

ORDER OF THE  
DEPARTMENT OF HEALTH AND FAMILY SERVICES  
AMENDING AND CREATING RULES

To amend HFS 73.01 and 73.10 (1) and to create HFS 73.11, relating to criteria for county agency determination under the long-term support community options (COP) and community integration (CIP) programs that in-home services are infeasible, as a condition for use of program funds to pay for services to persons who reside in community-based residential facilities (CBRFs).

Analysis Prepared by the Department of Health and Family Services

Under the Community Options Program (COP) and related home and community-based medical assistance (MA) waivers, federal and state funds are provided to implement care plans for eligible individuals to enable them to live in community-based settings rather than nursing homes despite disabilities or functional limitations.

Statutory language was added by 1997 Wisconsin Act 27 to restrict the use of Community Options and certain MA Waiver funds (COP-W and CIP II) to paying for services for persons living in their own homes, except under certain circumstances. One of the exceptions permits the use of these funds to pay for services for a person residing in a community-based residential facility (CBRF) if additional conditions are met. One of those conditions is if the county long term support agency documents that the option of in-home services has been discussed with the person, is thoroughly evaluated and is found to be "infeasible" as determined by the county agency in accordance with rules promulgated by the Department. Of the five conditions, this is the only one that is required to be determined in accordance with rules.

This rulemaking order establishes criteria for a county agency to make a determination that home care is infeasible for a program participant. Upon meeting the criteria in the rules, along with the four criteria in the statutes, the county agency is permitted to use COP, COP-W or CIP II funds to pay for services for the program participant in a CBRF.

The rulemaking order also amends s. HFS 73.10 to delete the 25% limit on spending for services to program participants who live in CBRFs. Act 27 deleted that limit from the program statutes.

Section 46.289, Stats., allows the Department of Health and Family Services to waive in Family Care pilot counties the restrictions on paying for persons residing in CBRFs under ss. 46.27 and 46.277, Stats., and this rulemaking order.

The Department's authority to create these rules is found in ss. 46.27 (2) (h) 2., (7) (cj) 3. b. and (11) (c) 5n. b. and 46.277 (5) (d) 1n. b. and (5r), Stats. The rules interpret ss. 46.27 (3) (f), (7) (cj) and (11) (c) 5n. and 46.277 (3) (c) and (5) (d) 1n., Stats.

SECTION 1. HFS 73.01 is amended to read:

**HFS 73.01 Authority and purpose.** This chapter is promulgated under the authority of ss. 46.27 (2) (h) 2., (7) (cj) 3. b., (11) (c) 5n. b. and (12), 46.277 (5) (d) 1n. b. and (5r) and 227.11 (2) (a), Stats., to establish certain standards and procedures related to assessments, case plans, service agreements, participant payment of service providers and verification that services have been received for county administration of the community options program under s. 46.27, Stats., and county administration of home and community-based services waivers from medical

assistance requirements that the department receives from the secretary of the U.S. department of health and human services under 42 USC 1396n (c), ~~and to establish conditions of hardship under which the department may grant exceptions in individual cases to limits on spending by counties for care provided in CBRFs and to establish criteria for county agency determination of the infeasibility of in-home services as a condition for paying for services provided to a program participant residing in a CBRF.~~

SECTION 2. HFS 73.10 (1) is amended to read:

HFS 73.10 (1) LIMITATION ON FUNDING. Each county shall annually establish limits, ~~not to exceed 25%~~, on spending for services for persons who reside in CBRFs from the allocations received under ss. 46.27 (7) and (11) and 46.277 (5), Stats., for community long-term support services. A county department shall include those limits in the county plan for participation in COP under s. 46.27 (4) (c), Stats.

SECTION 3. HFS 73.11 is created to read:

**HFS 73.11 Criteria for determination of the infeasibility of in-home services. (1)** A county may use long-term support funds under s. 46.27 or 46.277, Stats., to provide services to a person residing in a CBRF if the county department or aging unit has determined that all 5 conditions under s. 46.27 (7) (c) 3., s. 46.27 (11) (c) 5n., or s. 46.277 (5) (d) 1n., Stats., have been met.

**Note:** The five conditions are: the completion of an assessment before the person's admission; determination of the infeasibility of in-home care; determination that the CBRF is the person's preferred residence; determination that the CBRF provides a quality environment and quality care services; and determination that the CBRF is cost-effective when compared to other residential options.

**(2)** To determine in-home care is infeasible, the county department or aging unit shall document in writing that all of the following have occurred:

(a) A change has occurred in the individual's condition, functioning, living situation or supports so that arrangements that were in place and adequate to maintain the individual's health, safety and well-being are no longer sufficient to provide or ensure the provision of what the individual needs.

**Note:** Examples include, but are not limited to, when a spouse or other family member who has been a major caregiver dies or for some other reason can no longer provide care, or when there is a major change in the medical condition of a program participant such as a stroke or heart attack and there is need for more care and support but the additional funds or needed caregivers are for some reason not available.

(b) Options for supporting the individual in his or her own home and community have been explored or attempted but have either failed or been found to be unavailable or not possible.

**Note:** Examples of efforts include, but are not limited to, other relatives, friends, neighbors or volunteers have been contacted; professional workers from a home health agency have been recruited and have attempted unsuccessfully to work with the individual in his or her home; and other options such as modifying the home and providing adaptations and aids to enable the individual to be more independent or obtaining nutritional services, adult day care and transportation are not available, feasible or cost-effective.

The rules contained in this order shall take effect on the first day of the month following their publication in the Wisconsin Administrative Register, as provided in s. 227.22 (2), Stats.

Wisconsin Department of Health  
and Family Services

Dated: July 13, 2001

By: \_\_\_\_\_  
Phyllis J. Dubé  
Secretary

SEAL: