 422; 1975 c. 430 s. 78; 1977 c. 29 ss. 560, 1656 (18); 1977 c. 83 s. 26; 1977 c. 418, 449; 1979 c. 34, 221; 1981 c. 20 ss. 759 to 763m, 2202 (20) (j); 1981 c. 329; 1981 c. 390 s. 252; 1983 a. 27 s. 2202 (20); 1983 a. 190 s. 7; 1983 a. 192, 193, 447; 1985 a. 29, 120; 1985 a. 176 ss. 28, 30, 59 to 105; 1985 a. 332.

The county board of public welfare rather than the board of supervisors has the authority to appoint a county welfare director. 62 Atty. Gen. 114.

Under 49.26, (1971 Stats.), a county department of social services, by its director, may make valid conveyances of real estate acquired by the department as a result of old-age-assistance lien foreclosures or transfers in lieu thereof, or as the result of assignments to the department made by the county court in probate or administration proceedings in the estates of old-age-assistance recipients; or of out-of-state real property voluntarily transferred to the department. 63 Atty. Gen. 488.

In counties under 500,000 which have not elected to be under 46.21, county board of public welfare has exclusive power to appoint and terminate county welfare department employees. 65 Atty. Gen. 163.

Powers of county board and county board of public welfare as to department discussed. 68 Atty. Gen. 262.

46.225 Indigency determinations. If applicable under s. 977.07 (1), a county department under s. 46.21, 46.22 or 46.23 shall make indigency determinations.

History: 1979 c. 356; 1985 a. 176.

46.23 County department of human services. (1) INTENT.

The intent of this section is to enable and encourage counties to develop and make available to all citizens of this state a comprehensive range of human services in an integrated and efficient manner; to utilize and expand existing governmental, voluntary and private community resources for the provision of services to prevent or ameliorate social, mental and physical disabilities; to provide for the integration of administration of those services and facilities organized under this section through the establishment of a unified administrative structure and of a unified policy-making body; and to authorize state consultative services, reviews and establishments of standards and grants-in-aid for such programs of services and facilities.

(2) DEFINITIONS. Except as otherwise provided, in this section:

(a) "Human services" means the total range of services to people including, but not limited to, health care, mental illness treatment, developmental disabilities services, general relief, income maintenance, probation and parole services, alcohol and drug abuse services, services to children, youth and aging, family counseling, exceptional educational services and manpower services.

(b) "Program" means community services and facilities for the prevention and amelioration of social, mental and physical disabilities.

(3) COUNTY DEPARTMENT OF HUMAN SERVICES. (a) *Creation.* Upon approval by the secretary of a feasibility study and a program implementation plan, the county board of supervisors of any county with a population of less than 500,000, or the county boards of supervisors of 2 or more contiguous counties, each of which has a population of less than 500,000, may establish by resolution a county department of human services on a single-county or multicounty basis to provide the services required under this section. The county department of human services shall consist of the county human services board, the county human services director and necessary personnel.

(am) *Delivery of services plan.* 1. The county department of human services shall prepare a local plan for the delivery of human services which includes an inventory of all existing resources, identifies needed new resources and services and contains a plan for meeting the health, mental health and social needs of individuals and families. The plan shall be based on an annual need survey of the prevalence and

incidence of the various disabilities within the geographic boundaries of the county department of human services. The plan shall also include the establishment of long-range goals and intermediate-range plans, detailing priorities and estimated costs and providing for coordination of local services and continuity of care.

2. Prior to adoption of the plan by the county department of human services under subd. 1, it shall hold a public hearing on the plan. As far as practicable, the county department of human services shall annually publish or otherwise circulate notice of its proposed plan and afford interested persons opportunity to submit data or views orally or in writing.

3. The county board of supervisors in a county with a single-county department of human services and the county boards of supervisors in counties with a multicounty department of human services shall review and approve the overall plan, program and budgets proposed by the county department of human services.

4. No funds may be allocated to any multicounty department of human services until the counties have drawn up a detailed contractual agreement, approved by the secretary, setting forth the plan for joint sponsorship.

(b) *Transfer of other county powers and duties.* 1. If a county department of human services is established under par. (a), the county board of supervisors in a county with a single-county department of human services or the county boards of supervisors in counties with a multicounty department of human services shall transfer the powers and duties of the county departments under ss. 46.22, 51.42 and 51.437 to the county department of human services. The county board of supervisors in a county with a single-county department of human services and the county boards of supervisors in counties with a multicounty department of human services may transfer the powers and duties of the following to the county department of human services established under par. (a):

a. A county unit created by the county board of supervisors exercising its authority under s. 59.025.

b. A board of health or a health officer appointed under s. 140.09.

c. A county health commission or committee created under s. 141.01.

d. Any other human services program under county control.

2. a. Any reference in any law to a county department under s. 46.22, 51.42 or 51.437 applies to the county department of human services in its administration of the powers and duties of the county department to which the reference is made.

b. Any reference in any law to a county director appointed under s. 46.22 (2) (b), 51.42 (5) (d) or 51.437 (9) (a) applies to the county human services director appointed under sub. (5) (f) in his or her administration of the powers and duties of the county director to which the reference is made. Any reference in any law to a county director appointed under s. 46.22 (3m) (a), 51.42 (6m) (intro.) or 51.437 (10m) (intro.) applies to the county human services director appointed under sub. (6m) (intro.) in his or her administration of the powers and duties of the county director to which the reference is made.

c. Any reference to a county board appointed under s. 46.22 (1m) (b) 1, 51.42 (4) (a) 1 or 51.437 (7) (a) 1 applies to the county human services board appointed under sub. (4) (b) 1 in its administration of the powers and duties of the county board to which the reference is made. Any reference in any law to the county board appointed under s. 46.22 (1m) (b) 2, 51.42 (4) (a) 2 or 51.437 (7) (a) 2 applies to the county human services board appointed under sub. (4) (b) 2 in its adminis-

tration of the powers and duties of the county board to which the reference is made.

(bm) *Long-term support community options program.* If the county board of supervisors in a county with a single-county department of human services or the county boards of supervisors in counties with a multicounty department of human services designate the county department of human services as the administrative agency under s. 46.27 (3) (h) 3, the county department of human services shall administer the long-term support community options program under s. 46.27.

(c) *Transfer of state powers and duties.* 1. Except as provided under subd. 2, the secretary may, with the approval of the county human services board, delegate any duty, authority or responsibility vested in the department of health and social services relative to any program or service provided by the state on July 31, 1975, to any county department of human services established under this section which has an approved plan in effect for the affected program or service. The authority granted under this subdivision shall include the authority to transfer to a county department of human services that portion of any unexpended appropriation which represents a savings to the department of health and social services by virtue of the assumption by the county department of human services of the duty, authority or responsibility as delegated. The delegation of any duty, authority or responsibility, and transfer of funds therewith, shall be subject to the maintenance by the county department of human services of applicable standards prescribed by the department of health and social services. Upon failure to maintain the prescribed standards, any delegated function and unexpended funds shall revert to the department of health and social services according to procedures established by it. The secretary shall report annually to the governor and the legislature on the operations and effectiveness of the programs of each county department of human services under this paragraph.

2. In any county with a county executive or a county administrator which has established a single-county department of human services, the delegation by the secretary under subd. 1 is subject to the approval of the county board of supervisors, not the county human services board.

(d) *Employee protections.* All persons employed by a county or by the state, whose functions are assumed by a county department of human services shall continue as employees of the county department of human services without loss in seniority, status or benefits, subject to the merit or civil service system.

(e) *Exchange of information.* Notwithstanding ss. 49.45 (4), 49.53 (1), 51.30, 51.45 (14) (a), 55.06 (17) (c), 143.07 (7), 146.80 (3) (c) and 146.82, any subunit of a county department of human services acting under this section may exchange confidential information about a client, without the informed consent of the client, with any other subunit of the same county department of human services or with any person providing services to the client under a purchase of services contract with the county department of human services, if necessary to enable an employe or service provider to perform his or her duties, or to enable the county department of human services to coordinate the delivery of services to the client.

(4) COUNTY HUMAN SERVICES BOARD. (a) *Composition.* 1. In any single-county or multicounty department of human services, the county human services board shall be composed of not less than 7 nor more than 15 persons of recognized ability and demonstrated interest in human services. Not less than one-third nor more than two-thirds of the county

human services board members may be members of the county board of supervisors. The remainder of the county human services board members shall be consumers of services or citizens-at-large. No public or private provider of services may be appointed to the county human services board.

2. In a multicounty department of human services, the county human services board shall be constituted so that the representation shall be as equal as possible among the participating counties.

(b) *Appointment.* 1. Except as provided under subd. 2, the county board of supervisors in a county which has established a single-county department of human services or the county boards of supervisors in counties which have established a multicounty department of human services shall, before qualification under this section, appoint a governing and policy-making board to be known as the county human services board.

2. In any county with a county executive or county administrator and which has established a single-county department of human services, the county executive or county administrator shall appoint, subject to confirmation by the county board of supervisors, the county human services board, which shall be only a policy-making body determining the broad outlines and principles governing the administration of programs under this section. A member of a county human services board appointed under this subdivision may be removed by the county executive or county administrator for cause.

(c) *Terms.* Members of a county human services board shall serve for terms of 3 years, so arranged that as nearly as practicable, the terms of one-third of the members shall expire each year. Vacancies shall be filled in the same manner as the original appointments. A county human services board member appointed under par. (a) 1 may be removed from office for cause by a two-thirds vote of each county board of supervisors participating in the appointment, on due notice in writing and hearing of the charges against the member.

(5) POWERS AND DUTIES OF COUNTY HUMAN SERVICES BOARD IN CERTAIN COUNTIES. A county human service board appointed under sub. (4) (b) 1.

(a) Shall determine administrative and program policies within limits established by the department of health and social services. Policy decisions not reserved by statute for the department of health and social services may be delegated by the secretary to the county human services board.

(b) Shall establish priorities in addition to those mandated by the department of health and social services.

(c) Shall determine whether state mandated services are provided or purchased or contracted for with local providers, and monitor the performance of such contracts. Purchase of services contracts shall be subject to the conditions specified in s. 46.036.

(d) Shall determine, subject to the approval of the county board of supervisors in a county with a single-county department of human services or the county boards of supervisors in counties with a multicounty department of human services and with the advice of the county human services director appointed under par. (f), whether services are to be provided directly by the county department of human services or contracted for with other providers and make such contracts. The county board of supervisors in a county with a single-county department of human services or the county boards of supervisors in counties with a multicounty department of human services may elect to require the approval of any such contract by the county board of supervisors in a county with a single-county department of human services or the county

boards of supervisors in counties with a multicounty department of human services.

(e) Shall represent human service agencies, professionals and consumers of services in negotiations with the state and federal governments.

(f) Shall appoint a county human services director on the basis of recognized and demonstrated interest in and knowledge of human services problems, with due regard to training, experience, executive and administrative ability and general qualification and fitness for the performance of the duties of the county human services director. The appointment is subject to the personnel policies and procedures established by each county board of supervisors which participated in the appointment of the county human services board.

(g) Shall appoint advisory committees for the purpose of receiving community, professional or technical information concerning particular policy considerations.

(h) Shall determine the number and location of outstations when appropriate to meet service demands.

(i) May recommend the removal of the county human services director for cause to each county board of supervisors which participated in the appointment of the county human services board, and each such county board of supervisors may remove the county human services director for cause by a two-thirds vote of each such county, on due notice in writing and hearing of the charges against the county human services director.

(j) Shall develop county human services board operating procedures.

(k) Shall oversee the operation of one or more service delivery programs.

(l) Shall evaluate services delivery.

(m) May perform such other general functions necessary to administer the program.

(n) Shall submit a proposed budget in accordance with s. 46.031 (1) for authorized services. Notwithstanding the categorization of or limits specified for funds allocated under s. 49.52 (1) (d) or 51.423 (2), with the approval of the department of health and social services the county human services board may expend these funds consistent with any service provided under s. 49.52 (1) (d) or 51.42.

(o) Shall cooperate to the extent feasible with the school board, health planning agencies, law enforcement agencies, and other human service agencies, committees and planning bodies in the geographic area served by the county human services board.

(p) Shall comply with state requirements.

(5m) POWERS AND DUTIES OF COUNTY HUMAN SERVICES BOARD IN CERTAIN COUNTIES WITH A COUNTY EXECUTIVE OR COUNTY ADMINISTRATOR. A county human services board appointed under sub. (4) (b) 2 shall:

(a) Appoint committees consisting of residents of the county to advise the county human services board as it deems necessary.

(b) Recommend program priorities and policies, identify unmet service needs and prepare short-term and long-term plans and budgets for meeting such priorities and needs.

(c) Prepare, with the assistance of the county human services director under sub. (6m) (e), a proposed budget for submission to the county executive or county administrator and the department of health and social services in accordance with s. 46.031 (1) for authorized services.

(d) Advise the county human services director under sub. (6m) regarding purchasing and providing services and the selection of purchase of service vendors, and make recommendations to the county executive or county administrator

regarding modifications in such purchasing, providing and selection.

(e) Develop county human services board operating procedures.

(f) Comply with state requirements.

(g) Assist in arranging cooperative working agreements with persons providing health, education, vocational or welfare services related to services provided under this section.

(6) POWERS AND DUTIES OF COUNTY HUMAN SERVICES DIRECTOR IN CERTAIN COUNTIES. (a) A county human services director appointed under sub. (5) (g) shall have all of the administrative and executive powers and duties of managing, operating, maintaining and improving the programs of the county department of human services, subject to the rules promulgated by the department of health and social services under this section. In consultation with the county human services board under sub. (5) and subject to its approval, the county human services director shall prepare:

1. An annual comprehensive plan and budget of all funds necessary for the program and services authorized by this section in which priorities and objectives for the year are established as well as any modifications of long-range objectives.

2. Intermediate-range plans and budget.

3. Such other reports as are required by the secretary and the county board of supervisors in a county with a single-county department of human services or the county boards of supervisors in counties with a multicounty department of human services.

(c) A county human services director under this subsection shall make recommendations to the county human services board under sub. (5) for:

1. Personnel and salaries of employees.

2. Changes in the organization and management of the program.

3. Changes in program services.

(e) A county human services director under this subsection shall comply with state requirements.

(6m) COUNTY HUMAN SERVICES DIRECTOR IN CERTAIN COUNTIES WITH A COUNTY EXECUTIVE OR COUNTY ADMINISTRATOR. In any county with a county executive or county administrator in which the county board of supervisors has established a single-county department of human services, the county executive or county administrator shall appoint a county human services director on the basis of recognized and demonstrated interest in and knowledge of human services problems, with due regard to training, experience, executive and administrative ability and general qualification and fitness for the performance of the duties of the director. The appointment is subject to confirmation by the county board of supervisors unless the county board of supervisors, by ordinance, elects to waive confirmation or unless the appointment is made under a civil service system competitive examination procedure established under s. 59.07 (20) or ch. 63. The county human services director, subject only to the supervision of the county executive or county administrator, shall:

(a) Supervise and administer any program established under this section.

(b) Determine administrative and program procedures and administrative policies.

(c) Determine, subject to the approval of the county board of supervisors and with the advice of the county human services board under sub. (5m), whether services are to be provided directly by the county department of human services or contracted for with other providers and make such contracts. The county board of supervisors may elect to

require the approval of any such contract by the county board of supervisors.

(e) Assist the county human services board under sub. (5m) (c) in the preparation of the proposed budget required under sub. (5m) (c).

(f) Make recommendations to the county executive or county administrator regarding modifications to the proposed budget prepared by the county human services board under sub. (5m) (c).

(g) Evaluate service delivery.

(j) Perform other functions necessary to manage, operate, maintain and improve programs.

(k) Comply with state requirements.

(l) Represent human service agencies, professionals and consumers of services in negotiations with the state and federal governments.

(m) Determine the number and location of outstations when appropriate to meet service demands.

History: 1975 c. 39, 224; 1977 c. 29; 1981 c. 20, 93, 291; 1981 c. 329 s. 31; 1983 a. 27 ss. 962, 2202 (20); 1985 a. 29 ss. 844m to 860, 3200 (56) (a); 1985 a. 120, 176, 332.

Board and director may view client information without written and informed consent for any purpose related to their powers and duties. 69 Atty. Gen. 273.

46.24 Assistance to minors concerning abortion notification. If a minor who is contemplating an abortion requests assistance from a county department under s. 46.215, 46.22 or 46.23 in notifying the minor's parent or guardian of the contemplated abortion, the county shall provide assistance, including, if so requested, accompanying the minor for the notification of the minor's parent or guardian.

History: 1985 a. 56, 176.

46.245 Information for pregnant women. In any county in which a hospital, clinic or other facility in which abortions are performed is located, a county department under s. 46.215, 46.22 or 46.23 shall prepare the lists specified under s. 146.78 (2). The county department shall distribute the lists to each of those hospitals, clinics or other facilities.

History: 1985 a. 56, 176.

