



WISCONSIN LEGISLATIVE COUNCIL

REPORT TO THE LEGISLATURE

Legislation on Developmental Disabilities

- 2001 Senate Bill 289 and 2001 Assembly Bill 590, Relating to Adding Legislative Members to the Council on Developmental Disabilities; Requiring the Council on Developmental Disabilities to Report Annually to the Legislature; Expanding Eligibility, Requiring Submission of Waiver Requests by a Specified Date, and Providing Transitional Services Under a Pilot Program for Long-Term Care of Children With Disabilities; Requiring the Department of Health and Family Services to Develop a Plan to Administer and Fund Services for Persons With Developmental Disabilities; and Requiring the Exercise of Rule-Making Authority

January 22, 2002

RL 2001-15

LEGISLATION ON DEVELOPMENTAL DISABILITIES

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January 22, 2002

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PART I

KEY PROVISIONS OF LEGISLATION

The Special Committee on Developmental Disabilities recommended the following proposal to the Joint Legislative Council (JLC) for introduction in the 2001-02 Session of the Legislature, which was introduced as companion bills by the JLC.

Senate Bill 289 and Assembly Bill 590

- Add four legislative members to the Wisconsin Council on Developmental Disabilities; also require the council to report annually to the Legislature on waiting lists for services for persons with developmental disabilities.
- Make the following changes to the Children's Long-Term Support Redesign pilot by: (a) directing the Department of Health and Family Services (DHFS) to seek the necessary federal waivers and enactment of necessary statutory language and funding as soon as possible before July 1, 2002; (b) providing for the expansion of eligibility under certain long-term care programs currently serving children to include children with severe disabilities and long-term care needs and children eligible for Medical Assistance (MA) with high medical costs, and the expansion of MA to include services focused on the needs of children with developmental disabilities and their families; and (c) requiring DHFS to provide transitional services to families whose children with physical or developmental disabilities are preparing to enter the adult service system.
- Require DHFS to develop a plan to require one administrative subunit with DHFS to administer all institutional and community-based services for persons with developmental disabilities, and to combine all funding under the MA program for institutional and community-based services into one appropriation, to the extent permitted by federal law.

The Special Committee also recommended two additional proposals for introduction by the JLC. 2001 Senate Bill 231 and Assembly Bill 473 were introduced as companion bills by the JLC. A separate report, RL 2001-07 (October 23, 2001), was prepared on Senate Bill 231 and Assembly Bill 473 when they were introduced. The report is available at the Legislative Council's Web site: www.legis.state.wi.us/lc. 2001 Senate Bill 346 and Assembly 671 were also introduced as companion bills by the JLC. A separate report will be prepared on those bills.

PART II

COMMITTEE ACTIVITY

A. ASSIGNMENT

The JLC established the Special Committee by a May 18, 2000 mail ballot and appointed the cochairs and members by June 13 and August 14, 2000 mail ballots, respectively. The Special Committee was directed to review funding issues, staffing concerns and ways to streamline the bureaucracy that provides services to people with developmental disabilities. The committee was directed to focus on providing opportunities for persons with developmental disabilities to live independently, and to review the implications of the *Olmstead* decision.

Membership of the Special Committee, appointed by an August 14, 2000 mail ballot consisted of two Senators, two Representatives and nine Public Members. A list of the committee membership is set forth in **Appendix 3**.

B. SUMMARY OF MEETINGS

The Special Committee held eight meetings at the State Capitol in Madison on the following dates:

October 3, 2000. The Special Committee reviewed a staff brief on developmental disabilities issues, including a description of community-based services, Family Care, the Medical Assistance Program and residential institutions for the developmentally disabled. In addition, the committee reviewed information prepared by staff regarding laws relating to protective placement, guardianship and conservatorship, and on the U.S. Supreme Court decision *Olmstead v. L.C.* The committee also received briefings from Michael F. Kruley, Special Assistant to the Regional Manager, Department of Health and Human Services, Office for Civil Rights--Region V; Sandra Hammer Affirmative Action/Civil Rights Compliance Office, Neil Gebhart, Office of Legal Counsel, and Joyce Allen, Office of Strategic Finance, DHFS; Gerry Born, Executive Director, the ARC-Wisconsin; and Jim Balestrieri, President, Homes for Independent Living.

