



## Legislative Fiscal Bureau

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April 26, 2007

Joint Committee on Finance

Paper #111

### **Wisconsin Council on Developmental Disabilities (DOA -- Transfers to the Department and DHFS -- Disability and Elder Services)**

#### *Base Section*

[LFB 2007-09 Budget Summary: Page 32, #2 and Page 331, #5]

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#### **CURRENT LAW**

The Wisconsin Council on Developmental Disabilities (WCDD) is a federally-funded advocacy and planning council for individuals with developmental disabilities. Members of the Council are appointed by the Governor to serve four-year terms. At least 60% of the members are persons with developmental disabilities, their parents or guardians, or immediate relatives or guardians of persons with developmental disabilities. The Council develops and monitors implementation of the state plan on the provision of services for individuals with developmental disabilities and reviews and advises DHFS on local budgets and plans relating to these services. The Council was established in response to a federal requirement that states establish such a council as a condition of receiving federal funds for advocacy services.

The Department of Health and Family Services (DHFS) is currently authorized 7.75 FED positions to staff the Council. These positions are supported by federal funds the state receives from the U.S. Department of Health and Human Services (DHHS) to support state councils. In federal fiscal year 2005-06, the state's federal allocation was \$1,284,700, which DHFS used to support: (a) staff salary and fringe benefit costs (\$491,400); (b) grants to organizations (\$542,400); (c) contractual services (\$107,600); and (d) administrative costs, including rent, data processing and other charges, and miscellaneous supplies and services (\$143,300).

As a condition of receiving the federal grant, each state is required to provide matching funds. Federal funds may support no more than 75% of total eligible costs. DHFS currently

uses eligible costs funded by community aids to demonstrate the state's compliance with the federal match requirement.

The Council is statutorily attached to DHFS for administrative purposes. As such, the Council receives certain administrative services, such as payroll and budgeting services, from DHFS. The Council's staff is not located with other DHFS staff. Instead, the Council's staff offices are located at 201 West Washington Street in the City of Madison.

## **GOVERNOR**

### **Fiscal Changes**

*Department of Administration.* Provide \$1,283,200 (\$1,268,200 FED and \$15,000 GPR) annually and 7.75 FED positions, beginning in 2007-08, to reflect the fiscal effect for the Department of Administration (DOA) of the Governor's proposal to transfer the Council on Developmental Disabilities from DHFS to DOA.

*Department of Health and Family Services.* Reduce funding by \$1,286,800 (-\$15,000 GPR and -\$1,271,800 FED) annually and delete 7.75 FED positions, beginning in 2007-08, to reflect the fiscal effect for DHFS of the proposal.

### **Statutory Changes**

Create an appropriation in DOA for the receipt and distribution of federal funding for the Council. Require DHFS to ensure that the matching funds requirement for the state developmental disabilities councils grant, as received from DHHS, is met by reporting to DHHS county expenditures for services to persons with developmental disabilities under the community aids program.

Specify that: (a) the assets and liabilities primarily related to the functions of Council would become the assets and liabilities of DOA; (b) incumbent employees holding positions, relating primarily to the functions of the Council would be transferred to DOA; (c) transferred employees would have the same rights and status in DOA that they enjoyed in DHFS, and no employee transferred who has attained permanent status would have to serve a probationary period; (d) all tangible personal property, including records, primarily related to the functions of the Council would be transferred to DOA; (e) all contracts primarily related to the functions of the Council would remain in effect and would be transferred to DOA, which would be required to carry out these contractual obligations unless modified or rescinded by DOA to the extent allowed under the contract.

## **DISCUSSION POINTS**

1. Federal law requires each state to designate a state agency to support the state's council. The designated state agency must be: (a) the state council, if the state's statutes designate

the council as a separate agency; (b) a state agency that does not provide or pay for services for individuals with developmental disabilities; or (c) a state office, including the immediate office of the Governor of the state or a state planning office.