46.25 Child and spousal support; establishment of paternity; medical liability. (1) There is created a child and spousal support and establishment of paternity and medical liability support program in the department. The purpose of this program is to establish paternity when possible, to enforce support obligations owed by parents to their children and maintenance obligations owed to spouses or former spouses with whom the children reside, to locate persons who are alleged to have taken their child in violation of s. 946.71 or 946.715 or of similar laws in other states, and to locate and value property of any person having a support duty. To accomplish the objectives of this program and of other assistance programs under ch. 49, county and state agencies will cooperate with one another to implement a child and spousal support and paternity establishment program in accordance with state and federal laws, regulations and rules and to assure proper distribution of benefits of all assistance programs authorized under ch. 49.

(2) The department shall constitute the state location service which shall assist in locating parents who have deserted their children and other persons liable for support of dependents or persons who are alleged to have taken their child in violation of s. 946.71 or 946.715 or of similar laws in another state, and in locating and valuing property of any person having a support duty.

(2m) The department may request from any person any information it determines appropriate and necessary for the administration of this section, ss. 49.19, 49.46 and 49.47 and

programs carrying out the purposes of 7 USC 2011 to 2029. Any person in this state shall provide this information within 7 days after receiving a request under this subsection. The department or the county child and spousal support agency may disclose information obtained under this subsection only in the administration of this section, ss. 49.19, 49.46 and 49.47 and programs carrying out the purposes of 7 USC 2011 to 2029.

(3) The department, acting as a state location service, shall furnish all services under sub. (2) to any similarly appointed agency of another state which by its laws is authorized to furnish such services to this state or its agencies.

(4) Except as provided in this section, no person may use or disclose information obtained by the state location service. Any person violating this subsection may be fined not less than \$25 nor more than \$500 or imprisoned for not more than one year in the county jail or both.

(6) The department shall establish, pursuant to federal and state laws, rules and regulations, a uniform system of fees for services provided under this section to individuals not receiving aid under s. 49.19 or 49.47. The system of fees may take into account an individual's ability to pay. Any fee paid and collected under this subsection may be retained by the county providing the service except for the fee specified in 42 USC 653 (e) (2) for federal parent locator services.

(7) The department may represent the state or any individual in any action to establish paternity or to establish or enforce a support or maintenance obligation. The department may delegate its authority to represent the state or any individual in any action to establish paternity or to establish or enforce a support or maintenance obligation under this section to the district attorney, or corporation counsel when authorized by county board resolution, pursuant to a contract entered into under s. 59.07 (97). The department shall ensure that any such contract is for an amount reasonable and necessary to assure quality service. The department may, by such a contract, authorize a county to contract with any attorney, collection agency or other person to collect unpaid child support or maintenance. If a county fails to fully implement the programs under s. 59.07 (97), the department may implement them and may contract with any appropriate person to obtain necessary services. The department shall establish a formula for disbursing funds appropriated under s. 20.435 (4) (p) to carry out a contract under this subsection.

(7m) The department may contract with or employ a collection agency, attorney or other person to enforce a support obligation of a parent residing outside this state, or to appear in an action in federal court to enforce such an obligation, or both. To pay for the department's administrative costs of implementing this subsection, the department may charge a fee to counties, retain up to 50% of any incentive payment made to this state under 42 USC 658 for a collection under this subsection, and retain 30% of this state's share of a collection made under this subsection on behalf of a recipient of aid to families with dependent children.

(8) The department may charge counties seeking collection of child and spousal support for any administrative costs it incurs in providing services related to the federal parent locator service under 42 USC 653, the interception of unemployment compensation under 42 USC 654 or the withholding of state and federal income tax refunds under s. 46.255 and 42 USC 664.

(9) The department:

(a) Shall adopt and publish a standard for courts to use in determining a child support obligation based upon a percentage of the gross income and assets of either or both parents.

(b) Shall establish guidelines for courts to consider in determining child support under ss. 767.25 (1m) and 767.51 (5), and shall submit the guidelines to any appropriate standing committee of the legislature for review prior to publication.

(c) Shall develop cost-of-living indices and earnings indices for courts to consider in ordering adjustments in child support under s. 767.33 (1).

(d) May contract with any clerk of court for the department to receive and disburse court-ordered child support payments and to record all such payments and arrearages in payments if the court or clerk of court so requests.

(10) (a) The department shall study the relationship between immediate income withholding and increased collection of child support obligations. With respect to this study, the department may:

1. Enter into written agreements with counties to require the use of immediate income withholding for child support obligations.

2. Evaluate the cost-effectiveness and efficiency of using a percentage-of-income standard to establish a child support obligation.

3. Establish an advisory committee consisting of representatives of various interested organizations, including but not limited to judicial, legal, labor and business organizations.

(b) The department shall submit a report to the presiding officer of each house of the legislature no later than June 30, 1986, on the cost-effectiveness and efficiency of immediate income withholding for child support obligations in the counties with which the department entered into written agreements before July 1, 1984.

(c) The department may expend \$22,500 in fiscal year 1985-86 and \$22,500 in fiscal year 1986-87 from the appropriation under s. 20.435 (4) (de) to pay counties for the costs of processing immediate income withholding, pursuant to agreements entered into under par. (a) 1. The department shall develop a plan for allocating those moneys among counties with which the department enters into agreements.

(d) This subsection does not apply after June 30, 1987, or the effective date of the 1987-89 biennial budget act, whichever is later.

History: 1975 c. 82; 1977 c. 26, 29, 203, 418; 1979 c. 196, 221; 1981 c. 20, 93; 1983 a. 27; 1985 a. 29 ss. 861m to 866, 2390 to 2399.

46.255 Certification of delinquent support and maintenance payments. (1) If a person obligated to provide child support or maintenance is delinquent in making court-ordered payments the clerk of court, upon application of the county designee under s. 59.07 (97) or the department, shall certify the delinquent payment to the department.

(2) At least annually, the department of health and social services shall provide the certifications to the department of revenue.

(3) Receipt of a certification by the department of revenue shall constitute a lien, equal to the amount certified, on any state tax refunds or credits owed to the obligor. The lien shall be foreclosed by the department of revenue as a setoff under s. 71.105 (3), (7) and (8). When the department of revenue determines that the obligor is otherwise entitled to a state tax refund or credit, it shall notify the obligor that the state intends to reduce any state tax refund or credit due the obligor by the amount the obligor is delinquent under the support or maintenance order and that the department intends to forward that amount to the clerk of the court rendering the order. The notice shall provide that within 20 days the obligor may request a hearing before the circuit court rendering the support or maintenance order. Within 10 days after receiving a request for hearing under this subsection

tion, the court shall set the matter for hearing. Pending further order by the court or family court commissioner, the clerk of court is prohibited from disbursing the obligor's state tax refund or credit. The family court commissioner may conduct the hearing. The sole issues at that hearing shall be whether the obligor owes the amount certified and, if not, whether the money withheld from a tax refund or credit shall be paid to the obligor or held for future support or maintenance. An obligor may, within 20 days of receiving notice that the amount certified shall be withheld from his or her federal tax refund or credit, request a hearing under this subsection.

(4) The department of revenue shall send that portion of any state or federal tax refunds or credits withheld to the department of health and social services for distribution to the appropriate clerk of court. The department of health and social services shall make a settlement at least annually with the department of revenue and with each county clerk of court who has certified a delinquent obligation. The settlement shall state the amounts certified, the amounts deducted from tax refunds and credits and returned to the county clerk of court and the administrative costs incurred by the department of revenue. The department of health and social services may charge the county whose clerk of court certified the obligation the related administrative costs incurred by the department of health and social services and the department of revenue.

(5) Certification of an obligation to the department of health and social services does not deprive any party of the right to collect the obligation or to prosecute the obligor. The clerk of court shall immediately notify the department of any collection of an obligation that has been certified. The department shall correct the certified obligation according to the amount the county has collected and report the correction to the department of revenue.

(6) If the state implements the child and spousal support and paternity program under s. 59.07 (97), the state may act in place of the county designee under this section.

History: 1981 c. 20, 391; 1983 a. 27.

State's right to certification and interception is not extinguished by children's attainment of majority. *Marriage of Howard v. Howard*, 130 W (2d) 206, 387 NW (2d) 96 (Ct. App. 1986).

46.257 Child support supplement program. (1) The purposes of the child support supplement program include the following:

- (a) Improving the financial well-being of children.
- (b) Providing financial support to children with one or more noncustodial parents.
- (c) Reinforcing parental responsibility for child support.
- (d) Testing alternative procedures for providing child support and aid to families with dependent children.

(2) The department may initiate a child support supplement program under which a custodian of a minor child who receives inadequate child support from his or her parent or parents may obtain a supplemental payment from public funds on behalf of the minor child.

(2m) If the department initiates a child support supplement program, it may provide a wage supplement for custodial parents who are participating in the program and are employed.

(3) Under this program, the department may enter into agreements with counties under which the state or the county pays a child support supplement payment to a participating custodian of a minor child in that county who does not receive adequate child support, as determined according to the plan established by the department under sub. (6) (c).

(3m) If the department enters into agreements with counties under sub. (3), at least one of the counties may be a county which participates in the work experience and job training pilot program under s. 49.50 (7j).

(4) The state may not pay any supplemental payment under sub. (3) or any county's costs of administering the child support supplement program unless the state obtains federal financial participation in that program.

(5) (a) Any supplemental payment received by a custodian from the state or county under sub. (3) is unearned income under s. 49.046, 49.19 or 49.20.

(b) If a person would be eligible for aid to families with dependent children if he or she did not receive a child support supplement payment, receipt of that payment does not affect that person's eligibility for benefits under s. 49.46.

(6) To carry out the purpose of this section, the department shall:

(a) Establish a formula to determine the amount of the child support supplement. This formula shall be based on the number of children in the custody of the custodian.

(b) Establish a formula to determine when the state or county may obtain a contribution from a custodian who receives a child support supplement payment.

(c) At least 60 days before first entering into an agreement with a county under sub. (3), submit to the joint committee on finance a plan describing the formulas under pars. (a) and (b), the proposed methods of evaluating the impact and engaging in a cost-benefit analysis of the child support program, the proposed methods of administering and modifying the child support supplement program and the number of counties entering into agreements. The joint committee on finance shall review and approve, modify or disapprove the plan. If the joint committee on finance approves the plan as submitted by the department or as modified by the joint committee, the department may implement the plan.

(d) No later than January 1, 1989, submit to the governor and to the presiding officer of each house of the legislature a report evaluating the impact and providing a cost-benefit analysis of the child support supplement program.

(7) Supplemental payments under this section shall be paid from the appropriations under s. 20.435 (4) (d) and (p).

(8) This section applies from October 1, 1986 to September 30, 1994.

History: 1985 a. 29, 285.

46.26 Community youth and family aids. (1) PROCEDURES. The department shall develop procedures for the implementation of this section, standards for the development and delivery of social services under ch. 48, and shall provide consultation and technical assistance to aid counties in implementation and service delivery. The department shall establish information systems, monitoring and evaluation procedures to report periodically to the governor and legislature on the state impact of this section.

(2) RECEIPT OF FUNDS. (a) Beginning January 1, 1980, all funds to counties under this section shall be allocated to county departments under ss. 46.21, 46.22 and 46.23 subject to ss. 46.031 and 49.52 (2), except that monthly advance payments to the counties may be less than one-twelfth of the contracted amounts. No reimbursement may be made to any multicounty department until the counties which established the department have drawn up a detailed contractual agreement, approved by the secretary, setting forth the plans for joint sponsorship.

(b) Beginning January 1, 1980, uniform fees collected or received by counties under s. 46.03 (18) for services provided

under this section shall be applied to cover the cost of the services.

(c) Funds under this section may not be used to reduce the county fiscal effort indicated in the 1979 coordinated plan and budget, and funds may not be used to replace amounts or services provided or purchased by the county in calendar year 1979. All funds under this section shall be used to purchase or provide juvenile delinquency-related services under ch. 48, except that no funds under this section may be used for purposes of land purchase, building construction or maintenance of buildings under ss. 46.17 and 46.175, for reimbursement of costs under ss. 48.208 and 48.209, for city lockups or for reimbursement of care costs in temporary shelter care under s. 48.22.

(2m) PUBLIC PARTICIPATION PROCESS. In determining the use of funds under this section, county departments under ss. 46.21, 46.22 and 46.23 shall assess needs using an open public participation process which involves representatives of those receiving services.

(3) GRANTS-IN-AID. (a) Receipt of funds under this subsection is contingent upon use of a public participation process required under sub. (2m).

(c) Within the limits of the appropriations under s. 20.435 (4) (cd) and (oo), the department shall allocate funds to each county for services under this section.

(cm) Beginning May 1, 1986, the annual base allocation under this section shall reflect the cost of care, services and supplies purchased or provided by the department for persons who have attained 18 years of age but have not attained 19 years of age and who are subject to an order under s. 48.34 (4m). Beginning May 1, 1986, and ending December 31, 1986, 2.43831% of the total base allocation under this section in the state shall reflect the costs described in this paragraph. In each subsequent calendar year, 3.68172% of the total base allocations under this section in the state shall reflect the costs described in this paragraph. A county's base allocation is modified to reflect the costs described if the county, in calendar years 1983 and 1984, had an average rate under sub. (4) (a) for billings or deductions of over \$10,000 per year for the care, services and supplies purchased or provided by the department for persons who had attained 18 years of age but had not attained 19 years of age and who were subject to an order under s. 48.34 (4m). Each such county's percentage of the 2.43831% in 1986 or 3.68172% in any subsequent calendar year equals the amount so billed or deducted for that county divided by the amount so billed or deducted for all counties whose average yearly rate exceeded \$10,000. Counties whose base allocations are not modified under this paragraph may make claims under par. (f).

(d) In addition to the funds allocated under par. (c), the department shall allocate funds to counties under sub. (4) (b) 2 and shall consider each county's proportionate use of applicable departmental services under s. 48.34 during previous calendar years.

(e) The department may carry forward \$500,000 or 10% of its funds allocated under this subsection and not encumbered by counties by December 31, whichever is greater, to the next fiscal year. The department may transfer moneys from or within s. 20.435 (4) (cd) to accomplish this purpose. The department may allocate these transferred moneys during the next fiscal year to improve community-based juvenile delinquency-related services. The allocation does not affect a county's base allocation.

(f) Beginning May 1, 1986, and ending December 31, 1986, in addition to the funds allocated under par. (c), the department shall allocate \$65,400 for counties whose base allocations are not modified under par. (cm) to reimburse those

counties for costs described under par. (cm). In each subsequent calendar year, in addition to the funds allocated under par. (c), the department shall allocate \$100,000 for counties whose base allocations are not modified under par. (cm) to reimburse those counties for costs described under par. (cm). Counties covered under this paragraph shall make claims to the department for allocations under this paragraph. If claims exceed the amounts available, the department shall prorate the amount in accordance with the percentage of claims attributable to each county. If claims are for less than the amount available, the department shall allow the counties covered under par. (cm) to make claims for the surplus amount and the department shall prorate the amount in accordance with the percentage of claims attributable to each county.

(4) STATE SERVICES. (a) The department shall bill counties or deduct from the allocations under s. 20.435 (4) (cd) for the costs of care, services and supplies purchased or provided by the department for each person receiving services under ss. 48.34 and 51.35 (3). Payment shall be due within 60 days of the billing date. If any payment has not been received within 60 days, the department shall withhold aid payments in the amount due from the appropriations under s. 20.435 (4) (b) or (cd).

(b) 1. Assessment of costs under par. (a) shall be made periodically on the basis of a per person per day cost estimate adjusted at least annually by the department. Liability shall apply to county departments under s. 46.21, 46.22 or 46.23 in the county of the court exercising jurisdiction under ch. 48 for each person receiving department services under ss. 48.34 and 51.35 (3). In multicounty court jurisdictions, the county of residency within the jurisdiction shall be liable for costs under this subsection. Assessment of costs under par. (a) shall also be made according to the general placement type or level of care provided, as defined by the department, and prorated according to the ratio of the amount designated under sub. (3) (c) and (d) to the total applicable estimated costs of department care, services and supplies under ss. 48.34 and 51.35 (3).

2. If there is an increase in the per person daily cost assessment, there shall be an increase in the total funds available to all counties under sub. (3) (d) to cover increases for state charges under par. (a).

(d) 1. Except as provided in pars. (e) to (g), for services under s. 48.34, all payments and deductions made under this subsection and uniform fee collections made under s. 46.03 (18) shall be deposited in the appropriation under s. 20.435 (3) (hm). As adjustments in the assessments under this subsection are made, there shall be a proportionate adjustment in the allocations to counties under sub. (3) (d).

2. Beginning July 1, 1985, and ending December 31, 1985, the per person daily cost assessment to counties shall be \$90.24 for care in a juvenile correctional institution, \$90.18 for care for children transferred from a juvenile correctional institution under s. 51.35 (3), \$87.35 for care in a child caring institution, \$58.51 for care in a group home for children, \$20.08 for care in a foster home and \$4.47 for departmental aftercare services.

3. In calendar year 1986, the per person daily cost assessment to counties shall be \$91.93 for care in a juvenile correctional institution, \$91.87 for care for children transferred from a juvenile correctional institution under s. 51.35 (3), \$90.87 for care in a child caring institution, \$61.49 for care in a group home for children, \$20.08 for care in a foster home and \$4.71 for departmental aftercare services.

4. Beginning January 1, 1987, and ending June 30, 1987, the per person daily cost assessment to counties shall be

\$93.59 for care in a juvenile correctional institution, \$93.54 for care for children transferred from a juvenile correctional institution under s. 51.35 (3), \$94.52 for care in a child caring institution, \$64.62 for care in a group home for children, \$20.08 for care in a foster home and \$4.97 for departmental aftercare services.

(e) Beginning January 1, 1983, for foster care, group home care and institutional child care to delinquent children under ss. 48.48 (4) and (14), 48.52 and 49.19 (10) (d) all payments and deductions made under this subsection and uniform fee collections under s. 46.03 (18) shall be deposited in the appropriation under s. 20.435 (3) (ho).

(f) Beginning January 1, 1983, for services under s. 51.35 (3), uniform fee collections under s. 46.03 (18) shall be deposited in the appropriation under s. 20.435 (2) (gk) and all other payments made under this subsection shall be deposited in the general fund and treated as a nonappropriated receipt.

(g) Beginning January 1, 1983, for juvenile field and institutional aftercare services under ch. 48 and for the juvenile offender review program, all payments and deductions made under this subsection and uniform fee collections under s. 46.03 (18) shall be deposited in the general fund and shall be treated as a nonappropriated receipt.

(5) The juvenile correctional rate review council shall review any proposed rates for juvenile services provided by the state under sub. (4).

History: 1979 c. 34; 1979 c. 221 s. 2202 (20); 1981 c. 20, 329; 1983 a. 27, 192; 1985 a. 29, 120, 176, 281.

46.265 Diversion of youth from gang activities. The department may enter into a contract with an organization to provide services in a county having a population of 500,000 or more for the diversion of youths from gang activities into productive activities, including placement in appropriate educational, recreational and employment programs. Notwithstanding s. 16.75, the department may enter into a contract under this section without soliciting bids or proposals and without accepting the lowest responsible bid or offer.

History: 1985 a. 29.

46.27 Long-term support community options program. (1) DEFINITIONS. In this section:

(a) "Alzheimer's disease" has the meaning given under s. 46.87 (1) (a).

(ag) "Caregiver" has the meaning given under s. 46.87 (1) (b).

(ar) "Hospital" has the meaning provided in s. 50.33 (2).

(b) "Nursing home" means a facility that meets the definition in s. 50.01 (3) and that is licensed under s. 50.03 (1).

(c) "Program" means the long-term support community options program.

(cm) "Recuperative care" has the meaning given under s. 50.01 (5m).

(d) "Residence" means the voluntary concurrence of physical presence with intent to remain in a place of fixed habitation. Physical presence shall be prima facie evidence of intent to remain.

(dm) "Respite care" has the meaning given under s. 50.01 (6g).

(e) "Voluntary" means according to a person's free choice, if competent, or by choice of a guardian, if incompetent.

(2) DEPARTMENTAL DUTIES. The department shall:

(b) Coordinate the program with:

1. Discharge planning from hospitals;

2. Periodic on-site inspections of patient care under 42 USC 1396a (a) (31); and

3. The protective service system under ch. 55.

(c) Review and approve or disapprove the selection of a county department under sub. (3) (b) to administer the program.

(d) In consultation with representatives of counties, hospitals and nursing homes and with recipients of long-term community support services, develop guidelines for implementing the program and criteria for reviewing community options plans from counties participating in the program. The guidelines and criteria shall address cost-effectiveness, scope, feasibility and impact on the quality and appropriateness of health and social services and shall provide counties with maximum flexibility to develop programs that address local needs.

(e) Review and approve or disapprove the community options plan of each county participating in the program.

(f) Evaluate the cost-effectiveness of the program, the ability of the program to provide alternatives to institutional care of persons and the reasons why any county department administering the program finds that a community arrangement is not feasible under sub. (6) (d).

(g) After December 31, 1985:

1. Require that a county, by use of a form provided by the department or other appropriate procedure, ensure that persons receiving services under this section meet the eligibility requirements for the program.

2. Periodically monitor the implementation of the program.

(h) Promulgate rules to adopt a long-term community support service fee schedule as part of the uniform fee schedule under s. 46.03 (18) that is substantially similar to the fee calculation schedule existing on January 1, 1985, that was developed as a part of the guidelines required under par. (d).

(2m) REIMBURSEMENT DISALLOWANCES. The department may disallow reimbursement under this section for services provided to persons who do not meet the eligibility requirements.

(3) DUTIES OF PARTICIPATING COUNTIES. The county board of supervisors of any county participating in the program shall:

(a) Create an interagency long-term support planning committee, with the composition and the duties specified under sub. (4).

(b) Designate one of the following, subject to departmental review and approval, to administer the program:

1. A county department under s. 46.215 or 46.22.

2. A county department under s. 51.42 to which the powers and duties of a county department under s. 51.437 have been transferred under s. 51.437 (4g) (b).

3. A county department under s. 46.23.

4. The director of the department that administers the health and human services programs who is appointed under s. 46.21.

5. The departments under subs. 1 and 2 jointly, if the county long-term support planning committee develops no more than one annual community options plan under sub. (4).

(c) Develop procedures and phases for gradual implementation of this section in accordance with guidelines and criteria the department develops under sub. (2) (d).

(cm) Review and approve, disapprove or amend a community options plan to participate in the program, prior to submitting the plan to the department.

(d) Ensure that the program uses existing county resources and personnel to the greatest extent practicable and enhances the effectiveness of discharge planning from hospitals.

(e) After implementing the program for 12 months and within the limits of state and federal funds allocated under

sub. (7), provide noninstitutional community alternatives for a significant number of persons in each of the groups listed in sub. (4) (a) 1 and eligible under sub. (6). The department shall determine what constitutes a "significant number of persons" for each participating county, based on county size and on the statewide proportion of persons from each group receiving medical assistance in a nursing home or state center for the developmentally disabled.

(h) Identify the service needs of victims of Alzheimer's disease and of their caregivers.

(4) PLANNING COMMITTEE. (a) The county board of supervisors shall select the county long-term support planning committee, which shall include at a minimum the following members:

1. At least 5 persons receiving long-term community support services, each of whom represents one of the following groups:

- a. Elderly persons;
 - b. Physically disabled persons;
 - c. Developmentally disabled persons;
 - d. Chronically mentally ill persons;
 - e. Chemically dependent persons;
2. Two elected county officials;
3. One county health representative;

4. One representative of the county department under s. 46.215 or 46.22;

5. One representative of the county department under s. 51.42 or 51.437; and

6. One representative of the county commission on aging.

(b) If practicable, the county board shall select a physically disabled person as one of the members of the planning committee under par. (a).

(c) The planning committee shall develop a community options plan for participation in the program. The plan shall include:

1. A description of the county's proposed program, including the estimated numbers of persons to be assessed and the procedures to be used in performing assessments.

2. A description of the services available and the services to be developed or expanded as alternatives to institutional care under this program.

3. A description of the procedures to be used to coordinate the program with other county agencies, hospitals, nursing homes and providers of community support services.

4. A description of the method to be used to coordinate the use of funds received under this program with the use of other funds allocated to the county under ss. 46.80 (5) and 49.52 (1) (d) and to county departments under s. 51.423.

5. A description of the method to be used by the committee to monitor the implementation of the program.

6. A description of outreach procedures to be used to ensure that significant numbers of people from each group listed in sub. (3) (e) will be served by the program.

7. A description of services and programs to be provided to meet the needs of victims of Alzheimer's disease.

(5) COUNTY DEPARTMENT DUTIES. The county department selected by the county board of supervisors to administer the program shall:

(am) Organize assessment activities specified in sub. (6). The county department shall utilize persons for each assessment who can determine the needs of the person being assessed and who know the availability within the county of services alternative to placement in a nursing home or in a state center for the developmentally disabled. If any hospital patient is referred to a nursing home for admission, these persons shall work with the hospital discharge planner in performing the activities specified in sub. (6). The county

department shall coordinate the involvement of representatives from the county departments under ss. 46.215, 46.22, 51.42 and 51.437, health service providers and the county commission on aging in the assessment activities specified in sub. (6), as well as the person being assessed and members of the person's family or the person's guardian.

(b) Within the limits of state and federal funds allocated under sub. (7), arrange service contracts under s. 46.036 and ensure the provision of necessary long-term community support services for each person who meets the criteria specified in sub. (6) (b).

(c) Within the limits of state and federal funds allocated under sub. (7), provide for ongoing case management, periodic case plan review and follow-up services for any person receiving long-term community support services under sub. (6) (b).

(d) 1. Apply the uniform fee schedule under s. 46.03 (18) for long-term community support services provided any person under par. (b), if the person is eligible for medical assistance under s. 49.46 or 49.47 or if the county department finds the person likely to become medically indigent within 6 months by spending excess income or assets for medical or remedial care.

2. Bill other persons not subject to subd. 1 for the full cost of long-term community support services received.

3. Use funds received under this paragraph to pay for long-term community support services for persons who are eligible under sub. (6) (b).

(e) Within the limits of state and federal funds allocated under sub. (7) and in accordance with the county's plan for gradual implementation and the requirements under sub. (6) (a) 3, apply the program to any person residing in a nursing home or state center for the developmentally disabled who wants to be assessed and to receive long-term community support services, and coordinate the program with the protective services system under ch. 55.

(f) Implement the long-term community support service fee schedule under par. (g).

(g) Assess a person who receives services under par. (b) at least 50% of the amount specified under the fee calculation schedule under par. (f) for the services provided that person.

(h) Within the limits of state and federal funds allocated under sub. (7) and in accordance with the county's plan for gradual implementation, apply the program to any person who has been diagnosed by a physician as having Alzheimer's disease, who meets the level of care requirements under sub. (6r) (d) and who wants to be assessed and to receive long-term community support services.

(6) ASSESSMENTS. (a) 1. Within the limits of state and federal funds allocated under sub. (7), an assessment shall be conducted for any person identified in sub. (5) (e) or who is seeking admission to or is about to be admitted to any of the following facilities:

a. A nursing home in participating counties.

b. Before January 1, 1986, a state center for the developmentally disabled for extended care placement, or to the Wisconsin veterans home at King, if the person's county of residence is participating in this program.

bm. After December 31, 1985, a state center for the developmentally disabled for extended care placement, or to the Wisconsin veterans home at King.

1m. Each assessment shall determine the person's functional abilities, disabilities and need for medical and social long-term community support services. Each assessment shall include an investigation of long-term community support services that could serve as alternatives to institutional care in a nursing home or in a state center for the develop-

mentally disabled. The assessment shall include an explanation of the potential community alternatives to the person being assessed and the person's family or guardian.

2. Subdivision 1 does not apply to:

a. Any person or facility that is excluded because of gradual implementation of the program under sub. (3) (c).

b. Emergency admissions, as determined by a physician, but shall be applied within 10 days of admission.

c. Private pay patients seeking admission to or about to be admitted to a facility under subd. 1 who are informed about the program but waive the assessment, unless the patient will be eligible for medical assistance within 6 months of assessment.

d. Any person who is readmitted to a nursing home or state center for the developmentally disabled from a hospital within 6 months after being assessed.

e. Current residents of a nursing home or state center for the developmentally disabled who are eligible for an assessment under sub. (5) (e) and subd. 3, but who waive the assessment.

f. A person who enters a nursing home for recuperative care.

g. A person who enters a nursing home for respite care.

3. In each participating county, assessments shall be conducted for those persons and in accordance with the procedures described in the county's community options plan. The county may elect to establish assessment priorities for persons in target groups identified by the county in its plan regarding gradual implementation. On or before the date which is 36 months after the date upon which a county initially participates in the program or June 30, 1986, whichever is later, the county shall offer an assessment to any person who is eligible for medical assistance and who is already admitted to a nursing home or state center for the developmentally disabled.

(b) Within the limits of state and federal funds allocated under sub. (7), a community services case plan shall be developed for any person with chronic disabilities:

1. Who is assessed under par. (a); and

2. For whom noninstitutional community services are feasible, financially viable and preferred by the person or the person's guardian. In this subdivision, noninstitutional community services are financially viable if they can be financed by state or federal funds allocated under sub. (7).

(c) 1. If an assessment determines that nursing home care and community-based care are appropriate for a person who is eligible for medical assistance and if state or federal funds are available under sub. (7) (b) to support any needed noninstitutional services for the person in the community, then medical assistance reimbursement is not available for nursing home services provided to the person. An aggrieved person may appeal the assessment decision under ss. 49.45 (5) and 49.50 (8).

2. Subdivision 1 applies only if all counties in the state are participating in the program and are assessing all eligible persons under par. (a). After that time, the assessment criteria for determining whether nursing home care is appropriate shall be uniform statewide and shall be the same as the criteria used for the department's inspection of care reviews of nursing home residents.

3. Counties and their employes and agents are immune from liability for determinations made under subd. 1.

(d) If the county, through an assessment, determines that a community arrangement is not feasible, the county department administering the program shall explain the reasons to the person and his or her family or guardian. The county department administering the program shall maintain

records sufficient to provide the county long-term support planning committee and the department with a periodic review of the reasons community arrangements were not feasible in order to assist future program planning.

(6g) FISCAL RESPONSIBILITY. Within the limitations under sub. (7) (b), the fiscal responsibility of a county for an assessment, case plan or services provided to a person under this section is as follows:

(a) For a person seeking admission to or about to be admitted to a nursing home, the county in which the person has residence is the county of fiscal responsibility.

(b) For a person residing in a nursing home, the county in which the nursing home is located is the county of fiscal responsibility.

(c) For a person living in a nursing home whose legal residence is established in another county, the county in which the legal residence is established is the county of fiscal responsibility.

(d) For a person residing in a state facility under sub. (6) (a) 1. b, or for a person protectively placed under ch. 55, the county in which the person has residence before he or she enters the state facility or is protectively placed is the county of fiscal responsibility.

(6r) ELIGIBILITY. No county may use funds received under sub. (7) (b) to pay for long-term community support services provided to any person who initially receives services under this section after December 31, 1985, unless one of the following applies:

(a) The person meets the level of care requirements under s. 49.45 (6m) (i) for reimbursement of nursing home care under the medical assistance program.

(b) The person has chronic mental illness, as defined under s. 51.01 (3g), affecting mental health to the extent that long-term or repeated hospitalization is likely unless the person receives long-term community support services.

(c) The person receives medical assistance, resides in a nursing home or a state center for the developmentally disabled immediately prior to receiving services under this section and is identified through the inspection of patient care under 42 USC 1396a (a) (31) as a person for whom community care is appropriate.

(d) The person has been diagnosed by a physician as having Alzheimer's disease and requires a level of care equivalent to either of the following:

1. Noninstitutional personal care, including personal assistance, supervision and protection, and periodic medical services and consultation with a registered nurse, or periodic observation and consultation for physical, emotional, social or restorative needs, but not regular nursing care.

2. Care, including social services and activity therapy, in a residential facility under the daily supervision of a licensed nurse with consultation from a registered nurse at least 4 hours per week.

(7) FUNDING. (a) Before January 1, 1986, from the appropriation under s. 20.435 (4) (b), the department shall allocate funds to pay assessment and case plan costs under sub. (6) not otherwise paid under s. 46.032 or 49.45. The department shall reimburse counties for the cost of assessing persons eligible for medical assistance under s. 49.46 or 49.47 as part of the administrative services of medical assistance, payable under s. 49.45 (3) (a). Counties may use unspent funds allocated under this paragraph to pay the cost of long-term community support services.

(am) After December 31, 1985, from the appropriation under s. 20.435 (4) (bd), the department shall allocate funds to pay assessment and case plan costs under sub. (6) not otherwise paid under s. 46.032 or 49.45. The department

shall reimburse counties for the cost of assessing persons eligible for medical assistance under s. 49.46 or 49.47 as part of the administrative services of medical assistance, payable under s. 49.45 (3) (a). Counties may use unspent funds allocated under this paragraph to pay the cost of long-term community support services.

(b) 1. Before January 1, 1986, from the appropriation under s. 20.435 (4) (b), the department shall allocate funds to pay the cost of providing long-term community support services under sub. (5) (b) to persons eligible for medical assistance under s. 49.46 or 49.47 or to persons whom the county department administering the program finds likely to become medically indigent within 6 months by spending excess income or assets for medical or remedial care. The average per person reimbursement under this paragraph may not exceed the state share of the average per person reimbursement rate the department expects under s. 49.45 (6m). The county department administering the program may spend funds received under this paragraph only in accordance with the case plan and service contract created for each person receiving long-term community support services.

