



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #402

### **Limit Placement of Individuals with Developmental Disabilities in ICFs-MR and Nursing Homes (DHFS -- Health Care Financing -- Nursing Homes)**

[LFB 2003-05 Budget Summary: Pages 233, #6]

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#### **CURRENT LAW**

Individuals with developmental disabilities currently receive medical assistance (MA) supported services in a variety of settings, including intermediate care facilities for the mentally retarded (ICFs-MR), nursing facilities, community-based residential facilities, and in their own homes. Funding for MA-eligible services provided by ICFs-MR, nursing facilities, and under the MA-waiver programs are supported by a combination of GPR and federal matching funds on a 42% GPR/58% FED basis.

MA payments to ICFs-MR and nursing facilities are based on a prospective payment system that may not fully reimburse facilities for their MA-related costs. Counties may be required to support a portion of unreimbursed costs in the institutional facilities they own and operate. In addition, counties are responsible for providing the non-federal matching funds for intensive treatment program (ITP) services, and for certain home- and community-based waiver programs.

The number of developmentally disabled individuals residing in institutional facilities continues to decrease, in contrast with rising participation in community-based programs. For instance, the number of persons with developmental disabilities residing in institutions in Wisconsin decreased from 2,932 individuals on December 31, 1999, to 2,737 individuals at the end of 2002 (6.7%). Over the same period, participation in the MA community integration programs (CIP IA and IB) increased 8.1%, from 8,964 to 9,687. Some individuals with developmental disabilities also participate in other long-term care programs, such as Family Care and the Wisconsin Partnership Project.

## **GOVERNOR**

Reduce funding by \$53,800 GPR in 2003-04 and increase funding by \$1,112,100 (\$438,900 GPR and \$673,200 FED) in 2004-05 and provide 1.0 position (0.5 GPR position and 0.5 FED position), beginning in 2004-05, to reflect the net fiscal effect of the Governor's proposal to increase access to community-based, long-term care for individuals with developmental disabilities and to provide an incentive for ICFs-MR to reduce the number of their licensed beds.

The Governor's proposal would provide the following in 2004-05: (a) county funding allotments to support either institutional care or community-based services under CIP IB; (b) 25 additional CIP IB slots; (c) incentive payments to ICFs-MR that enter into phase-down agreements with DHFS; (d) 1.0 contract specialist to implement the proposal; and (e) funding for information systems changes to determine the county of residence and responsibility for MA-eligible individuals who seek admission to either ICFs-MR or nursing homes. In addition, the Governor's proposal would delete \$53,800 GPR DHFS currently provides annually to Walworth County to support long-term care services for former residents of the Christian League for the Handicapped, a facility that ended its participation in the MA program.

*Statutory Changes.* The Governor proposes several statutory changes that would restrict institutional admissions, create requirements for petitions for placements in ICFs-MR and nursing facilities, and establish county liability for the non-federal portion of ICF-MR and nursing facility costs in certain circumstance. The attachment summarizes these proposed statutory changes.

## **DISCUSSION POINTS**

1. This proposal is intended to reduce the use of institutional long-term care services for individuals who can receive community-based care, which is consistent with state policy and national trends of deinstitutionalization. The bill would create additional incentives to help the state comply with the Supreme Court's "Olmstead" decision, which requires states to provide community-based services to persons with developmental disabilities when: (a) community placement is deemed appropriate; (b) the affected persons do not oppose such treatment; and (c) the placement can be reasonably accommodated, taking into account disability services.

2. Counties currently have a fiscal incentive to place individuals with developmental disabilities in institutions, since, in most cases, the state pays all of the state MA costs for care in these facilities. In contrast, counties often incur costs for community-based services they provide to this population, due to the limited state funding available under the MA community-based waiver programs. Further, a county's funding allocation for community-based long-term care services may be insufficient to meet the demand for these services. Consequently, institutional care may be the only option available to these clients.

3. One of the ways to promote greater use of community-based services is to ensure

that adequate funding is available for such services. The Governor's proposal would provide counties with funding amounts equal to the MA fee-for-service costs for institutional services to individuals with developmental disabilities in ICFs-MR and nursing homes. Counties could then use this funding to either continue to provide institutional care or provide community-based care under the CIP IB program. Since the costs of care under the CIP IB program are, on average, lower than the average cost of care in institutional facilities, counties would have an incentive to serve individuals in the community when possible.

4. The funding that would be provided in the bill for county allotments (\$156,300 GPR and \$219,500 FED) in 2004-05 is intended to provide counties with funding that represents one-half of the estimated cost savings due to declining ICF-MR utilization, as projected at the time the administration developed the proposal.

5. In addition, the Governor's bill would provide \$142,400 GPR and \$199,600 FED in 2004-05 to support 25 new CIP IB slots, beginning in January, 2005. As of December 31, 2002, the DHFS human services reporting system (HSRS) identified 3,572 individuals with developmental disabilities as waiting for community-based waiver services. Approximately 176 of these individuals are currently residing in institutional facilities. The Governor's proposal to support 25 additional CIP IB slots would not meet the current demand for all eligible individuals who are eligible for, and would prefer, community placement over institutional care.

6. The bill would also provide \$148,100 GPR and \$207,600 FED to provide incentive payments for facilities that enter into "phase-down" agreements with the state, beginning in January, 2005, to support the estimated cost of two phase-down agreements in 2004-05. When nursing facilities have low occupancy rates, both cost-efficiency and the quality of care may suffer. Phase-down funding provides facilities with an incentive to delicense some of their beds. The cost estimates assume that a significant downsizing would require each facility to delicense approximately 13 beds. In 2001-02, three ICFs-MR entered into phase-down agreements with DHFS to reduce a combined total of 379 beds. These phase-down payments would be made on a one-time basis.

7. Since the average occupancy rate among ICFs-MR in 2001 was approximately 90.5% and each facility staffed an average 55 licensed beds, a large number of the beds that would be delicensed under a phase-down agreement are already unoccupied. In general, unoccupied beds currently do not directly increase costs of the MA program, since nursing facility per diem rates generally apply to occupied beds. However, unoccupied beds do increase state MA costs to the extent that certain fixed costs enter into the MA-allowable cost of care calculations.

If the Legislature approves the Governor's budget provision that would increase the ICF-MR bed tax from \$100 per month to \$445 per month, and apply the bed tax to all licensed beds, there may be sufficient incentives for ICFs-MR to reduce the number of their licensed beds. Furthermore, funding provided to pay facilities to delicense unoccupied beds that do not incur costs to the state could instead be used to support additional community-based waiver slots.

8. In order to implement this proposal, the Governor recommends funding to support certain information system changes, as well as the addition of a contract specialist position. The information system changes would allow the contract specialist to determine the county responsible for supporting the costs of care for persons with developmental disabilities when counties are required to supply the non-federal share of such costs. Currently, the Bureau of Quality Assurance maintains this data only for MA-waiver participants. Since provisions in this proposal would require counties to pay the non-federal portion of service costs for persons with developmental disabilities located in ICFs-MR, DHFS would require a mechanism to determine what county is responsible for these services costs. In many cases, individuals with developmental disabilities are placed in ICFs-MR that are outside of their county of residence.

9. The additional contract specialist position would perform the following duties: (a) reconcile MA payments to ICFs-MR payments with county allocations to determine available funding for community-based services; (b) ensure that the county responsible for the costs of care of individuals placed in an ICF-MR supports these costs; and (c) assist counties in finding and funding relocations from institutional facilities.

10. As a means of reducing the GPR costs of this proposal, the Governor recommends eliminating \$53,800 GPR annually DHFS provides to Walworth County to support services for individuals with developmental disabilities who previously resided at the Christian League for the Handicapped, which no longer participates in the MA program. However, the bill would not repeal the provision that requires DHFS to make this annual payment. If the Committee adopts the Governor's recommendation, it should repeal this statutory provision.

11. Since the projected MA federal financial participation (FFP) rates have changed slightly from the time the proposal was developed, the alternatives in this paper reflect the revised FFP rates.

**ALTERNATIVES**

1. Approve all of the Governor's recommended statutory changes. In addition, repeal the current statutory requirement that DHFS make payments for services for individuals that were formerly served by the Christian League for the Handicapped the Governor's recommendations.

2. Delete all of the Governor's statutory and funding changes relating to this item.

<u>Alternative 2</u>	<u>GPR</u>	<u>FED</u>	<u>TOTAL</u>
<b>2003-05 FUNDING</b> (Change to Bill)	- \$385,100	- \$673,200	- \$1,058,300
<b>2004-05 POSITIONS</b> (Change to Bill)	- 0.50	- 0.50	- 1.00

3. Modify the bill to reflect one or more of the following.

**A. CIP IB Slots**

1. Make any of the following changes to the CIP IB slots provided in the Governor's proposal, beginning in July, 2004 or January, 2005.

	<u>Slots</u>	<u>Additional Slots Beginning in January, 2005</u>		
		<u>GPR</u>	<u>FED</u>	<u>Total</u>
a.	10	\$56,900	\$79,900	\$136,800
b.	20	113,900	159,700	273,600
c.	30	170,800	239,600	410,400
d.	150	854,200	1,197,800	2,052,000

	<u>Slots</u>	<u>Additional Slots Beginning in July, 2004</u>		
		<u>GPR</u>	<u>FED</u>	<u>Total</u>
e.	10	\$113,900	\$159,700	\$273,600
f.	20	227,800	319,400	547,200
g.	30	341,700	479,100	820,800
h.	150	1,708,400	2,395,600	4,104,000

2. Delete the Governor's proposal to fund 25 CIP IB slots, beginning in January, 2005.

<u>Alternative 3--A2</u>	<u>GPR</u>	<u>FED</u>	<u>TOTAL</u>
<b>2003-05 FUNDING</b> (Change to Bill)	- \$142,400	- \$199,600	- \$342,000

**B. Phase-Down Funding**

1. Provide any of the following changes to the phase-down funding provided in the Governor's proposal.

	<u>Phase-Downs</u>	<u>Number of Additional Phase-Downs Beginning in January, 2005</u>		
		<u>GPR</u>	<u>FED</u>	<u>Total</u>
a.	2	\$148,100	\$207,600	\$355,700
b.	4	296,100	415,300	711,400
c.	6	444,200	622,800	1,067,000

Number of Additional Phase-Downs  
Beginning in July, 2004

	<u>Phase-Downs</u>	<u>GPR</u>	<u>FED</u>	<u>Total</u>
d	2	\$296,100	\$415,300	\$711,400
e..	4	592,200	830,500	1,422,700
f.	6	888,400	1,245,700	2,134,100

2. Delete the Governor's recommendation to fund the estimated costs of two phase-down agreements.

<u>Alternative 3--B2</u>	<u>GPR</u>	<u>FED</u>	<u>TOTAL</u>
<b>2003-05 FUNDING</b> (Change to Bill)	- \$148,100	- \$207,600	- \$355,700

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## ATTACHMENT I

*Statutory Provisions.* Restrict institutional admissions by: (a) prohibiting placement of an individual with a developmental disability in an ICF-MR and an ICF-MR from admitting an individual, unless, prior to placement, a court determines that community-based care is not in the individual's best interest; (b) requiring an ICF-MR to notify the county department in the applicant's county of residence within five days of receiving an application for admission; (c) prohibiting placement of an individual with a developmental disability who requires active treatment in a nursing facility and prohibiting a nursing facility from admitting such an individual unless it is determined that care could not be adequately provided in an ICF-MR or in the community; and (d) specify that these provisions would not apply to emergency placements and temporary placements.

Also, require a county department that participates in CIP IB to develop a plan for providing home or community-based care to an individual in a non-institutional community setting within 90 days of: (a) determining that the individual could be served in an ICF-MR or in the community; (b) receiving an application or proposal for an ICF-MR or nursing facility admission; or (c) receiving notice of placement of individual in a nursing home or ICF-MR; or within 60 days after extension of a temporary placement. Modify the preadmission screening process so that an individual who is found to require active treatment be assessed for placement in an ICF-MR or under a plan of home-or community-based care.

Under the Governor's proposal, counties would also pay the non-federal portion of payments for services in ICF-MRs other than the state centers and for permissible services that are provided in nursing facilities unless the individual who receives services is protectively placed or is under an emergency or temporary placement. In addition, the federal portion of MA payments would only be provided if it was determined that home-or community-based care would not meet that person's needs. These provisions would only apply if an individual was placed in, or admitted to a nursing home or ICF-MR after the placing board considered a plan for home and community care and rejected the plan or found it would not meet the person's needs.

Finally, the Governor's proposal would amend statutes to establish requirements regarding petitions for placements.

*Petitions for Placements.* Require a court to notify the appropriate county department to develop a plan for home and community care for a person who is about to be protectively placed. Require a court to request a statement or testimony from the county department as to whether the individual's needs could be met in a noninstitutional setting. Provide that, if the county board proposes to place an individual who has a developmental disability in an ICF-MR or nursing facility under a protective placement order, the county would be required to develop a home or community-based care plan and furnish the plan to the county board or agency and to the individual's guardian. Require the county board or agency to place the individual in a

noninstitutional community setting in accord with the plan unless the court finds that to do so is not in the individual's best interests. Provide that, if the individual or the individual's guardian rejects the plan, the court must consider the rejection in determining whether or not the placement is in the individual's best interests. Finally, permit a court to extend a temporary placement up to 60 days to allow a county to develop a plan of community care.

These provisions would first apply to preadmission screenings and resident reviews performed, petitions for protective placements filed, transfers of protectively placed individuals, annual reviews of protectively placed individuals, temporary protective placements, and services provided by counties on April 1, 2004.

The provisions relating to placements and admissions to ICFs-MR and nursing facilities would take effect on January 1, 2004.