November 17, 2000. The Special Committee reviewed information, prepared by staff, regarding the brain injury waiver (BIW) program, the DHFS 2001-03 Biennial Budget requests relating to developmental disabilities, the effect of the personal care worker rate increase, and the self-determination service delivery model. The committee also heard a presentation from Erica Andres, Program Coordinator, Wisconsin CareGivers Association. The committee identified speakers to invite to the public hearing on November 27, 2000 and identified issues it wanted to explore at future meetings including regulatory issues concerning residential facilities serving persons with developmental disabilities, the long-term care redesign for children, and whether the committee should have input into the state's *Olmstead* plan.

November 27, 2000. The Special Committee held a public hearing and heard presentations from invited speakers. Seventeen people testified at the public hearing regarding the need for increased funding to eliminate the waiting lists for CIP-IB, Community Options Program (COP), Family Support and the Birth-to-Three program; the rate increase for personal care workers; the need for respite care; and the shortage of direct-care workers. The committee then heard presentations from invited speakers regarding counties' funding concerns about long-term care services for the developmentally disabled; Family Care; the proposed alternative to Family Care; the Children's Long-Term Care Redesign pilot; self-determination projects; transitional services for developmentally disabled students ages 18 to 21; the Wisconsin Conservation Corps; the Lifespan Respite Care projects; and workforce shortages and training issues.

December 14, 2000. The Special Committee heard a presentation from Bill Burke, an attorney for the Voice of the Retarded, regarding issues stemming from the *Olmstead* decision. The committee then began reviewing Memo No. 7, *Summary of Recommendations Offered for Committee Discussion* (December 8, 2000), which set forth the recommendations that had been made either by members of the committee or by persons testifying before the committee. As the committee discussed Memo No. 7, it determined that several of the items in the memo, and certain issues raised during the course of the meeting, should be prepared in the form of bill drafts.

January 18, 2001. The Special Committee heard presentations from People First of Dane County and People First of Wisconsin, regarding the need to close the State Centers for the Developmentally Disabled, and from the Wisconsin Council on Developmental Disabilities, regarding possible legislative recommendations discussed by the committee. The committee then completed its discussion of Memo No. 7 and asked that several more bill drafts and a recommendation letter to the ADA Title II Advisory Committee be prepared for the committee's discussion.

February 16, 2001. The Special Committee heard presentations from Tom Alt, Deputy Secretary; Laura Flood, Administrator, Division of Care and Treatment Facilities; and Fredi Bove, Chief, Budget Section, DHFS, regarding the department's 1996 plan to close Southern Wisconsin Center for the Developmentally Disabled. The committee also heard a presentation from Shirley Patterson, Director of Continuing Care for Persons with Developmental Disabilities, Minnesota Department of Human Services, regarding the process and plan Minnesota developed to close its state institutional facilities for the developmentally disabled.

March 19, 2001. The Special Committee reviewed bill drafts and recommendation letters that had been requested by the Special Committee based on discussions of Memo No. 7 at previous meetings. The committee asked that several more bill drafts and a recommendation letter to the Office of the Commissioner of Insurance, as well as redrafts of several bills, be prepared for the committee's discussion.

April 27, 2001. The Special Committee gave approval to three recommendation letters and several of the bill drafts. The committee also approved several other bill drafts, with amendments discussed at the meeting. In addition, the committee approved a request that staff prepare a bill draft increasing the cigarette tax and appropriating the additional funds

to the waiting lists for developmental disabilities services. The cochairs asked that the bill drafts be consolidated into four composite bill drafts--one with fiscal items, one with nonfiscal items, one regarding the state centers task force, and one with the cigarette tax increase.