1m. After December 31, 1985, from the appropriation under s. 20.435 (4) (bd), the department shall allocate funds to pay the cost of providing long-term community support services under sub. (5) (b) to persons eligible for medical assistance under s. 49.46 or 49.47 or to persons whom the county department administering the program finds likely to become medically indigent within 6 months by spending excess income or assets for medical or remedial care. The average per person reimbursement under this paragraph may not exceed the state share of the average per person reimbursement rate the department expects under s. 49.45 (6m). The county department administering the program may spend funds received under this paragraph only in accordance with the case plan and service contract created for each person receiving long-term community support services.

2. No county may use funds received under this paragraph to pay for long-term community support services provided any person who resides in a nursing home or state center for the developmentally disabled, unless the department waives this restriction on use of funds and the services are provided in accordance with a discharge plan.

(c) 1. The department shall allocate funds under this subsection to each participating county. If, before January 1, 1986, a county elects to participate in the program for only part of a year, the department shall prorate the county's allocation for that year.

2. Receipt of funds under this section is subject to s. 49.52 (2).

3. The department may not release funds under this section before approving the county's community options plan.

(d) The department may release funds to counties acting jointly, if the counties sign a contract approved by the secretary that explains the plans for joint sponsorship.

(e) No county may use funds received under this section to:

1. Purchase land or construct buildings;

2. Replace federal, state or county matching funds for long-term community support services previously provided, as indicated by the county budget or by actual expenditures for the year prior to the county's participation in the program, except to the extent that federal or state funding available for these services decreases; or

3. Reduce the federal, state or county matching expenditures for long-term community support services provided to any person under sub. (5) (b) from funds allocated under s. 46.80 (5), 49.52 (1) (d) or 51.423, except to the extent that

federal or state funding allocated under these sections decreases.

(f) If the department determines that a county demonstrates a pattern of failure to serve clients whose cost of care significantly exceeds the average cost of care for long-term community support services provided under this section, the department may require that county to reserve a portion of funds allocated under this subsection for provision of service to those clients.

(g) The department may carry forward up to \$500,000 of funds allocated under this subsection and not encumbered by counties by December 31 to the next state fiscal year. The department may transfer moneys within or between s. 20.435 (4) (b) or (bd) to accomplish this purpose. An allocation under this paragraph shall not affect a county's base allocation for the program. The department may allocate these transferred moneys during the next fiscal year to counties for the improvement or expansion of long-term community support services for clients whose cost of care significantly exceeds the average cost of care provided under this section, including any of the following:

1. Specialized training for providers of services under this section.

2. Start-up costs for developing needed services.

3. Home modifications.

4. Purchase of medical equipment or other specially adapted equipment.

(8) COUNTY PARTICIPATION. In 1985, any county may elect to participate in the program. In 1986, a county shall participate in and implement the program.

(9) PILOT PROJECT ALLOCATING THE COST OF NURSING HOME UTILIZATION INCREASES TO COUNTIES. (a) The department may select up to 5 counties that volunteer to participate in a pilot project under which they will receive certain funds allocated for long-term care. The department shall allocate a level of funds to these counties equal to the amount that would otherwise be paid under s. 20.435 (1) (b) to nursing homes for providing care because of increased utilization of nursing home services, as estimated by the department. In estimating these levels, the department shall exclude any increased utilization of services provided by state-operated nursing homes. The department shall calculate these amounts on a calendar year basis under sub. (10).

(b) The department may only select counties to participate in this pilot project and receive these funds that have been part of the long-term support community options program since January 1, 1983. County participation in this pilot project shall be for periods beginning either January 1, 1984, or January 1, 1985.

(c) All long-term community support services provided under this pilot project in lieu of nursing home care shall be consistent with those services described in the participating county's community options plan under sub. (4) (c) and provided under sub. (5) (b). Each county participating in the pilot project shall assess persons under sub. (6).

(10) FUNDING THE PILOT PROJECT. (a) 1. The department shall determine for each county participating in the pilot project under sub. (9) a funding level of state medical assistance expenditures to be received by the county. This level shall equal the amount that the department determines would otherwise be paid under s. 20.435 (1) (b) because of increased utilization of nursing home services, as estimated by the department.

2. The department shall transfer or credit to the participating county the amount calculated under subd. 1 for 1984 or for the first 6 months of 1985, depending on the date the county begins participating in the pilot project. The county

shall use these funds to provide long-term care to medical assistance recipients covered by its community options plan, either in the form of nursing home care financed under par. (b) or in the form of long-term community support services. The county may use extra funds available under this paragraph after it provides this long-term care for other long-term community support services under its community options plan.

(b) Each county participating in the pilot project is liable for the entire nonfederal share of medical assistance costs related to increased utilization of nursing homes that are located in the county.

(c) The department's method of determining each county's base level of funding, the transfer or credit of funds and the department's specification of county financial liability under the pilot project are subject to the approval of the joint committee on finance.

(11) MEDICAL ASSISTANCE WAIVER. (a) On or before October 1, 1985, the department shall request a waiver from the secretary of the federal department of health and human services, under 42 USC 1396n (c), authorizing the department to provide as part of the medical assistance program home and community-based services for up to 1,000 persons at any one time who are eligible for long-term support community options program services under sub. (5) (b).

(b) The department shall include all assurances required under 42 USC 1396n (c) in its request.

(c) The following conditions apply under the waiver:

1. At the end of the 3-year period during which the waiver remains in effect the department may request a 3-year extension of the waiver.

2. The department shall annually submit to the secretary of the federal department of health and human services information showing the effect of the program on the type and amount of medical assistance provided and on the health and welfare of program participants.

3. Medical assistance reimbursement for services a county provides under this subsection shall be made from the appropriations under s. 20.435 (1) (o) and (4) (b) and (bd).

(d) This subsection applies on the date the secretary of the federal department of health and human services approves the waiver request submitted under par. (a). This subsection applies for 3 years following that date and, if the secretary of the federal department of health and human services approves an extension, shall apply for up to an additional 3 years.

History: 1981 c. 20; 1983 a. 27; 1983 a. 189 s. 329 (5); 1983 a. 192, 239; 1985 a. 29 ss. 876s to 896am, 3200 (56); 1985 a. 120, 176.

46.275 Community integration program for residents of state centers. **(1) LEGISLATIVE INTENT.** The intent of the program under this section is to relocate persons from the state centers for the developmentally disabled into appropriate community settings with the assistance of home and community-based services and with continuity of care. The intent of the program is also to minimize its impact on state employes through redeployment of employes into vacant positions.

(1m) DEFINITIONS. In this section:

(a) "Medical assistance" means aid provided under ss. 49.43 to 49.47.

(b) "Program" means the community integration program for residents of state centers for the developmentally disabled, for which a waiver has been received under sub. (2).

(2) DEPARTMENTAL POWERS AND DUTIES. The department may request a waiver from the secretary of the U.S. department of health and human services, under 42 USC 1396n (c), authorizing the department to integrate medical assistance

recipients who reside in state centers for the developmentally disabled into their communities by providing home and community-based services as part of the medical assistance program. If the department requests this waiver, it shall include all assurances required under 42 USC 1396n (c) (2) in its request. If the department receives this waiver, at the end of the 3-year period during which the waiver remains in effect the department may request an additional 3-year extension of the waiver. If the department receives this waiver, it shall:

(a) Annually submit to the secretary of the U.S. department of health and human services information showing the effect of the program on medical assistance costs and on the health and welfare of program participants.

(b) Evaluate the effect of the program on medical assistance costs and on the program's ability to provide community care alternatives to institutional care in state centers for the developmentally disabled.

(c) Fund home or community-based services provided by any county or by the department that meet the requirements of this section.

(d) Review and approve or disapprove each plan of care developed under sub. (3) (c) 2.

(e) Submit to the governor and to the presiding officer of each house of the legislature, for distribution to appropriate legislative committees, annual progress reports on the program plus any other information requested.

(3) COUNTY PARTICIPATION. (a) Any county may participate in the program, if it meets the conditions specified in this subsection and the requirements established by the department, including requirements concerning the qualifications and levels of staff for home or community-based service providers.

(b) The board of supervisors of any county that participates in the program shall designate one of the following county departments to administer the program, subject to departmental review and approval:

2. A county department under s. 51.42 to which the powers and duties of a county department under s. 51.437 have been transferred under s. 51.437 (4g) (b).

3. A county department under s. 46.23.

4. A county department under s. 51.437.

(c) Any county participating in the program shall inform the persons eligible for program services under sub. (4) that home and community-based services are available, at their choosing, in place of institutional care. Services provided under this section shall meet the following conditions:

1. The services substitute for care provided at a state center for the developmentally disabled.

2. The services are provided to each recipient under a written plan of care designed for that recipient and approved by the department.

(d) Any county participating in the program shall provide case management services, including the responsibility for locating, coordinating and monitoring all services and informal supports needed by eligible persons and their families.

(e) Any county participating in the program shall protect the health and welfare of persons receiving program services and shall coordinate the program to the greatest extent practicable with the long-term support community options program under s. 46.27.

(3g) DUTIES OF THE DEPARTMENT. The department shall provide fair and equitable arrangements to protect the interests of all state employes affected by the program, including arrangements designed to preserve employe rights and benefits.

(3r) RELOCATION BY THE DEPARTMENT. (a) The department may, without county participation under sub. (3) or county

reimbursement under sub. (5) (a), relocate a person eligible for program services under sub. (4) from a state center for the developmentally disabled into a community setting in any of the following situations:

1. The person's county of residence when the person entered the state center for the developmentally disabled cannot be determined with reasonable certainty.

2. The person's county of residence when the person entered the state center for the developmentally disabled is not participating, under sub. (3), in the program.

3. The person will be relocated into the home of the person's parent or guardian and will be receiving state monitoring of the relocation and services provided by a public or private school.

(b) If the department relocates a person under this subsection, it shall comply with the requirements imposed on counties under sub. (3) (c) to (e).

(c) Prior to relocating a person under this subsection, the department shall ensure delivery of any necessary education, habilitation, vocational, medical and therapy services through contracting with community-based service providers. If any service is not available, the department may provide it directly.

(4) ELIGIBILITY OF RECIPIENTS. (a) Any medical assistance recipient living in a state center for the developmentally disabled is eligible to participate in the program. Such a recipient may apply, or any person may apply on behalf of such a recipient, for participation in the program.

(b) The department in conjunction with the county shall review any application for participation in the program as to eligibility and the appropriateness of planned services. The county department administering the program for the county in which the medical assistance recipient resides shall review any application for participation in the program as to eligibility, except applications for relocation under sub. (3r). No person may participate in the program unless all of the following occur:

1. Consent for participation is given either by the person's parent, guardian or legal custodian, if the person is under age 18, or by the person or the person's guardian, if the person is age 18 or over, except that this subdivision does not limit the authority of the circuit court to enter, change, revise or extend a dispositional order under subch. VI of ch. 48 or to order a placement under s. 55.06.

2. The county, or the department under sub. (3r), agrees to provide services to the person.

3. The department determines that available home or community-based services are appropriate for that person.

(c) 1. Except as provided in subd. 2, if a resident of a state center for the developmentally disabled is relocated in order to receive home or community-based services under the program, the center may not accept a patient to fill the bed left vacant by the person leaving.

2. If a person who has been relocated from a state center for the developmentally disabled under this program seeks to return to the center within 365 days after relocating because the person or the county department administering the program, or the department under sub. (3r), finds that the services available are inappropriate, the center shall accept the person as a patient to fill the bed that the person vacated. After this 365-day period, the person may only be readmitted into a bed not left vacant because of relocation under this section.

(f) To the extent provided in 42 USC 1396n, if a person who has been relocated from a state center for the developmentally disabled under this program discontinues participating in the program for any reason other than institutional

placement, the department may reallocate on a case-by-case basis the funding within the relocating county to another medical assistance recipient who is developmentally disabled and who, but for this program, would require the level of care provided in a state center for the developmentally disabled.

(5) FUNDING. (a) Medical assistance reimbursement for services a county, or the department under sub. (3r), provides under this program is available from the appropriations under s. 20.435 (1) (b) and (o). If 2 or more counties jointly contract to provide services under this program and the department approves the contract, medical assistance reimbursement is also available for services provided jointly by these counties.

(b) No county, or the department under sub. (3r), may use funds received under this section to do any of the following:

1. Purchase land or construct buildings.

2. Reduce federal, state or county matching expenditures for long-term community support services provided to any person as part of this program from funds allocated under s. 46.80 (5), 49.52 (1) (d) or 51.423, as indicated in the county's budget or by actual expenditures.

3. Provide room and board, except for respite care.

4. Provide services within a skilled nursing facility, intermediate care facility or intermediate care facility for the mentally retarded, including a state center for the developmentally disabled.

5. Provide residential services in any community-based residential facility, as defined in s. 50.01 (1), or group home, as defined in s. 48.02 (7) that has more than 4 beds, unless the department approves the provision of services in a community-based residential facility or group home that has 5 to 8 beds.

6. Provide services to a recipient that are not specified in the recipient's written plan of care.

(c) The total allocation under s. 20.435 (1) (b) and (o) to any county, or the department under sub. (3r), for services provided under this section may not exceed \$55 per person relocated under the program per day of relocation for fiscal year 1983-84 and may not exceed \$56.38 per person relocated under the program per day of relocation for fiscal year 1984-85. The department shall request approval of allocation amounts from the federal department of health and human services. If the federal department of health and human services approves a lesser allocation amount than that requested for approval, the allocation amount for services provided under this section per person relocated under the program per day of relocation for fiscal years 1985-86 and 1986-87 may not exceed the lesser amount so approved by the federal department of health and human services. A county may use funds received under this section only to provide services to persons who meet the requirements under sub. (4) and may not use unexpended funds received under this section to serve other developmentally disabled persons residing in the county.

(5m) REPORT. By March 1 of each year, the department shall submit a report to the joint committee on finance and to the presiding officer of each house of the legislature describing the program's impact during the preceding calendar year on state employes, including the department's efforts to reemploy employes into vacant positions and the number of employes laid off.

(6) EFFECTIVE PERIOD. This section takes effect on the date the secretary of the U.S. department of health and human services approves the waiver request submitted under sub. (2) or on July 2, 1983, whichever is later. This section remains in effect for 3 years following that date and, if the secretary of

the U.S. department of health and human services approves an extension, shall continue an additional 3 years.

History: 1983 a. 27; 1985 a. 29 ss. 896b to 896L, 3202 (23); 1985 a. 120, 176.

46.277 Community integration program for persons relocated or meeting reimbursable levels of care. (1) LEGISLATIVE INTENT. The intent of the program under this section is to provide home or community-based care to serve in a noninstitutional community setting a person who meets eligibility requirements under 42 USC 1396n (c) and is relocated from an institution other than a state center for the developmentally disabled or meets the level of care requirements for medical assistance reimbursement in a skilled nursing facility or an intermediate care facility, except that the number of persons who receive home or community-based care under this section is not intended to exceed the number of nursing home beds that are delicensed as part of a plan submitted by the facility and approved by the department. The intent of the program is also that counties use all existing services for providing care under this section, including those services currently provided by counties.

(1m) DEFINITIONS. In this section:

(a) "Medical assistance" means aid provided under ss. 49.43 to 49.47.

(b) "Program" means the community integration program for facilities certified as medical assistance providers, for which a waiver has been received under sub. (2).

(2) DEPARTMENTAL POWERS AND DUTIES. The department may request a waiver from the secretary of the federal department of health and human services, under 42 USC 1396n (c), authorizing the department to serve medical assistance recipients, who meet the level of care requirements for medical assistance reimbursement in a skilled nursing facility or an intermediate care facility, in their communities by providing home or community-based services as part of medical assistance. The number of persons for whom the waiver is requested may not exceed the number of nursing home beds that are delicensed as part of a plan submitted by the facility and approved by the department. If the department requests a waiver, it shall include all assurances required under 42 USC 1396n (c) (2) in its request. If the department receives this waiver, it may request one or more 3-year extensions of the waiver under 42 USC 1396n (c) and shall perform the following duties:

(a) Evaluate the effect of the program on medical assistance costs and on the program's ability to provide community care alternatives to institutional care in facilities certified as medical assistance providers.

(b) Fund home or community-based services provided by any county that meet the requirements of this section.

(c) To the maximum extent possible, authorize the provision of services under this section to serve persons, except those institutionalized in a state center for the developmentally disabled, in noninstitutional settings and coordinate application of the review criterion under s. 150.39 (5) with the services provided under this section.

(d) Review and approve or disapprove each plan of care developed by the county department under sub. (3).

(3) COUNTY PARTICIPATION. (a) Sections 46.27 (3) (b) and 46.275 (3) (a) and (c) to (e) apply to county participation in this program, except that services provided in the program shall substitute for care provided a person in a skilled nursing facility or intermediate care facility who meets the level of care requirements for medical assistance reimbursement to that facility rather than for care provided at a state center for the developmentally disabled. The number of persons who receive services provided by the program under this para-

graph may not exceed the number of nursing home beds that are delicensed as part of a plan submitted by the facility and approved by the department.

(b) 1. If the provision of services under this section results in a decrease in the statewide nursing home bed limit under s. 150.31 (3), the facility affected by the decrease shall submit a plan for delicensing all or part of the facility that is approved by the department.

2. Each county department participating in the program shall provide home or community-based care to persons eligible under this section, except that the number of persons who receive home or community-based care under this section may not exceed the number of nursing home beds that are delicensed as part of a plan submitted by the facility and approved by the department.

(4) ELIGIBILITY OF RESIDENTS. (a) Any medical assistance recipient who meets the level of care requirements for medical assistance reimbursement in a skilled nursing facility or intermediate care facility is eligible to participate in the program, except that the number of participants may not exceed the number of nursing home beds that are delicensed as part of a plan submitted by the facility and approved by the department. Such a recipient may apply, or any person may apply on behalf of such a recipient, for participation in the program. Section 46.275 (4) (b) applies to participation in the program.

(b) To the extent authorized under 42 USC 1396n, if a person discontinues participation in the program, a medical assistance recipient may participate in the program in place of the participant who discontinues if that recipient meets the level of care requirements for medical assistance reimbursement in a skilled nursing facility or intermediate care facility, except that the number of participants may not exceed the number of nursing home beds that are delicensed as part of a plan submitted by the facility and approved by the department.

(5) FUNDING. (a) The provisions of s. 46.275 (5) (a) and (b) apply to funding received by counties under the program.

(b) Prior to relocating any person under the program, the department shall submit to the joint committee on finance a method for determining the medical assistance reimbursement levels to be provided to any county under par. (a) for the committee's approval. Total funding to any county for relocating each person under the program may not exceed the statewide average daily medical assistance reimbursement rate for the class of facility involved per day of relocation.

(5m) REPORT. By March 1 of each year, the department shall submit a report to the joint committee on finance and to the presiding officer of each house of the legislature describing the cost and quality of services used under the program and the extent to which existing services have been used under the program in the preceding calendar year.

(6) EFFECTIVE PERIOD. The effective date provisions of s. 46.275 (6) apply to this section.

History: 1983 a. 27; 1985 a. 29 ss. 896nc to 896u, 3202 (23); 1985 a. 176.

46.28 Revenue bonding for residential facilities. (1) In this section:

(a) "Authority" means the Wisconsin housing and economic development authority created under ch. 234.

(b) "Chronically disabled" means any person who is alcoholic, developmentally disabled, drug dependent or mentally ill, as defined in s. 51.01 (1), (5), (8) and (13), or any person who is physically disabled.

(c) "Elderly" means a person 60 years of age or older.

(d) "Residential facility" means a living unit for the elderly or chronically disabled that is developed by a sponsor and

that is not physically connected to a nursing home or hospital except by common service units for laundry, kitchen or utility purposes.

(e) "Sponsor" means any of the following:

1. A nonprofit participating health institution, as defined in s. 231.01 (6).
2. A tribal council or housing authority or any nonprofit entity created by a tribal council.
3. The department.
4. Any county department under s. 46.21, 46.22, 46.23, 51.42 or 51.437.
5. A county commission on aging created under s. 59.07 (93).
6. Any housing authority created under s. 59.075, 66.395, 66.40 or 66.4325.
7. Any housing corporation, limited-profit or nonprofit entity.
8. Any other entity meeting criteria established by the authority and organized to provide housing for persons and families of low and moderate income.

(2) The department may approve any residential facility for financing by the authority if it determines that the residential facility will help meet the housing needs of the elderly and the chronically disabled, based on factors that include:

- (a) The geographic location of the residential facility.
- (b) The population served by the residential facility.
- (c) The services offered by the residential facility.

(3) The department may authorize the authority to issue revenue bonds under s. 234.70 to finance any residential facility it approves under sub. (2).

(4) The department may charge sponsors for administrative costs and expenses it incurs in exercising its powers and duties under this section and under s. 234.70.

History: 1981 c. 298; 1983 a. 27 ss. 996g to 996r, 2202 (20); 1983 a. 81 s. 11; 1983 a. 83 s. 20; 1983 a. 189 s. 329 (9); 1985 a. 29, 176; 1985 a. 265 s. 4; 1985 a. 332.

46.30 Community action agencies. (1) DEFINITIONS. In this section:

(a) "Limited-purpose agency" means a private, nonprofit organization that is a statewide organization whose project has statewide impact.

(b) "Poor person" means a resident of a community served by a community action agency, whose income is at or below 125% of the poverty line.

(c) "Poverty line" means the nonfarm federal poverty line for the continental United States, as defined by the federal department of labor under 42 USC 9902 (2).

(2) **CREATION.** (a) 1. A community action agency is any of the entities specified in par. (b) that meets the following conditions:

a. Is capable of performing the functions specified in sub. (3).

b. Receives the approval of the secretary.

c. Receives the approval of the county board of supervisors, if the community action agency serves an entire county, or, if the agency serves a city, village or town, receives the approval of the city's, village's or town's legislative body.

2. Each private, nonprofit community action agency shall be governed by a board consisting of 15 to 51 members, chosen from the following groups:

a. One-third of the members shall be elected public officials or their representatives. If the number of elected public officials who are reasonably available and willing to serve on a governing board is insufficient to meet this requirement, appointed public officials may be substituted. The chief executive or the legislative body of the county, city, village or

town that approved the creation of a community action agency under subd. 1. c shall appoint these members.

b. At least one-third of the members shall represent poor persons in the community to be served by the community action agency, being chosen in accordance with democratic selection procedures adequate to ensure that they are selected by and that they represent poor persons.

c. The remaining members shall represent specific groups or areas within the community to be served by the community action agency. The members selected under subd. 2. a and b shall determine which groups or areas are to be represented and shall delegate to the group, or to residents of the area, the task of selecting the representative. Representatives of an area of the community shall reside within that area.

3. Each community relations-social development commission created under s. 66.433 that acts as a community action agency shall modify the composition of its commission so that the commission is composed of 15 to 51 members, chosen from the groups specified in subd. 2. a to c.

(b) The following entities may organize as community action agencies:

1. Any private, nonprofit community organization, including any migrant or seasonal farm worker organization.

2. Any community relations-social development commission created under s. 66.433.

3. Any entity designated by the community services administration as a community action agency under 42 USC 2790 to 2797, in effect on August 1, 1981, for federal fiscal year 1981, unless the agency lost its designation. Any such entity is deemed to meet the conditions under par. (a) 1.

(c) The approval of a community action agency may be rescinded but only if there is good cause and if the decision to rescind is made by both the legislative body of the county, city, village or town that granted the approval and the secretary. At least 90 days before rescinding approval, the legislative body or secretary shall notify the community action agency of its reasons for the action and hold a public hearing in the community concerning the action.

(3) **POWERS AND DUTIES.** (a) A community action agency shall do all of the following:

1. Administer funds received from the department under sub. (4) and funds from other sources provided to support a community action program.

2. Set personnel, program and fiscal policies. Each community action agency shall set policies and procedures governing employe compensation and employment qualifications for itself and its agents. These policies and procedures shall ensure that employment practices are impartial and are designed to employ only competent persons, and shall guard against personal or financial conflicts of interest. Each community action agency shall also define the duties of its employes regarding advocacy on behalf of poor persons.

3. Involve, to the greatest extent practicable, poor persons in developing and implementing programs in order to ensure that these programs:

a. Will stimulate the capabilities of these persons for self-advancement.

b. Will be meaningful to and widely utilized by these persons.

4. Allow poor persons to influence the character of programs operated by the community action agency.

5. Involve members of the community in planning, conducting and evaluating its programs.

6. Conduct its program in a manner free of discrimination based on political affiliation and of personal or familial favoritism. Each community action agency shall establish policies and procedures to carry out this requirement and to

hold staff members accountable for complying with matters governed by this section and by other state or federal laws, rules or regulations.

7. Release any record of the community action agency for examination or copying upon request, unless disclosure would constitute an unwarranted invasion of an individual's privacy. Each community action agency shall require its agents to make their records similarly available. Each community action agency shall hold public hearings on request to provide information and to receive comments about its activities.

8. Appoint a representative or representatives to the citizen advisory committee under s. 46.031 (3) (a), in order to participate in developing and implementing programs designed to serve the poor.

(b) A community action agency may:

1. Approve program plans and priorities.
2. Resolve internal personnel or fiscal matters.
3. Create a community action program. If the community action agency creates a program, it shall plan, coordinate, administer and evaluate the program. A community action program may include provisions that will help poor persons:
 - a. Secure and retain employment.
 - b. Improve their education.
 - c. Make better use of available income.
 - d. Obtain and maintain adequate housing and a suitable living environment.
 - e. Secure needed transportation.
 - f. Obtain emergency assistance. Through its program, the community action agency may provide emergency supplies or services to meet basic needs.
 - g. Participate in community affairs.
 - h. Use more effectively other available programs.
4. Create methods by which poor persons can work with private groups to solve common problems.
5. Research the causes of and problems created by poverty in the community.
6. Determine if programs to reduce poverty are working effectively.
7. Initiate and sponsor projects to aid poor persons that provide otherwise unavailable services.
8. Transmit information between public and private organizations and otherwise coordinate the provision of public and private social services programs to eliminate overlap and ensure effective delivery of the programs.
9. Contract with other persons to perform the community action agency's functions. The community action agency may delegate responsibility for funding or administering its programs or for making policy determinations concerning a particular geographic area of the community it serves only if poor persons represent at least one-third of the members of the governing body of the agent being delegated this responsibility.

(4) FUNDING. (a) The department shall allocate the federal community services block grant funds received under 42 USC 9903 and deposited in the appropriations under s. 20.435 (4) (mc) and (md) and the state supplement under s. 20.435 (4) (cv) as provided in this subsection.

(b) The department shall allocate at least 90% of the funds received under 42 USC 9903 to community action agencies and organizations.

(c) The department may not allocate more than 5% of the funds received under 42 USC 9903 for state administrative expenses.

(cm) The department shall allocate all of the funds under s. 20.435 (4) (cv) to community action agencies and organizations, including any of the 11 federally recognized tribal

governing bodies in this state and limited-purpose agencies in proportion to the share of funds actually allocated to these entities under 42 USC 9903.

(d) Before January 1 of each year the department shall contract with each agency and organization being funded, specifying the amount of money the organization will receive and the activities to be carried out by the organization.

History: 1983 a. 27, 538; 1985 a. 29.

46.36 Sewer system at Taycheedah correctional institution. The department of health and social services, with the approval of the governor, may enter into an agreement containing such terms, conditions and covenants as are approved by the building commission, to participate in the construction of a sanitary sewer system in the area adjacent to the Taycheedah correctional institution in the town of Taycheedah, Fond du Lac county; to connect the sewer system of the Taycheedah correctional institution thereto; to pay sewage disposal charges; and to grant easements or convey land to meet construction requirements.

History: 1975 c. 189 s. 99 (1); 1975 c. 224 s. 146m.

46.37 Certain water and sewerage service in Winnebago county. The department as a member of the tri-institutional Winnebago mental health institute, Winnebago county asylum and Sunny View sanatorium sewer agreement in Winnebago county is authorized to furnish and charge for water and sewerage services to business and dwelling units located in the privately owned area lying west of the Winnebago mental health institute and bounded on the west by the railroad properties and on the north, east and south by the grounds of the Winnebago mental health institute, together with such dwelling or other units as now exist or as may be erected on the railroad and state owned property adjacent to this area.

History: 1973 c. 90 s. 560 (3).

46.50 State mental health authority. In order to promote coordination and efficient development of mental health services by the state and by municipalities in the state, the department is declared to be the state mental health authority of Wisconsin and as such is authorized to receive federal grants in aid and to cooperate with the federal government in promoting the extension of such services.

46.60 Controlled substances therapeutic research. (1) DEFINITIONS. In this section:

- (a) "Board" means the controlled substances board.
- (b) "Marijuana" means marijuana, tetrahydrocannabinols or a chemical derivative of tetrahydrocannabinols.
- (c) "Practitioner" has the meaning specified under s. 450.01 (17).

(2) DUTIES OF THE BOARD. Upon the request of any practitioner, the board shall aid the practitioner in applying for and processing an investigational drug permit for marijuana under 21 USC 355 (i). If the federal food and drug administration issues an investigational drug permit, the board shall approve which pharmacies can distribute the marijuana to patients upon written prescription. Only pharmacies located within hospitals are eligible to receive the marijuana for distribution. The board shall also approve which practitioners can write prescriptions for the marijuana.

History: 1981 c. 193; 1983 a. 189 s. 329 (18); 1985 a. 146 s. 8.

46.70 Delivery of services to American Indians. (1) To facilitate the delivery of accessible, available and culturally appropriate social services and mental hygiene services to American Indians by county departments under s. 46.215, 46.22, 51.42 or 51.437, the department may fund federally recognized tribal governing bodies.

(2) From the appropriations under s. 20.435 (4) (dL) and (o), the department may make available to any of the 11 federally recognized tribal governing bodies in this state funds for the purposes stated in sub. (1). Beginning January 1, 1985, and ending December 31, 1985, the department may award to each tribal governing body up to \$26,000. Beginning January 1, 1986, and ending December 31, 1986, the department may award to each tribal governing body up to \$26,800. Beginning January 1, 1987, and ending June 30, 1987, the department may award to each tribal governing body up to \$13,800. Receipt of funds is contingent upon department approval of the application. The department may partially approve any application and provide only part of the funds requested. Each application shall contain a plan for expenditure of funds, consistent with the purposes stated in sub. (1).

(3) Reimbursement to each tribal governing body is limited to the lesser of total costs or the contract amount, not to exceed the amount specified in sub. (2). Reimbursement to each tribal governing body is also limited to expenditures contained in the plan approved under sub. (2). The department may make advance payments of up to one-twelfth of an annual contract. As a condition of reimbursement, each tribal governing body shall maintain an accounting system and shall submit expenditure reports as the department prescribes in the contract.

History: 1981 c. 20; 1983 a. 27; 1985 a. 29, 176

46.73 Cancer reporting. (1) Any hospital, as defined under s. 50.33 (2), any physician licensed under ch. 448, and any laboratory required to apply to the department for a certificate of approval under s. 143.15 (2) shall report information concerning any person diagnosed as having cancer or a precancerous condition to the department as prescribed by the department under sub. (2).

(2) The department shall prescribe:

(a) The form on which the report under sub. (1) shall be submitted.

(b) The time schedule under which the report under sub. (1) shall be submitted.

(c) The types of cancer and precancerous conditions to be reported under sub. (1).

(3) Any information reported to the department under sub. (1) which could identify any individual who is the subject of the report or the person submitting the report shall be confidential and may not be disclosed by the department except to the following:

(a) A central tumor registry in another state if the individual who is the subject of the information resides in the other state.

(b) A national tumor registry recognized by the department.

(4) The report of information under sub. (1) may not be construed as a violation of any person's responsibility for maintaining the confidentiality of patient health care records, as defined under s. 146.81 (4).

History: 1985 a. 29

46.80 Aging. (1) The department's primary responsibility to elderly persons is to assure that all elderly and disabled persons have available and accessible a continuum of care or a wide range of community and supportive services so that they may remain in their homes and neighborhoods for as long as it is possible. The department shall be the mechanism by which governmental and nongovernmental agencies may coordinate their policies, plans and activities with regard to the aging. To this end it shall:

(a) Conduct a continuous review of the scope and degree of coordination of all state programs and activities on the aging and make recommendations to the appropriate agencies regarding the expansion, coordination, consolidation and reorganization of particular activities as a means of developing a more effective and efficient total program for the aging.

(b) Examine the need for future activities, programs, services and facilities for the aging on the state, local and voluntary levels.

(c) Encourage, promote and aid in the establishment of programs and services for the aging within subordinate units of government and nongovernmental groups, and assist organizations and committees in the development of programs in such manner as the division deems appropriate.

(d) Gather and disseminate information about programs, services, activities and facilities for the aging.

(e) Conduct a continuous program to stimulate public awareness and understanding of the needs and potentials of the aging.

(f) Provide consultant service to assist in the development of local housing for the aged.

(2) The several state agencies shall cooperate with the department in making available to it such available data as will facilitate the work of the department. The department shall make available to the several state agencies such information as it secures which will facilitate the effective operation of their programs for the aging.

(3) The department may accept, on behalf of the state, and use gifts and grants for the purposes of this section. It shall use, to the fullest extent legally possible, all available grants from federal, state and other public or private sources to fund community home care services or programs which offer alternatives to institutionalization and which provide comprehensive services at the community level. The state plan for the older Americans act shall detail objectives designed to accomplish this purpose.

(4) The secretary shall appoint such technical staff as is necessary to carry out the functions of this program.

(5) (a) The department shall administer a state supplement to the federal congregate nutrition projects under 42 USC 3030e, in effect on April 30, 1980, from the appropriation under s. 20.435 (4) (dh) which will promote expansion of projects throughout the state. The department shall allocate these funds based on the percentage of the state's population of low-income persons over age 60 who reside in each county or who are members of an American Indian tribe, except that all counties receiving federal funds for congregate nutrition projects on or after July 1, 1977, may not receive an amount less than the 1976-77 allocation as a result of the program expansion. This paragraph does not require that federal limitations on the use of federal congregate nutrition funds for home delivered meals apply to the state supplement.