2. The federal law recognizes a potential conflict of interest in placing a state's council in an agency that provides services to persons with developmental disabilities, which may compromise the advocacy mission of the state's council.

In Wisconsin, DHFS is the primary source of state funding for services for individuals with developmental disabilities. DHFS: (a) operates the state centers for the developmentally disabled; (b) distributes state and federal funding to counties through the community aids program and the medical assistance funded home- and community-based waiver programs, which are the primary funding sources for community-based services for individuals with developmental disabilities; and (c) administers, with counties, several smaller programs that serve this population, including the birth-to-three program and the family support program.

3. However, federal law permits states to maintain their state councils in agencies that provide or pay for services for individuals with developmental disabilities if the designation was made prior to April 6, 1994, and if: (a) the Governor has considered the comments and recommendations of the general public and the majority of the non-state agency members of the council with respect to the designation of the state agency; and (b) the Governor or the Legislature has made an independent assessment that the designation of the agency would not interfere with the budget, personnel, priorities, or other action of the council, and the ability of the council to serve as an independent advocate for individuals with developmental disabilities.

4. Although Wisconsin is still in compliance with federal law because of the grandfather provision that allows councils to continue their attachments if the agency was designated prior to April 6, 1994; under federal law, the Council may request a review of and change in the designated state agency by the Governor or Legislature. In such a case, the Council must provide documentation concerning the reason for the requested change. The Council has indicated that it would like to request a change in the designated agency because its ability to serve as an independent advocate for individuals with developmental disabilities has been hindered due to its attachment to DHFS.

The Council's staff has cited examples, which have occurred in the past, of interference by DHFS in the Council's operations. For example, while federal law and policy direct the Council to submit the state plan and federal grant application to DHHS, the Council's staff indicate that DHFS required the Council to receive approval of the application before it was submitted to the federal agency. In the past, the Council's staff also expressed concerns over DHFS' involvement in day-to-day matters that the Council believed infringed upon their independence as an agency. These issues were problematic in the past, and have since been alleviated. To prevent these problems from occurring in the future, the Council has requested a transfer from DHFS.

5. The Council held two public hearings in 2003, during which all individuals attending spoke in favor of changing the Council's designated state agency. The Council has taken

up the issue of changing the designated state agency numerous times during its meetings over the past four years, and voted in 2003 to begin the process of making this change. For these reasons, the Committee may wish to transfer the Council's staff and attachment from DHFS.

6. On the other hand, while the Council's transfer from DHFS may be desirable, the WCCD's advocacy mission could still be compromised by transferring the Council's employees to DOA. Although DOA has primary management responsibilities for the executive branch, it is also the agency that is primarily responsible for carrying out the Governor's policies. Therefore, some of the issues that resulted in the Council's decision to transfer from DHFS may continue to exist if the Council were transferred to DOA.

7. The Council has pursued options to transfer to other agencies that have no responsibilities relating to programs that serve individuals with developmental disabilities. However, preliminary information from these agencies suggest that the amounts that these agencies would charge the Council for providing support services would exceed the amounts DHFS currently charges for these support services, or that DOA would charge the Council under the bill. Further, these agencies may view such a transfer as a distraction to the primary mission of the agency.

8. Alternatively, if the Committee chooses to create the new Department of Children and Families (DCF), as proposed by the Governor, the Committee could choose to transfer the attachment from DHFS to DCF, beginning in 2008-09. The Council's Executive Director indicates that this would be a satisfactory resolution.

9. Another option would be to make the Council a separate, stand-alone state agency, attached DOA only for administrative purposes, similar to the Board on Aging and Long-Term Care (BOALTC). Currently, BOALTC is a separate stand-alone agency that is afforded the independence of an independent state agency, but receives assistance from DOA for certain administrative functions, including payroll and procurement. Similarly, the Child Abuse and Neglect Prevention Board is an independent agency, which is staffed by 8.0 state positions, attached to DHFS for administrative purposes. State councils do not have the powers of state agencies. The Council has suggested that it be renamed the "Board for People with Developmental Disabilities." The Council has expressed its preference for this option over the Governor's recommendation, because it would permit the Council to operate with the independence afforded to such councils under federal law.

10. Nationally, there are currently 28 state councils that are attached to agencies similar to DHFS (through the grandfather provision), 11 state councils that are stand-alone agencies, and 11 that are attached to other state agencies that do not provide services to people with developmental disabilities.

**ALTERNATIVES TO BASE**

1. Provide \$1,283,200 (\$1,268,200 FED and \$15,000 GPR) annually and 7.75 FED positions, beginning in 2007-08, to reflect the fiscal effect for the Department of Administration (DOA) of the Governor's proposal to transfer the Council on Developmental Disabilities from DHFS to DOA.

ALT 1 (DOA)	Change to Bill		Change to Base	
	Funding	Positions	Funding	Positions
GPR	\$0	0.00	\$30,000	0.00
FED	<u>0</u>	<u>0.00</u>	<u>2,536,400</u>	<u>7.75</u>
Total	\$0	0.00	\$2,566,400	7.75

ALT 1 (DHFS)	Change to Bill		Change to Base	
	Funding	Positions	Funding	Positions
GPR	\$0	0.00	- \$30,000	0.00
FED	<u>0</u>	<u>0.00</u>	<u>- 2,543,600</u>	<u>- 7.75</u>
Total	\$0	0.00	- \$2,573,600	- 7.75

2. Create a new state agency, the Board for People with Developmental Disabilities (BPDD), and assign the agency the statutory responsibilities currently assigned to the Council. Transfer funding and positions from DHFS to the new agency, and attach BPDD to DOA for administrative purposes only, effective with the passage of the biennial budget bill.

ALT 2 (DOA)	Change to Bill		Change to Base	
	Funding	Positions	Funding	Positions
GPR	- \$30,000	0.00	\$0	0.00
FED	<u>- 2,536,400</u>	<u>- 7.75</u>	<u>0</u>	<u>0.00</u>
Total	- \$2,566,400	- 7.75	\$0	0.00

ALT 2 (BPDD)	Change to Bill		Change to Base	
	Funding	Positions	Funding	Positions
GPR	\$30,000	0.00	\$30,000	0.00
FED	<u>2,536,400</u>	<u>7.75</u>	<u>2,536,400</u>	<u>7.75</u>
Total	\$2,566,400	7.75	\$2,566,400	7.75

ALT 2 (DHFS)	Change to Bill		Change to Base	
	Funding	Positions	Funding	Positions
GPR	\$0	0.00	- \$30,000	0.00
FED	<u>0</u>	<u>0.00</u>	<u>- 2,543,600</u>	<u>- 7.75</u>
Total	\$0	0.00	- \$2,573,600	- 7.75

3. Maintain current law. However, if the Committee creates a Department of Children and Families, as recommended by the Governor, the Committee could choose to transfer the Council to that Department in a subsequent action.

<b>ALT 3 (DOA)</b>	<b>Change to Bill</b>		<b>Change to Base</b>	
	Funding	Positions	Funding	Positions
GPR	- \$30,000	0.00	\$0	0.00
FED	<u>- 2,536,400</u>	<u>- 7.75</u>	<u>0</u>	<u>0.00</u>
Total	- \$2,566,400	- 7.75	\$0	0.00

<b>ALT 3 (DHFS)</b>	<b>Change to Bill</b>		<b>Change to Base</b>	
	Funding	Positions	Funding	Positions
GPR	\$30,000	0.00	\$0	0.00
FED	<u>2,543,600</u>	<u>7.75</u>	<u>0</u>	<u>0.00</u>
Total	\$2,573,600	7.75	\$0	0.00

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