PART III

LEGISLATION

This part of the report provides background information on, and a description of two of the pieces of the legislation recommended by the Special Committee on Developmental Disabilities for introduction in the 2001-02 Session of the Legislature, and introduced into the Legislature by JLC.

A. SENATE BILL 289 AND ASSEMBLY BILL 590

1. Legislative Members: Wisconsin Council on Developmental Disabilities

a. Background

Under current law, the Council on Developmental Disabilities consists of representatives from the following state agencies: (1) the Department of Workforce Development; (2) the DHFS; (3) the Department of Public Instruction; and (4) the University of Wisconsin.

Also, under current law, the Governor appoints additional members to the council for staggered four-year terms, to represent the following: (1) public and private nonprofit agencies of the state's political subdivisions that provide direct services to persons with developmental disabilities; and (2) nongovernmental agencies and groups concerned with services to persons with developmental disabilities. The Governor must make additional appointments to ensure that at least one-half of the council's membership consists of persons with developmental disabilities or their parents or guardians.

The council has the following duties:

- 1) Designate appropriate state or local agencies for the administration of programs and fiscal resources made available to the council under federal legislation affecting the delivery of services to the developmentally disabled.
- 2) Perform the following responsibilities related to the state plan for the delivery of services to the developmentally disabled and the construction of facilities:
 - a. Develop, approve and continue modification of the statewide plan.
 - b. Monitor and evaluate the implementation of the statewide plan.
- 3) Review and advise the DHFS on community budgets and community plans for programs affecting persons with developmental disabilities.
- 4) Participate in the development of, review, comment on and monitor all state plans in the state which relate to programs affecting persons with developmental disabilities.

- 5) Serve as an advocate for persons with developmental disabilities.
- 6) Provide continuing counsel to the Governor and the Legislature.

[ss. 15.197 (11n) and 51.437 (14r), Stats.]

During its deliberations, the Special Committee on Developmental Disabilities discussed whether the addition of legislative members to the council would increase awareness within the Legislature of issues affecting persons with developmental disabilities. The Special Committee also reviewed other state-level councils which contain legislative members, particularly the Council on Domestic Abuse under s. 15.197 (16), Stats., which has four legislative members.

b. Description of the Bills

The bills restore language concerning the council on developmental disabilities that was vetoed by the Governor in 2001 Wisconsin Act 16 (the Biennial Budget Act). The restored language does the following:

- 1) Requires the Governor to appoint four legislative members to the council on developmental disabilities, as designated by the Speaker of the Assembly, the Assembly Minority Leader, the Senate Majority Leader and the Senate Minority Leader.
- 2) Requires the council to evaluate the waiting lists for developmental disabilities services compiled by DHFS and to submit an annual report regarding the status of the waiting lists to the Legislature at the end of each calendar year.

2. Children's Long-Term Support Redesign

a. Background

In 1997, the Wisconsin DHFS appointed a children's committee on long-term support as part of the effort to redesign the state system on long-term care. The children's long-term support committee identified the following systemic problems regarding the current system of children's long-term care service: access to long-term support services is complicated and inconsistent throughout the state, choice of available services often does not meet families' needs, coordination of services among programs is duplicative, quality assurance for services is poorly monitored and enforced, and funding of long-term care services is inadequate to meet the growing need for services.

In response to these concerns, the children's long-term support redesign committee developed a model to redesign the current system of care for children and their families which will be implemented as a pilot program and funded by federal Medicaid waiver funding. The children's home and community-based waiver would define children with physical, sensory, developmental and significant health care needs as eligible. The waiver would permit the blending of the family support program, the Community Options Program (COP), and MA waiver funding into a single funding stream. The intended effects are to streamline services and secure additional federal matching funds. DHFS would offer the waiver to children and

families currently receiving services through family support, COP, MA home and community-based waivers and MA fee-for-service. Under the waiver, the funds for these programs would be managed within individual budgets based upon the child's functional needs. DHFS would pilot this waiver on a statewide, voluntary basis. The current family care pilot counties would have the option of piloting the children's waiver and coordinating it with the family care program. Families already receiving long-term support services would be offered the opportunity to enroll in the children's waiver on a voluntary basis.

The Special Committee determined that the current structure of long-term care services for children does not address the unique needs of developmentally disabled children and their families.

The Biennial Budget Act requires DHFS to seek waivers of federal MA statutes and regulations that are necessary to implement the program in pilot sites. If the waivers are approved, the biennial budget act requires DHFS to seek statutory language to implement the children's long-term support redesign on a piloted basis.

b. Description of the Bills

The bills restore language governing the children's long-term support redesign pilot program that was vetoed by the Governor in the Biennial Budget Act. The restored language requires DHFS to seek the necessary federal waivers and enactment of necessary statutory language and funding as soon as possible before July 1, 2002. The bills also provide for the expansion of eligibility under certain long-term care programs currently serving children to include children with severe disabilities and long-term care needs and children eligible for MA with high medical costs, and the expansion of MA to include services focused on the needs of children with developmental disabilities and their families. DHFS is required to provide transitional services to families whose children with physical or developmental disabilities are preparing to enter the adult service system.

3. Administration and Funding of Developmental Disabilities Services

a. Background

Currently, most services for persons with developmental disabilities are administered through three different divisions in the DHFS: the Division of Care and Treatment Facilities (state centers for the developmentally disabled); the Division of Health Care Financing (MA-funded services for persons with developmental disabilities); and the Division of Supportive Living (most community-based services for persons with developmental disabilities).

The Special Committee determined that the current structure for administering developmental disabilities services inhibits the ability to view the service system for persons with developmental disabilities as a whole.

b. Description of the Bills

The bills require the DHFS to develop a plan to administer and fund services for persons with developmental disabilities, and to submit that plan to the Department of

Administration as part of the department's budget request for the 2003-05 Biennium. The plan that is submitted shall include any recommended statutory language changes that are needed to implement the plan. The plan must require all institutional and community-based services for persons with developmental disabilities to be administered within one administrative subunit of the department. The subunit designated to do this must be the subunit that is administering community-based services for persons with developmental disabilities as of the effective date of this act.

Further, the plan must provide that funding under the MA program for institutional services and home and community-based waiver services for persons with developmental disabilities shall be combined into one appropriation to the extent permissible under federal law. The department must apply for any necessary waivers of federal MA statutes and regulations from the federal DHFS.

APPENDIX 1

Committee and Joint Legislative Council Votes

The following drafts were recommended by the Special Committee on Developmental Disabilities to the JLC for introduction in the 2001-02 Session of the Legislature: WLC: 0059/2, relating to adding legislative members to the council on developmental disabilities, and requiring an annual report to the Legislature; WLC: 0060/2, relating to permitting counties to provide the nonfederal share of MA to create additional brain injury waiver slots; WLC: 0100/2, relating to requiring the DHFS to promulgate rules relating to registered nurse visits as part of a review of a plan of care for persons receiving personal care services under the MA program, and requiring rule-making; and WLC: 0116/1, relating to requiring the DHFS to develop a plan to require one subunit within the DHFS to administer all institutional and community-based services for persons with developmental disabilities; and to combine all funding under the MA program for institutional and community-based services into one appropriation.

The vote was as follows: Ayes, 13 (Sens. Robson and Roessler; Reps. Foti and Plouff; and Public Members Brinkman, Friese, Helgesen, McGwin, Olson, Ryan, Thompson, Ward and Wittenmyer); Noes, 0.

These drafts were subsequently redrafted as WLC: 0151/1.

At its May 15, 2001 meeting, the JLC voted to introduce WLC: 0151/1 into both houses of the Legislature on a roll call vote of Ayes, 18 (Reps. Rhoades, Bock, Foti, Freese, Gard, Huber, Jensen, Lehman and Meyerhofer; and Sens. Risser, Baumgart, Burke, Chvala, Darling, George, Grobschmidt, Robson and Zien); Noes, 0; and Absent, 4 (Reps. Black and Stone; and Sens. Panzer and Rosenzweig).

APPENDIX 2

JOINT LEGISLATIVE COUNCIL s. 13.81, Stats.

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This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the cochairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

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APPENDIX 3

DEVELOPMENTAL DISABILITIES, **SPECIAL COMMITTEE ON**

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STUDY ASSIGNMENT: The Committee is directed to review funding issues, staffing concerns and ways to streamline the bureaucracy that provides services to people with developmental disabilities. The study will focus on providing opportunities for persons with developmental disabilities to live independently. The Committee shall review the implications of the Olmstead decision. The Special Committee shall report its recommendations to the Joint Legislative Council by January 1, 2001.

Established and Cochairs appointed by a June 13, 2000 mail ballot; and members appointed by an August 14, 2000 mail ballot.

13 MEMBERS: 2 Senators; 2 Representatives and 9 Public Members.

LEGISLATIVE COUNCIL STAFF: Rachel Letzing, Staff Attorney; Laura Rose, Senior Staff Attorney; and Tracey Uselman, Support Staff.

APPENDIX 4

Committee Materials List

October 3, 2000 Meeting

Staff Brief 00-3, Programs and Services for Persons With Developmental Disabilities in Wisconsin (9-27-00)

Memo No. 1, Laws Relating to Protective Placement, Guardianship and Conservatorship (9-27-00)

Memo No. 2, The Olmstead Decision (9-27-00)

November 17, 2000 Meeting

Memo No. 3, Brain Injury Waiver Program (11-9-00)

Memo No. 4, Department of Health and Family Services 2001-2003 Biennial Budget Requests Relating to Persons With Developmental Disabilities (11-9-00)

Memo No. 5, Effect of the Rate Increase for Personal Care Workers (11-9-00)

Memo No. 6, The Self-Determination Service Delivery Model for Persons With Developmental Disabilities (11-16-00)

RL 91-14, Legislation on Fair Housing and Community Living Arrangements (11-11-91)

RTC 97-16, Recommendations of the Joint Legislative Council's Special Committee on Programs for Developmentally Disabled Persons (26-98)

RL 97-9, Legislation on Programs for Persons With Developmental Disabilities (3-20-98)

December 14, 2000 Meeting

Memo No. 7, Summary of Recommendations Offered for Committee Discussion (12-8-00)

Memo No. 8, Attached Report Relating to Long-Term Care Work Force Issues (12-8-00)

Report No. 12 to the 1989 Legislature, Legislation on Developmental Disabilities Laws (9-21-89)

Audit Report 00-11, "An Evaluation, Division of Vocational Rehabilitation, Department of Workforce Development", Legislative Audit Bureau (10-00)

January 18, 2001 Meeting

Memo No. 9, Minnesota's Service System for Persons With Developmental Disabilities (1-11-01)

WLCS: 0058/1, relating to funding for the family support program and increasing an appropriation

WLCS: 0059/1, relating to adding legislative members to the council on developmental disabilities

WLCS: 0060/1, relating to permitting counties to provide the nonfederal share of medical assistance to create additional brain injury waiver slots

WLCS: 0061/1, relating to piloting the children's long term support redesign and increasing an appropriation

WLCS: 0062/1, relating to requiring the department of health and family services to implement, on a pilot basis, an alternative model to the family care program before increasing the number of counties in which family care operates

WLCS: 0063/1, relating to providing funding for developmental disabilities services, requiring rule-making and increasing an appropriation

February 16, 2001 Meeting

Memo No. 10, Attached Report Relating to States' Developmental Disabilities Funding (2-13-01)

Memo No. 11, The Business Employees' Skills Training (BEST) Program (2-13-01)

WLC: 0063/2, relating to providing funding for developmental disabilities services, requiring rule-making and increasing an appropriation

WLC: 0085/1, relating to prohibiting promulgation of administrative rules with a fiscal effect until the legislature appropriates sufficient funds to implement the rule

WLC: 0100/1, relating to requiring the department of health and family services to promulgate rules relating to registered nurse visits as part of a review of a plan of care for persons receiving personal care services under the medical assistance program, and requiring rule-making

Draft letter to Secretary of Health and Human Services, Tommy G. Thompson and Members of Wisconsin's Congressional delegation, regarding support for paying parents who are caregivers to their minor children (2-9-01)

Draft letter to George Potarcke, Chairperson, ADA Title II Advisory Committee, and Tom Rand, Chairperson, Wisconsin Council on Long-Term Care, regarding recommendations for an Olmstead plan for Wisconsin (2-9-01)

Letter with attachments, from Maureen Arcand, relating to aging and developmental disabilities (1-30-01)

Testimony, from Tom Alt, Deputy Secretary, Department of Health and Family Services, from his February 16, 2001 presentation to the Special Committee

March 19, 2001 Meeting

WLC: 0100/1, relating to requiring the department of health and family services to promulgate rules relating to registered nurse visits as part of a review of a plan of care for persons receiving personal care services under the medical assistance program, and requiring rule-making

Letter, from Jim Balestrieri, President, Homes for Independent Living, to Steve Foti (2-26-01)

Memo, from Kathleen McGwin, to the Special Committee on Developmental Disabilities (February 16, 2001)

April 27, 2001 Meeting

Handout, Respite Care Association of Wisconsin, Inc., distributed at the request of Public Member Nancy Olson (undated)

Draft letter, to Secretary Tommy Thompson, U.S. Department of Health and Human Services and Members of the Wisconsin Congressional Delegation (4-12-01)

Draft letter, to the Commissioner of Insurance, relating to liability issues of concern to providers of developmental disabilities services (4-26-01)

LRB-2132/2, relating to respite care projects and making an appropriation

Memorandum, from Kevin Underwood, President, Wisconsin Parents Coalition for the Retarded, Inc., to the Special Committee (4-17-01)

WLC: 0058/2, relating to funding for the family support program and increasing an appropriation

WLC: 0059/2, relating to adding legislative members to the council on developmental disabilities, and requiring an annual report to the legislature

WLC: 0060/2, relating to permitting counties to provide the nonfederal share of medical assistance to create additional brain injury waiver slots

WLC: 0063/3, relating to providing funding for services for persons with developmental disabilities who are on waiting lists for services; requiring the department of health and family services to establish criteria for distribution of this funding; and to develop a plan to eliminate waiting lists for services for persons with developmental disabilities by the end of state fiscal year 2004-05; requiring the council on developmental disabilities to evaluate, and report to the legislature, the number of persons with developmental disabilities on waiting lists for services at the end of each calendar year; requiring rule-making; and making an appropriation

WLC: 0100/2, relating to requiring the department of health and family services to promulgate rules relating to registered nurse visits as part of a review of a plan of care for persons receiving personal care services under the medical assistance program, and requiring rule-making

WLC: 0116/1, relating to requiring the department of health and family services to develop a plan to require one subunit within the department of health and family services to administer all institutional and community-based services for persons with developmental disabilities; and to combine all funding under the medical assistance program for institutional and community-based services into one appropriation

WLC: 0142/1, relating to requiring the creation of a task force to develop a plan to close at least one state center for the developmentally disabled

WLC: 0146/1, relating to requiring annual adjustments to the rates for the community integration program for residents of state centers and the community integration program for persons with mental retardation and the community aids basic county allocation, to reflect changes in the consumer price index