(b) From the appropriation under s. 20.435 (4) (dh), the department shall provide funds to counties and to federally recognized tribal governing bodies to supplement federal projects providing home delivered meals under 42 USC 3030f and 3030g or to supplement nonfederally funded projects under s. 46.85. The department shall allocate these funds based on the percentage of the state's population of low-income persons over age 60 who reside in each county or who are members of an American Indian tribe. Beginning January 1, 1982, and ending December 31, 1982, the total amount allocated may not exceed \$580,000. Beginning January 1, 1983, and ending June 30, 1983, the total amount allocated may not exceed \$300,100.

(c) The department shall, by rule, define the standard of "low income" that it uses in this subsection.

History: 1971 c. 164; 1975 c. 39, 200; 1977 c. 29; 1979 c. 34 ss. 828g to 829, 2102 (20) (a); 1979 c. 221; 1981 c. 20; 1983 a. 27 s. 2202 (20); 1985 a. 332.

46.83 Health care for elderly persons. (1) DEFINITIONS. In this section:

(a) "Eligible person" means a person who fulfills all of the following requirements:

1. Is 65 years of age or older and is eligible to receive federal medicare benefits under 42 USC 1395 to 1395xx.

2. Is not eligible to receive medical assistance because the person has an income which exceeds the amount specified under s. 49.47 (4) (c) 1.

3. Has an income of not more than 140% of the income poverty guidelines for the nonfarm population of the United States as prescribed by the federal office of management and budget under 42 USC 9902 (2).

(b) "Health maintenance organization" has the meaning given under s. 609.01 (2).

(2) DUTIES OF DEPARTMENT. (a) From the appropriation under s. 20.435 (1) (bs), the department shall establish a program to encourage eligible persons to enroll in health maintenance organizations.

(b) The department shall do all of the following:

1. Develop an application form, specifying the information an eligible person must provide, for use under sub. (3) (a).

2. Establish guidelines based on assets and income for use in determining the amounts that may be paid to a health maintenance organization on behalf of eligible persons.

3. Establish other necessary criteria for approval or denial of applications.

(3) APPLICATION. (a) An eligible person in an area selected under sub. (4) may apply to the department, on a form provided by the department, for a benefit under this section.

(b) The department shall review each application, and approve or deny the application based on the guidelines and criteria established under sub. (2) (b) 2 and 3. In determining the amount that will be paid, the department shall take into consideration the actual cost to the applicant of enrolling in a health maintenance organization. The department may pay all or any portion of the actual cost.

(c) If the department approves an application, it shall provide the eligible person with a voucher specifying the amount that the department will pay to a health maintenance organization on the person's behalf and the period of time during which the voucher remains in effect. That period may not begin before January 1, 1986, nor extend beyond June 30, 1987.

(4) PILOT PROGRAM. Based on the availability of federal funding for payments to health maintenance organizations for medicare recipients under 42 CFR parts 405 and 417, the department shall determine the extent of the need for the program established under this section and, based upon the amount of the appropriation under s. 20.435 (1) (bs) and the costs of participation in health maintenance organizations in various areas of this state, shall select 2 or more areas served by more than one health maintenance organization in which residents who are eligible persons may participate in the program established under this section. The department shall determine the amount of the appropriation under s. 20.435 (1) (bs) that will be available for eligible persons in each area. The department may begin accepting applications on July 20, 1985. No payments may be made before January 1, 1986.

(5) STUDY. The department shall study the impact of the program established under this section and of the federal program established under 42 CFR parts 405 and 417, including the utilization of inpatient care and treatment,

outpatient care and treatment and prescription drugs by participants in the program or programs.

(6) SUNSET. (a) Subsections (1) to (4) do not apply after June 30, 1987.

(b) Subsection (5) does not apply after December 31, 1987.

History: 1985 a. 29.

46.85 Senior companion and retired senior volunteers programs. (1) The department may establish and operate a senior companion program modeled after the federal senior companion program under 42 USC 5011 (b), in effect on April 30, 1980. If operated, the program shall engage the services of low-income persons aged 60 or over to provide supportive person-to-person assistance in health, education, recreation, welfare and related fields to persons aged 60 or over with special needs who reside in their own homes, and it may engage other persons aged 60 or older, regardless of income, as volunteers in similar activities. The department may also establish and operate a retired senior volunteers program modeled after the federal retired senior volunteers program under 42 USC 5001, in effect on April 30, 1980 to provide voluntary services in a community. If operated, the program shall engage persons aged 60 or over as volunteers.

(2) If the department establishes a program under this section, it shall promulgate rules for the operation of the program. Such rules shall include:

(a) A definition of "low income" which shall at least equal the guidelines of the federal ACTION program.

(b) A requirement that program units provide accident and liability insurance coverage during working hours for all program participants, including volunteers.

(c) A requirement that program units receiving federal funds establish advisory councils empowered according to, but not limited by, applicable federal guidelines. Council members may be reimbursed for transportation and other expenses incurred in service to the program.

(3) Prior to January 1, 1982, the department shall make renewable state grants-in-aid from the appropriation under s. 20.435 (4) (dh) to qualified public and nonprofit private agencies for the operation of local senior companion and retired senior volunteers program units. The grants shall be for periods of 12 months or less and shall be for no more than 90% of approved nonfederal expenditures and other expenditures specifically authorized by the secretary. The grants may not be used to match other state funds. The department shall apportion funds provided under this subsection to each county that receives funds under this section for the period from January 1, 1981, to June 30, 1981. The department shall allocate the amount apportioned upon application by qualified public and nonprofit private agencies. Any amounts apportioned to a county but not allocated may be apportioned and allocated to other counties. Funds provided under this subsection may not be allocated to any project unless that project maintains its calendar year 1979 levels of federal and local funding, except to the extent that available federal funding decreases. Programs funded under this subsection and established after July 29, 1979, shall engage at least 10 companions or volunteers or combination thereof.

(3m) From the appropriation under s. 20.435 (4) (dh), the department shall provide a state supplement to federally funded senior companion and retired senior volunteer program units. Beginning January 1, 1982, and ending December 31, 1982, each unit shall receive an amount equal to its 1981 state allocation. In addition, the department may provide up to \$11,600 to the units. Beginning January 1, 1983, and ending June 30, 1983, each unit shall receive 50% of

its 1981 state allocation. In addition, the department may provide up to \$11,800 to the units.

(4) Low income older persons employed in a senior companion program shall be paid a stipend which compensates them for no more than 20 hours per week at an hourly rate not to exceed the federal minimum wage, and in addition shall receive reimbursement for the cost of one meal per working day.

(5) All persons engaged in a program under this section, whether for compensation or as volunteers, are eligible for:

(a) Transportation assistance, not to exceed mileage payments for 20 miles per day.

(b) Accident and liability insurance coverage during working hours.

History: 1977 c. 418; 1979 c. 34, 221; 1981 c. 20; 1983 a. 27 s. 2202 (20).

46.855 Alzheimer's disease; training and information grants. From the appropriation under s. 20.435 (4) (bf), the department shall award a grant to a private nonprofit organization, as defined under s. 108.02 (19) to do all of the following:

(1) Provide training and technical assistance to the staff of county departments under ss. 46.215, 46.22 and 46.23, to the staff of administering agencies designated under s. 46.87 (3) (c) and to other providers of services to victims of Alzheimer's disease, as defined under s. 46.87 (1) (a).

(2) Develop training materials for educating persons who provide services to victims of Alzheimer's disease.

(3) Collect and disseminate information on Alzheimer's disease and coordinate public awareness activities related to the disease.

History: 1985 a. 29, 176.

46.87 Alzheimer's family and caregiver support program.

(1) In this section:

(a) "Alzheimer's disease" means a degenerative disease of the central nervous system characterized especially by premature senile mental deterioration, and also includes any other irreversible deterioration of intellectual faculties with concomitant emotional disturbance resulting from organic brain disorder.

(b) "Caregiver" means any person other than a paid provider who provides care for a person with Alzheimer's disease.

(2) From the appropriations under s. 20.435 (4) (b) and (o), the department shall allocate funds to agencies designated under sub. (3) (c), to be used for the administration and implementation of an Alzheimer's family and caregiver support program for victims of Alzheimer's disease and their caregivers.

(3) (a) A county board may apply to participate in the program created under this section by submitting to the department a letter of intent to participate which includes a description of the program and services related to Alzheimer's disease which the county board intends to provide.

(b) The department shall select counties to participate in the program on the basis of the criteria promulgated under sub. (7) (b).

NOTE: Subs. (3) (b) and (4) refer to criteria promulgated and procedure established under sub. (7) (b) and (c), respectively. A senate amendment deleted sub. (7) from s. 46.87 before it was created by 1985 Wis. Act 29. The same amendment created s. 28m of 1985 Wis. Act 29, which authorizes the department to promulgate rules for the administration of s. 46.87.

(c) The county board for each county selected to participate shall designate one of the following as the administering agency for the program:

1. The county department under s. 46.215 or 46.22.

2. The county department under s. 51.42 or 51.437.

3. The county department under s. 46.23.

4. The county aging unit designated by the subunit of the department that administers programs for the aging under the federal older Americans act.

(4) If a county board does not submit an application under sub. (3) (a) by January 1, 1986, the department shall make that county's allocation available to a private nonprofit organization, as defined under s. 108.02 (18), to administer the program created under this section and shall select the organization according to the procedure established under sub. (7) (c). An organization selected as the administering agency under this subsection shall continue to be eligible to receive the county's allocation unless the county board subsequently submits to the department a letter of intent to participate and receives approval of its proposed program.

(5) The administering agency in each county may use the funds allocated to it to do any or all of the following:

(a) Provide services and goods to households that meet all of the following conditions:

1. At least one member of the household must be a person who has been diagnosed by a physician as having Alzheimer's disease.

2. Either the person with Alzheimer's disease or the person's caregiver resides in the county to which the household applies for participation in the program.

3. The total Wisconsin adjusted gross income, as defined under s. 71.02 (2) (i), of the household is \$40,000 or less, except that in determining household income the administering agency shall disregard any expenses attributable to the medical and other exceptional needs of the victim of Alzheimer's disease.

(b) Provide services and goods to victims of Alzheimer's disease living in residential facilities in the county who have a total Wisconsin adjusted gross income, as defined under s. 71.02 (2) (i), of \$40,000 or less, except that in determining income the administering agency shall disregard any expenses attributable to the person's medical and other exceptional needs.

(c) Contract with service providers to develop programs to serve victims of Alzheimer's disease outside of the home of the victim or the victim's caregiver.

(6) (a) For the purpose of distributing funds allocated under this section to households or individuals participating in the program, the administering agency shall determine all of the following:

1. The services and goods needed by the household to enable it to maintain the victim of Alzheimer's disease as a member of the household, or the services or goods needed by a victim of Alzheimer's disease living in a residential facility, and the cost of each service or good that is needed.

2. The ability of the household or of the person to pay for the services and goods identified under subd. 1, using as the basis for the determination the uniform fee schedule established by the department under s. 46.03 (18).

(b) An administering agency may pay to or expend on behalf of a participating household or individual person the cost of any goods and services identified under par. (a) 1, less the amounts the household or the person is able to pay, as determined under par. (a) 2, except that the amount paid or expended may not exceed \$4,000 in any 12-month period for each victim of Alzheimer's disease in the household or for an individual person living in a residential facility.

(8) The department shall collect and analyze information about victims of Alzheimer's disease who are served under this section.

History: 1985 a. 29, 176.

46.90 Elder abuse reporting system. (1) DEFINITIONS. In this section:

(a) "Abuse" means the wilful infliction on an elder person of physical pain or injury or unreasonable confinement.

(b) "County agency" means the agency in each county designated under sub. (2).

(c) "Elder person" means a person who is age 60 or older or who is subject to the infirmities of aging.

(d) "Infirmities of aging" has the meaning provided under s. 55.01 (3).

(e) "Material abuse" means the misuse of an elder person's property or financial resources.

(f) "Neglect" means a significant danger to an elder person's physical or mental health because the person who takes care of the elder person is unable or fails to provide adequate food, shelter, clothing or medical or dental care.

(g) "Self-neglect" means a significant danger to an elder person's physical or mental health because the elder person is responsible for his or her own care but is unable to provide adequate food, shelter, clothing or medical or dental care.

(2) COUNTY AGENCY DESIGNATION. Each county board shall designate an agency in the county as the county agency for the purposes of this section.

(3) COUNTY AGENCY DUTIES. (a) Each county agency shall develop a policy for notifying law enforcement officials in appropriate cases and shall establish an elder abuse reporting system to carry out the purposes of this section. Each county agency shall enter into a memorandum of understanding regarding the operation of the system with the county department under s. 46.215 or 46.22 and with any private or public agency, including a county department under s. 51.42 or 51.437, within the county that is participating in the elder abuse reporting system. The memorandum of understanding shall, at a minimum, identify the agencies that are responsible for the investigation of reports of abuse, material abuse, neglect or self-neglect and for the provision of specific services.

(b) Each county agency shall receive reports of abuse, material abuse, neglect or self-neglect of elder persons.

(c) Each county agency shall publicize the existence of an elder abuse reporting system in the county and shall provide a publicized telephone number which can be used by persons wishing to report suspected cases of abuse, material abuse, neglect or self-neglect.

(4) REPORTING. (a) 1. Any person may report to the county agency that he or she believes that abuse, material abuse or neglect has occurred if the person is aware of facts or circumstances that would lead a reasonable person to believe or suspect that abuse, material abuse or neglect has occurred. The person shall indicate the facts and circumstances of the situation as part of the report.

2. Any person who believes that self-neglect has occurred may report that belief and the facts and circumstances contributing to the belief to the county agency.

(b) 1. No employer may discharge or otherwise discriminate against any person for reporting in good faith under this subsection.

2. a. Any employe of a state agency who is discharged or otherwise discriminated against may file a complaint with the personnel commission under s. 230.45 (1) (j). In this subparagraph, "agency" has the meaning provided under s. 111.32 (6) (a).

b. Any employe of an employer not described in subd. 2. a who is discharged or otherwise discriminated against may file a complaint with the department of industry, labor and human relations under s. 101.222 (5).

(c) No person may be held civilly or criminally liable or be found guilty of unprofessional conduct for reporting in good faith under this subsection.

(5) INVESTIGATIONS AND PROVISION OF SERVICES. (a) Except as otherwise provided, upon receiving a report of abuse, material abuse, neglect or self-neglect, the county agency shall either investigate the report or refer the report to another agency for investigation. Upon receiving a report of abuse, material abuse, neglect or self-neglect of an elder person who resides in a community-based residential facility or a nursing home licensed under s. 50.03 or of an elder person who receives services from a home health agency licensed under s. 141.15 and the person suspected of abusing or neglecting the person is an employe of the home health agency, the county agency may not investigate the report but it shall refer the report within 24 hours after the report is received, excluding Saturdays, Sundays and legal holidays, to the department for investigation. An investigation of a report of abuse, neglect or self-neglect shall be commenced within 24 hours after a report is received, excluding Saturdays, Sundays and legal holidays. An investigation of a report of material abuse shall be commenced within 5 days after a report is received, excluding Saturdays, Sundays and legal holidays. If a report is referred to the department, pars. (b) to (g) and sub. (6) do not apply to the department.

(b) The scope of the investigation is at the discretion of the investigating agency and may include the following:

1. A visit to the elder person's residence.

2. Observation of the elder person.

3. An interview with the elder person. To the extent practicable, this interview shall be private.

4. An interview with any person who takes care of the elder person.

5. A review of treatment and health care records.

(c) If an investigator so requests, a sheriff or police officer shall accompany the investigator during visits to the elder person's residence and shall provide other assistance as needed.

(d) 1. If any person except the elder person in question interferes with the investigation, the investigator may apply for an order under ch. 813 prohibiting the interference.

2. The court shall grant the order upon a showing that there is reasonable cause to believe that abuse, material abuse, neglect or self-neglect has occurred and that the interference complained of, if continued, would make it difficult to determine whether abuse, material abuse, neglect or self-neglect has occurred, is occurring or may recur.

(e) After the investigation is completed, the county agency or the investigating agency shall determine if the elder person or any other person involved in the alleged abuse, material abuse, neglect or self-neglect is in need of services under this chapter or ch. 47, 49, 51 or 55. Within the limits of available state and federal funds and of county funds appropriated to match the state and federal funds, the county agency shall provide the necessary services or arrange for the provision of the services with other agencies or individuals. Those services provided shall be rendered under the least restrictive conditions necessary to achieve their objective.

(f) If the investigator has reason to believe that substantial physical harm, irreparable injury or death may occur to an elder person, the investigator shall immediately notify the protective services agency designated under s. 55.02.

(g) An elder person may refuse to allow an investigation under this subsection or may refuse to accept services unless a guardian authorizes the investigation or services. The investigator shall notify the elder person of this right to refuse before or at the point of commencing an investigation and the

county agency or other provider agency shall notify the elder person of this right before providing services.

(6) **RECORDS; CONFIDENTIALITY.** (a) The county agency or other investigating agency shall prepare a report on each investigation it conducts unless the agency finds, at the conclusion of the investigation, that the report of alleged abuse, material abuse, neglect or self-neglect is without foundation. If an agency other than the county agency conducts the investigation, it shall submit a copy of the investigation report to the county agency.

(b) Reports of suspected abuse, material abuse, neglect or self-neglect and investigation reports under this section are confidential and may not be released by the county agency or other investigating agency, except under the following circumstances they may be released:

1. To the elder person and any person named in a report who is suspected of abusing or neglecting an elder person. These persons may inspect the report on the investigation, except that information identifying the person who initially reported the suspected abuse, material abuse, neglect or self-neglect may not be released.

2. To the protective services agency notified under sub. (5)

(f). Information obtained under this subdivision shall remain confidential.

3. To an individual, organization or agency designated by the department or as required by law for the purposes of management audits or program monitoring and evaluation. Information obtained under this subdivision shall remain confidential and shall not be used in any way that discloses the names or other identifying information about the individuals involved.

4. For purposes of research if the research project has been approved by the department or the county agency and the researcher has provided assurances that the information will be used only for the purposes for which it was provided to the researcher, the information will not be released to a person not connected with the study under consideration, and the final product of the research will not reveal information that may serve to identify the individuals involved. Such information shall remain confidential. In approving research projects under this subdivision, the department shall impose any additional safeguards needed to prevent unwarranted disclosure of information.

5. Pursuant to lawful order of a court of record.

6. To any agency or individual that provides services under sub. (5) (e). Information obtained under this subdivision shall remain confidential.

7. To the guardian of the elder person or the guardian of any person named in a report who is suspected of abusing or neglecting an elder person. These persons may inspect the report on the investigation, except that information identifying the person who initially reported the suspected abuse, material abuse, neglect or self-neglect may not be released.

8. To law enforcement officials in accordance with the policy developed under sub. (3) (a).

(c) 1. Any person, including the state or any political subdivision of the state, violating this subsection shall be liable to any person damaged as a result of the violation for such damages as may be proved, together with exemplary damages of not less than \$100 nor more than \$500 for each violation and such costs and reasonable actual attorney fees as may be incurred by the person damaged. A custodian of records incurs no liability under this subdivision for the release of records in accordance with this subsection while acting in good faith.

2. In any action brought under subd. 1 in which the court determines that the violator acted in a manner that was

knowing and wilful, the violator shall be liable for such damages as may be proved together with exemplary damages of not less than \$500 nor more than \$1,000 for each violation, together with costs and reasonable actual attorney fees as may be incurred. It is not a prerequisite to an action under this paragraph that the plaintiff suffer or be threatened with actual damages.

3. An individual may bring an action to enjoin any violation of this subsection or to compel compliance with this subsection, and may in the same action seek damages as provided in this paragraph. The individual may recover costs and reasonable actual attorney fees as may be incurred in the action, if he or she prevails.

(d) Any person who requests or obtains confidential information under this subsection under false pretenses may be fined not more than \$500 or imprisoned not more than one year in the county jail or both.

(e) Any employe who violates this subsection may be subject to discharge or suspension without pay.

(7) **EXCEPTION.** Nothing in this section shall be construed to mean that a person is abused, neglected or in need of emergency or protective services solely because he or she consistently relies upon treatment by spiritual means through prayer for healing in accordance with his or her religious tradition.

(8) **DEPARTMENT DUTIES.** (a) The department shall develop a plan to assist county agencies in determining appropriate responses to reports of abuse, material abuse, neglect or self-neglect.

(b) The department shall prepare and distribute sample report forms for use by county agencies.

(c) The department shall collect statistical information from each county pertaining to each reported case of abuse, material abuse, neglect or self-neglect. The department may require investigators to submit statements to the department that summarize the information being reported. These summary statements may not name or otherwise identify individual persons. The department shall use this information to review the effectiveness of this section, to plan program changes and to formulate reports.

(d) The department shall develop and disseminate information on elder abuse and the elder abuse reporting system under this section. The department shall also develop informational materials to be used by county agencies regarding elder abuse and the elder abuse reporting system. The department shall solicit contributions of labor, materials and expertise from private sources to assist in developing the informational materials.

History: 1983 a. 398, 1985 a. 176.

46.92 Telecommunication aid for the hearing impaired.

(1) **ASSISTANCE.** From the appropriation under s. 20.435 (4) (cm), beginning on November 1, 1984, the department shall, subject to the availability of funds, provide assistance to deaf and severely hearing impaired persons to secure telecommunication devices capable of serving their needs. Except in extraordinary circumstances, the department shall purchase or provide funds for the purchase of telecommunication devices.

(2) **ELIGIBILITY.** A person is eligible to receive assistance under sub. (1) if all of the following conditions are met:

(a) The person is certified as deaf or severely hearing impaired by a licensed physician, an audiologist certified by the American speech and hearing association or the department.

(b) The adjusted gross income of the person's family is equal to or less than 200% of the poverty line established under 42 USC 9902 (2).

(3) **HEARING RIGHTS.** Any person aggrieved by a decision of the department under this section has a right to a contested case hearing under ch. 227.

(4) **DEPARTMENTAL DUTIES.** The department shall:

(a) Promulgate rules necessary for the administration of this section.

(b) Establish application procedures and determine eligibility.

History: 1983 a. 427; 1983 a. 538 s. 51.

46.93 Adolescent pregnancy prevention programs and pregnancy services. (1) **LEGISLATIVE FINDINGS.** The legislature finds that the 1,100,000 annual unintended or unwanted adolescent pregnancies in the United States, as estimated by the federal national center for health statistics, is a tragic and undesirable consequence of complex societal problems. The legislature recognizes that there is a lack of adequate health care, education, counseling and vocational training for adolescents which may provide positive options to adolescents in the area of pregnancy and parenting. To reduce the incidence, and adverse consequences, of adolescent pregnancy, the legislature finds that adolescent pregnancy prevention programs and pregnancy services are essential to encourage and implement community programs which address the complex societal problems facing adolescents and provide positive options to adolescent pregnancy.

(1m) **DEFINITIONS.** In this section:

(a) "Adolescent" means a person under the age of 18 years.

(b) "Board" means the adolescent pregnancy prevention and pregnancy services board under s. 15.195 (5).

(c) "Nonprofit corporation" means a nonstock, nonprofit corporation organized under ch. 181.

(d) "Organization" means a nonprofit corporation or a public agency which provides or proposes to provide adolescent pregnancy prevention programs or pregnancy services or both.

(e) "Public agency" means a county, city, village, town or school district or an agency of this state or of a county, city, village, town or school district.

(2) **PURPOSE; ALLOCATION.** From the appropriation under s. 20.434 (1) (b), the board shall review and either approve for award or disapprove grant applications from applying organizations to provide for adolescent pregnancy prevention programs or pregnancy services that include health care, education, counseling and vocational training. Types of services and programs that are eligible for grants include all of the following:

(a) Adolescent health clinics located in schools.

(b) A statewide communications media campaign to discourage adolescent sexual activity and encourage the assumption of responsibility by adolescents, including male adolescent responsibility, for their sexual activity and for parenting.

(c) Adoption counseling for adolescents.

(d) Residential facilities for pregnant adolescents.

(e) Adult role model programs for adolescents.

(3) **STAFF AND SALARIES.** The salaries of the board staff and all actual and necessary operating expenses of the board shall be paid from the appropriation under s. 20.434 (1) (a).

(4) **PROHIBITED USES OF FUNDS.** Funds received by an organization under a grant awarded under this section may not be used for any of the following:

(a) Purchasing or dispensing contraceptives in adolescent health clinics located in schools.

(b) Providing abortions.

(c) Advertising abortion services in a statewide communications media campaign.

History: 1985 a. 56.

46.94 Notice of utility disconnection required. Any public utility, as defined in s. 196.01 (5), or any fuel distributor furnishing heat, light or power to a residential customer shall provide written notice of intent to disconnect or discontinue service during the months of November to April and shall include information concerning any federal, state or local program that provides assistance for fuel or home heating bills. The department shall provide printed information at no cost upon request to any fuel distributor serving residential customers except public utilities. The information shall describe the nature and availability of any federal, state or local program that provides assistance for fuel or home heating bills.

History: 1979 c. 48; 1979 c. 361 ss. 61, 108; 1981 c. 20 s. 1738; 1983 a. 53 s. 114.

46.95 Domestic abuse grants. (1) **DEFINITIONS.** In this section:

(a) "Domestic abuse" means physical abuse, including a violation of s. 940.225 (1), (2) or (3), or any threat of physical abuse between adult family or household members or by a minor family or household member against an adult family or household member. "Domestic abuse" does not mean physical abuse, including a violation of s. 940.225 (1), (2) or (3), or any threat of physical abuse against a minor family or household member by an adult family or household member.

(b) "Family member" means a spouse, a parent, a child or a person related by consanguinity to another person.

(c) "Household member" means a person currently or formerly residing in a place of abode with another person.

(d) "Organization" means a nonprofit corporation or a public agency which provides or proposes to provide any of the following domestic abuse services:

1. Shelter facilities or private home shelter care.
2. Advocacy and counseling for victims.
3. A 24-hour telephone service.
4. Community education.

(2) **DISTRIBUTION OF FUNDS.** (a) The secretary shall make grants from the appropriations under s. 20.435 (4) (cb) and (hh) to organizations for the provision of any of the services specified in sub. (1) (d). Grants may be made to organizations which have provided those domestic abuse services in the past or to organizations which propose to provide those services in the future. No grant may be made to fund services for child abuse or abuse of elderly persons.

(b) In reviewing applications for grants, the department shall consider:

1. The need for domestic abuse services in the specific community in which the applicant provides services or proposes to provide services.
2. Coordination of the organization's services with other resources in the community and the state.
3. The need for domestic abuse services in the areas of the state served by each health systems agency designated under 42 USC 300L.
4. The needs of both urban and rural communities.
5. Maintenance of effort, by a city or county.

(c) No grant may be made to an organization which provides or will provide shelter facilities unless the department of industry, labor and human relations determines that the physical plant of the facility will not be dangerous to the health or safety of the residents when the facility is in operation. No grant may be given to an organization which

provides or will provide shelter facilities or private home shelter care unless the organization ensures that the following services will be provided either by that organization or by another organization, person or agency:

1. A 24-hour telephone service.
2. Temporary housing and food.
3. Advocacy and counseling for victims.
4. Referral and follow-up services.
5. Arrangements for education of school-age children.
6. Emergency transportation to the shelter.
7. Community education.

(d) 1. No organization may receive more than 70% of its operating budget or \$100,000 annually, whichever is less, under this section.

2. Not more than 33 1/3% of the 30% of an organization's operating budget not funded by a grant under subd. 1 may consist of the value of in-kind contributions. The department shall establish guidelines regarding which contributions qualify as in-kind contributions.

(e) In funding new domestic abuse services, the department shall give preference to services in areas of the state where these services are not otherwise available.

(3) COUNCIL ON DOMESTIC ABUSE. The council on domestic abuse shall:

(a) Review applications for grants under this section and advise the secretary as to whether the applications should be approved or denied. The council shall consider the criteria under sub. (2) (b) when reviewing the applications.

(b) Advise the secretary and the legislature on matters of domestic abuse policy.

(c) Develop with the judicial conference and provide without cost simplified forms for filing petitions for domestic abuse restraining orders and injunctions under s. 813.12.

History: 1979 c. 111; 1979 c. 355 s. 241; 1981 c. 20 ss. 792c, 792m, 2202 (20) (s); 1983 a. 27 ss. 997m, 998, 2202 (20); 1983 a. 204; 1985 a. 29.

46.96 Independent living center grants. (1) In this section:

(a) "Independent living center" means a community-based public or private nonprofit, nonresidential program that substantially involves the severely disabled individuals it serves in its policy direction and management and that provides directly or indirectly through referral, those services which assist severely disabled individuals to increase personal self-determination and to minimize unnecessary dependence upon others.

(b) "Severely disabled individual" means any individual whose ability to function independently in his or her family or community or whose ability to engage or continue in employment is so limited by the severity of his or her disability that comprehensive or vocational rehabilitation services are required to improve significantly either his or her ability to function independently in his or her family or community or his or her ability to engage in employment.

(2) The department shall make grants from the appropriations under s. 20.435 (4) (c) or (kc) or (5) (bm) and (na) to independent living centers for nonresidential services to severely disabled persons.

(3) From the amounts distributed under this section the department shall make grants to independent living centers that received state or federal funds designated for independent living centers in fiscal year 1982-83 in an amount up to \$626,100 in fiscal year 1985-86 and \$626,100 in fiscal year 1986-87.

History: 1983 a. 27; 1985 a. 29 ss. 903, 903m, 3202 (23); 1985 a. 120.

46.97 Grants for the provision of shelter for homeless individuals and families. (1) DEFINITIONS. In this section:

(a) "Current operating budget" means the budget for the calendar or fiscal year during which an application is submitted, including all sources and amounts of revenue and all actual and planned expenditures.

(b) "Eligible applicant" means any of the following:

1. A county or municipal governing body.
2. A county or municipal governmental agency.
3. A community action agency.
4. A private nonprofit organization, as defined under s. 108.02 (19).

(c) "Proposed operating budget" means the budget proposed for the calendar or fiscal year following the year in which an application is submitted, including all anticipated revenue other than the amount sought in the grant application and all planned expenditures.

(d) "Shelter facility" means a temporary place of lodging for homeless individuals or families.

(2) PURPOSE; ALLOCATION. (a) From the appropriation under s. 20.435 (4) (cc), the department shall award grants to eligible applicants for the purpose of supplementing the operating budgets of agencies and shelter facilities that have or anticipate a need for additional funding because of the renovation or expansion of an existing shelter facility, the development of an existing building into a shelter facility, the expansion of shelter services for homeless persons or an inability to obtain adequate funding to continue the provision of an existing level of services.

(b) The moneys appropriated under s. 20.435 (4) (cc) shall be allocated as follows:

1. No more than \$300,000 in any year to eligible applicants located in Milwaukee county.
2. No more than \$50,000 in any year to eligible applicants located in Dane county.
3. No more than \$100,000 in any year to all other applicants.

(3) APPLICATION. (a) An eligible applicant which is not located in Dane county or Milwaukee county may submit an application for one of the following:

1. A grant of not more than 25% of the current or proposed operating budget of a shelter facility operated by the applicant.
2. A grant of not more than 25% of the portion of the applicant's current or proposed operating budget allocated for providing homeless individuals with vouchers that may be exchanged for temporary shelter.

(am) An eligible applicant located in Dane county or Milwaukee county may submit an application for one of the following:

1. Before July 1, 1987, a grant of not more than 35% of the total current or proposed operating budgets of one or more shelter facilities from which the applicant purchases shelter for homeless persons and to which the applicant will distribute the money it receives under conditions described in the application.
2. Before July 1, 1987, a grant of not more than 35% of the total current or proposed operating budgets of 2 or more shelter facilities which the applicant represents and to which the applicant will distribute the money received under conditions described in the application.

3. After June 30, 1987, a grant of not more than 25% of the total current or proposed operating budgets of one or more shelter facilities from which the applicant purchases shelter for homeless persons and to which the applicant will distribute the money it receives under conditions described in the application.

4. After June 30, 1987, a grant of not more than 25% of the total current or proposed operating budgets of 2 or more

shelter facilities which the applicant represents and to which the applicant will distribute the money received under conditions described in the application.

(b) Applications shall be submitted in the form required by the department and shall be accompanied by the current or proposed operating budget or both, as required by the department, of each shelter facility or agency which will, directly or indirectly, receive any of the grant money, and an explanation of why the shelter facility or agency has or anticipates a need for additional funding.

(4) **RULE MAKING REQUIRED.** The department shall promulgate by rule both of the following:

(a) Criteria for awarding grants.

(b) Criteria for determining whether an agency that operates a shelter facility or program is eligible for a grant.

(5) **PROHIBITED USES.** (a) The department may not provide a grant for any of the following purposes:

1. The construction of a new shelter facility.
2. The operation of a shelter care facility licensed under ch. 48.
3. The operation of a facility or private home providing shelter for victims of domestic abuse.
4. The operation of an agency that provides only information, referral or relocation services.

(b) No county or municipality may use any money received under this section to reduce the shelter benefits it is obligated to provide under s. 49.02 to recipients of general relief.

History: 1985 a 29, 276.

46.98 Child care program. (1) DEFINITIONS. In this section:

(a) "Child care provider" means a provider licensed under s. 48.65, certified under s. 48.651 or established or contracted for under s. 120.13 (14).

(b) "Gainfully employed" means working, seeking employment or participating in a training or educational program designed to lead directly to paid employment.

(c) "Parent" means a parent, guardian, foster parent, legal custodian or a person acting in the place of a parent.

(2) **DISTRIBUTION OF DAY CARE FUNDS.** (a) The department shall, for the purposes specified in sub. (3), distribute the funds allocated for day care services under s. 49.52 (1) (d) to either of the following:

1. County departments under s. 46.215, 46.22 or 46.23.
2. Private nonprofit child care providers who provide day care for the children of migrant workers.

(b) The department shall promulgate by rule a procedure to be used annually to develop a formula for the distribution of funds under par. (a).

(3) **USE OF DAY CARE FUNDS.** (a) Funds distributed under sub. (2) may only be used for the purposes specified in this section. The funds shall be used to provide care for children under age 12 for all or part of a day during which a child's parent is gainfully employed and to provide care for children under age 12 as a service to prevent or remedy child abuse or neglect, to assist families in stress or to preserve a family unit.

(b) Counties may spend moneys distributed under sub. (2) (a) 1 for child care purposes other than those in par. (a) only with the approval of the department. Child care purposes include start-up, maintenance and expansion of child care services and facilities, education and training for persons providing child care and the payment of wages for recipients of aid under s. 49.19 who work for a child care provider.

(c) From the funds distributed under sub. (2) (a) 1, a county may provide day care services itself or it may purchase day care services from a child care provider. In addition, from the funds distributed under sub. (2) (a) 1, each county shall, subject to the availability of funds, provide day care by

offering to each eligible parent a voucher for the payment of day care services provided by a child care provider. Each county shall allocate all or a portion of its day care funding for payment of vouchers. Except for parents who are eligible under sub. (4) (a) 4, an eligible parent has the right to choose whether the care will be provided in a day care center, in the home of another person or, subject to the county's approval, in the parent's home. A parent who uses vouchers for the payment of day care services may supplement the maximum rate for day care services set under sub. (4) (d).

(d) No funds distributed under sub. (2) (a) 1 may be used for investigations of child abuse and neglect reports under s. 48.981.

(4) **ELIGIBILITY FOR DAY CARE FUNDS.** (a) The following persons are eligible to receive aid from the funds distributed under sub. (2):

1. A parent who is gainfully employed and who receives aid under s. 49.19, if the dependent child care income disregard under 42 USC 602 is less than the actual amount the parent spends for child care.

2. A parent who is gainfully employed, who is in need of child care services and whose family income is equal to or less than 70% of the state median income. The department shall annually determine the state median income.

3. A parent who is gainfully employed, who is in need of child care services and whose family income is greater than 70% of the state median income to the extent determined annually by the department. The department shall annually determine the state median income.

4. A parent in need of child care services to prevent or remedy child abuse or neglect, to alleviate stress in the family or to preserve the family unit.

(b) Parents receiving aid under this section whose family income is equal to or greater than 50% of the state median income are liable for the cost of child care received, payable in accordance with a schedule developed by the department based on ability to pay. Payment may be waived for persons receiving aid under par. (a) 4.

(c) If funds distributed under this section are insufficient to meet the needs of all eligible parents, a county may give priority to parents who are eligible to receive aid under par. (a) 4.

(d) Each county shall annually set a maximum rate that it will pay for day care services provided to eligible parents. The department shall annually review each county's rate and shall approve it if the department finds that the rate is set at a reasonable and customary level which does not preclude an eligible parent from having a reasonable selection of child care providers. The department shall promulgate by rule a procedure and criteria for approving county rates.

(5) **DEPARTMENTAL DUTIES.** (a) The department shall monitor the administration of the programs in this section.

(b) The department shall provide technical assistance to counties relating to the administration of the programs under this section.

(c) The department shall assess the extent and location of unmet child care needs in the state.

(d) The department shall provide information to the public, counties and child care providers relating to child care services.

(e) The department may promulgate rules for the administration of this section.

(f) Before the department distributes any funds under sub. (2) (a) 2, it shall establish an annual grant process for selecting child care providers to whom the funds will be distributed. The department shall enter into a contract, specifying the

conditions under which day care will be provided to the children of migrant workers, with each provider selected.

History: 1983 a. 193; 1985 a. 29 ss. 904c to 904w, 3202 (23); 1985 a. 176, 281.

46.985 Family support program. (1) DEFINITIONS. In this section:

(a) "Administering agency" means a county department or a human service agency that administers the program under a contract with a county department.

(b) "Child" means a person under 24 years of age.

(c) "County department", unless otherwise qualified, means a county department under s. 46.23, 51.42 or 51.437.

(d) "Disabled" means having a severe physical, emotional or mental impairment which is diagnosed medically, behaviorally or psychologically, which is characterized by the need for individually planned and coordinated care, treatment, vocational rehabilitation or other services and which has resulted or is likely to result in a substantial limitation on the ability to function in at least 3 of the following areas:

1. Self-care.
2. Receptive and expressive language.
3. Learning.
4. Mobility.
5. Self-direction.
6. Capacity for independent living.
7. Economic self-sufficiency.

(e) "Family" means a group that lives together and that consists of at least one disabled child and his or her parent.

(f) "Parent" means a parent, guardian, legal custodian or a person acting in the place of a parent, but does not include a foster parent or any other paid care provider.

(g) "Program" means the family support program in a service area.

(h) "Service area" means a county or group of counties served by a county department.

(2) DEPARTMENTAL POWERS AND DUTIES. In order to enable the parents of disabled children to care for their disabled children in their homes rather than placing the children in institutions or other out-of-home placements, thereby enhancing the quality of family life; to improve the availability and coordination of community services to families; and to increase the control of families over the types of services and goods provided to them, the department shall:

(a) After consulting with county departments under ss. 46.215, 46.22, 46.23, 51.42 and 51.437, providers of educational programs and services to families and representatives of families, promulgate rules for implementing the program, including all of the following:

1. Criteria for participation in the family support program and application procedures for county departments.
2. Criteria by which county departments may determine priorities for available funding.
3. Methods for ensuring the accountability of the program in each service area.
4. Procedures for coordinating the family support program and the use of its funds, throughout this state and in each service area, with other publicly funded programs including the community options program under s. 46.27; the community integration program under ss. 46.275 and 46.277; the social services, mental health and developmental disabilities programs under ss. 49.52, 51.42 and 51.437; the independent living center program under s. 46.96; and the medical assistance program under ss. 49.45 to 49.47.
5. Criteria for determining family eligibility for the program, in addition to the requirements specified in sub. (5).
6. Procedures for applying to an administering agency for family participation in the program.

7. Procedures for performing family needs assessments and developing service plans.

8. Criteria for determining a family's ability to bear the cost of the services and goods it needs which shall take into account the family's size, family income, the number of disabled children in the family and the medical and other expenses related to the exceptional needs of the disabled child.

9. Types of services and goods that may be approved for funding through the program.

10. Criteria for determining whether to provide a family with funding in excess of the amount specified in sub. (6) (g).

11. Criteria for determining approval of funding for a family in which the disabled child is 21 years of age or over.

(b) Select participants from among the county departments that apply based on the criteria promulgated under par. (a) 1 and on the availability of funding.

(c) Specify the required content of the annual county department program plan.

(d) Review and approve or disapprove each program plan submitted under sub. (3) (c).

(e) Annually submit to the governor and to the presiding officer of each house of the legislature a report on the family support program.

(3) DUTIES OF PARTICIPATING COUNTY DEPARTMENTS. Each participating county department shall do all of the following:

(a) Appoint members to a family support advisory committee or appoint an existing committee in the service area as the family support advisory committee to assist in developing the program plan and to monitor the program. The committee shall include, but need not be limited to, the following members:

1. Parents of disabled children including, if possible, parents from families that participate in the program. To the maximum extent possible, the parents shall be representative of the various disability, racial and ethnic groups in the service area. The members specified under this subdivision shall constitute a majority of the membership of the committee.

2. Persons from the service area representing the county department under s. 46.23, 51.42 or 51.437 and the county department under s. 46.215 or 46.22, school districts and public health agencies. At least one of the committee members selected under this subdivision shall be a person providing community social services to disabled children or families eligible for the program.

3. Persons in the service area who provide social or educational services to disabled children other than the providers specified in subd. 2.

(b) Cooperate with the committee appointed under par. (a) to prepare a program plan. The program plan shall include all of the following:

1. A description of the proposed program.
2. The estimated number of families that will be assessed and served.
3. A list of specific groups, if any, that will be given priority for available funding.
4. A description of the outreach procedures that will be used to ensure that the program will be made available to children with physical, emotional and mental impairments.
5. The procedures that will be used to determine family needs.
6. A description of the methods that will be used for the development and monitoring of service plans and for coordinating the provision of services and goods to participating families.

7. A description of the methods that will be used to promote the creation of informal support and advocacy systems for families.

8. A description of the method that will be used to monitor the program.

(c) Submit the proposed program plan to the county board of supervisors in each county in the service area for review. After approval by the county board of supervisors in each county in which families are eligible to participate in the program, the county department shall submit the proposed program plan to the department.

(d) Administer the program or contract with a human service agency in the service area to administer the program within the limits of state and federal funds allocated under sub. (7).

(e) In conjunction with the county department under s. 46.215 or 46.22, if any, in the service area and with the administering agency, if it is not the county department under s. 46.23, 51.42 or 51.437, coordinate the administration of the program with the administration of other publicly funded programs that serve disabled children.

(f) Submit all information and reports required by the department.

(4) DUTIES OF ADMINISTERING AGENCIES. In addition to the duties specified under sub. (6), each administering agency shall:

(a) Cooperate in the development of the program plan under sub. (3) (b).

(b) Provide information about the program and other programs for disabled children to families in the service area.

(c) Implement the program in accordance with the program plan.

(d) Designate one of its employes as the coordinator for each participating family.

(5) FAMILY ELIGIBILITY. A family is eligible to receive services and goods from the program if it meets all of the following requirements:

(a) The parent has a disabled child whom the parent wants to keep at home or return to the home from an institution or other out-of-home placement.

(b) The parent will be able to take care of the disabled child at home if financial, physical or other barriers are reduced or eliminated and adequate community support services are provided.

(6) APPLICATION, ASSESSMENT AND SERVICE PLAN. (a) A parent shall apply for the program to the administering agency in the county in which the family resides. The administering agency shall determine whether the family is eligible according to sub. (5) and the criteria promulgated under sub. (2) (a) 5 and shall approve or disapprove each application within 30 days after its receipt.

(b) If the administering agency approves an application under par. (a), it shall arrange for an assessment of the family's needs, except that an administering agency is not required to do an assessment if no program funds are available to provide services and goods to additional families. The assessment shall be performed in accordance with the procedures promulgated under sub. (2) (a) 7 either by an employe of the administering agency or, under a contract, by a person who is knowledgeable about the disabled child's condition and the related needs of the family. The person conducting the assessment shall do all of the following:

1. Ensure that the family participates in the assessment to the greatest extent possible.

2. Involve other persons who are knowledgeable about the disabled child's condition and who can identify and assist the

family in assessing the social, psychological and medical needs of all family members.

3. Identify services and goods that the family is currently receiving, other services and goods available to the family through public and private agencies, friends and relatives and services and goods that the family is not currently receiving which the parent needs to maintain the disabled child at home.

4. Identify the services and goods needed by the family that are available from publicly funded sources other than the program or from private sources, including friends and relatives.

5. Identify the services and goods needed by the family that are available for funding through the program.

(c) For each family whose application is approved, the administering agency shall develop a service plan within 60 days after receipt of the application. In developing the service plan, the administering agency shall ensure that the family members are the primary decision makers. Each service plan shall include all of the following:

1. A description of the needs of the family, based on the assessment under par. (b).

2. A list of the services and goods the family receives that are provided through public or private funding sources other than the program.

3. A list of the services and goods that will be funded through the program, the estimated cost of each and an estimate of the length of time each one will need to be funded through the program.

4. A written participation agreement, which shall be signed by a parent and a representative of the administering agency, governing expenditure of program funds by or on behalf of the family.

(d) The administering agency shall review each service plan at least once every 6 months, or more often at a parent's request. The participation agreement under par. (c) 4 may be amended by written agreement between the parent and the administering agency.

(e) The administering agency may approve funding for all or any part of the cost of any services and goods that have been identified as necessary in a family's service plan and which meet the criteria promulgated under sub. (2) (a) 9.

(f) An administering agency may approve the expenditure of program funds for a family whose disabled child is 21 years of age or over only with the approval of the department in accordance with the rules promulgated under sub. (2) (a) 11.

(g) Using the criteria promulgated under sub. (2) (a) 8, the administering agency shall determine the amount that will be paid to or expended on behalf of each participating family for the services and goods approved under par. (e). The amount that may be paid to or expended on behalf of a family may not exceed \$3,000 in any 12-month period for each disabled child in the family, except that the department may, upon request by an administering agency, approve a greater amount for a specific family with exceptional needs.

(h) If an administering agency denies an application or if it terminates a family's participation agreement, it shall provide the parent with a written notice of that fact stating the reason for the denial or termination and shall refer the family to other available agencies and resources. A parent whose application is denied or whose participation agreement is terminated may file a request with the department for a hearing under s. 227.42.

(7) FUNDING. (a) From the appropriations under s. 20.435 (4) (b) and (o), the department shall allocate to county departments funds for the administration and implementation of the program.

(b) Funds allocated under this subsection may not be used to replace any other state and federal funds or any county funds that are currently being provided to a family under any program.

(c) The total amount of a county department's allocation used to pay for staff salaries and other administrative costs associated with the program may not exceed 10% of the allocation.

History: 1985 a. 29, 120, 176; 1985 a. 182 s. 57

46.99 Purchase of day care programs for student parents.

(1) DEFINITIONS. In this section:

(a) "Day care program" means a program established and provided by a school board under s. 120.13 (14) or purchased by a school board from a provider licensed under s. 48.65, which combines care for eligible children with parenting education and experience for student parents.

(b) "Eligible child" means a child under 3 years of age who resides with a parent who is a pupil enrolled in a school district.

(c) "School age mother" means a woman under 21 years of age who is not a high school graduate.

(d) "Student parent" means the parent with whom an eligible child resides.

(2) CONTRACTS WITH SCHOOL BOARDS. (a) From the appropriation under s. 20.435 (4) (eg), the department may contract with school boards for the provision of day care programs.

(b) Each biennium, the department shall estimate the number of live births to school age mothers residing in each school district and shall rank all school districts in this state from the highest estimated number of live births to the lowest.

(c) The department shall offer to contract for the provision of day care programs beginning with the school board in the district ranked highest under par. (b), and shall continue offering contracts to school boards in the order in which the districts are ranked until the moneys appropriated are fully committed. In each contract offer, the department shall specify the maximum number of eligible children for whom the department will provide funds and the maximum amount for which the school board is eligible. That amount shall be determined by multiplying the specified number of children times \$8 times the number of school days, as defined under s. 115.01 (10), in the district during the year for which the contract is offered. No school board may be offered more than 50% of the annual appropriation under s. 20.435 (4) (eg).

(3) CONTRACT ELIGIBILITY. A school board is eligible for a contract under sub. (2) only if it agrees to comply with all of the following conditions:

(a) It has established or will establish a school age parent program under subch. VI of ch. 115.

(b) It will develop a plan, to be approved by the department, for coordinating its day care program with other services, including public health, education, employment, family and social services, that are available in the community for student parents.

(c) The day care services it provides or purchases will be located either in the building in which a student parent attends school or on premises which are readily accessible to student parents.

(d) It will require that each student parent whose child receives day care services under this section must do both of the following:

1. Demonstrate an acceptable level of effort to complete high school.

2. Work in the day care center for at least 5 class hours a week, for which the school district will give the student parent a grade and credit toward high school graduation.

(e) Notwithstanding s. 120.13 (14), it will not charge a student parent a fee for day care services provided to a child under this section.

(f) It will develop a plan, to be approved by the department and the state superintendent of public instruction, for the parenting education component of the day care program for which the school district seeks reimbursement under s. 115.93 (1m).

(4) PAYMENT TO SCHOOL BOARDS. The department shall pay a school board with which it contracts under sub. (2) \$8 per school day for each eligible child that receives day care in a program under this section. The contract shall specify the method and the schedule of payment.

(5) NOTICE TO COUNTY DEPARTMENTS; PAYMENT. (a) When the department offers a contract under sub. (2) (c) to a school board, and when the school board accepts the offer, the department shall notify the county department under s. 46.215, 46.22 or 46.23 in each county in which the school district is located.

(b) The county department specified under par. (a) shall pay the school board from its child day care allocation under 1985 Wisconsin Act 29, section 3023 (3) (f), an amount equal to the amount offered to the school board by the department under sub. (2) (c). If the school district is located in more than one county, the department shall determine the amount each county department shall pay the school board, based on the school district's population in each county.

(c) If the amount paid by a county department under par. (b) exceeds the amount actually paid by the department to the school board under sub. (4) in any school year, the school board shall either pay the county department the amount of the overpayment or, if the school board will provide the day care program in the next school year, credit the county department with that amount and apply the credit against the amount due under par. (b) for the next school year.

(6) EVALUATION REQUIRED. The department shall evaluate the results of each program established under this section and shall broadly disseminate to other school districts the results of each program it considers successful.

History: 1985 a. 29, 56, 176