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Children's Community Options Program (Health Services -- Medical Assistance -- Long-Term Care Services)

[LFB 2015-17 Budget Summary: Page 216, #2]

CURRENT LAW

Family Support Program. The Family Support Program (FSP) is a categorical allocation within community aids that funds services that help children with severe disabilities remain in their homes. To qualify for program services, a child must be diagnosed with a severe physical, emotional, or mental impairment which requires individually planned and coordinated care, treatment, vocational rehabilitation, or other services. The condition must have resulted, or be likely to result, in a substantial limitation in at least three of seven functions of daily living (self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency). Although eligibility does not depend on income, some families are required to share in the cost of program services based on a sliding scale, beginning with families with income at 330% of the FPL.

Families receive an assessment to determine what services a child requires to be able to live at home. Counties ensure that the family participates in the assessment and that the assessment process involves people knowledgeable about the child's condition. The assessment also includes a review of other available services and funding sources, such as Medicaid or the family's private health insurance coverage. A written service plan is developed, with FSP funds allocated for services for which other funding sources are not available.

The program provides up to $3,000 per year in services and goods to eligible families, along with additional amounts that may be provided with the Department's approval. In calendar year 2013, 2,571 children received services under the program. An additional 509 children enrolled in the children's long-term services (CLTS) medical assistance (MA) waiver program received services that were funded from county FSP allocations.

In calendar year 2015, DHS will distribute approximately $5.1 million to counties for FSP services as part of the community aids program allocations. Counties may spend up to 10% of these funds for staff and other administrative costs. The amount each county receives each year is generally based on historical allocations.

Non-MA Waiver COP. Under current law, children with disabilities may also receive services under the non-MA waiver community options program (COP). COP provides funding to counties and tribes to support individuals in need of long-term care services, including elderly individuals and adults with physical or developmental disabilities in the counties that do not offer Family Care and IRIS, as well as children with long-term support needs and individuals with mental health or alcohol or drug abuse-related problems in all counties. COP provides services and equipment, including home modifications, respite care, adaptive equipment, communication aids, and personal care. Counties may also use the non-MA waiver COP funding to supplement other state and local funds to provide long-term care services, including services that cannot be funded under the Medicaid waiver programs, such as room and board costs. Unlike FSP, there is no limit to the cost of services an individual may receive under the non-MA waiver COP program. In calendar year 2013, DHS estimates that approximately $4 million was allocated to counties to provide services for disabled children, or to serve as a match for Medicaid-funded services under the CLTS MA waiver program.

GOVERNOR

Repeal the Family Support Program (FSP) and consolidate funding currently provided to support services for children with disabilities under FSP and the non-MA waiver COP program to create a Children's community options program (Children's COP).

Eligibility. Direct DHS to allocate funds to county or private nonprofit agencies to provide long-term community support services to eligible children who have a disability. For these purposes, define a "child" as a person under 22 years of age and who is not receiving services in, or on a waiting list for, an adult long-term care program. Define a "disability" as a severe physical, developmental, or emotional impairment that is diagnosed medically, behaviorally, or psychologically, 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 substantial limitation to at least two of the following areas: (a) self-care; (b) receptive and expressive language; (c) learning; (d) mobility; and (e) self-direction. Require that an assessment be conducted for any child seeking Children's COP services, within the limits of state and federal funds and fee collections.

Direct DHS to create a sliding scale formula for fees chargeable for conducting an assessment, developing a case plan, and providing long-term community support services, based on a child's ability to pay, unless prohibited under federal Medicaid law. Require counties to require children or their parents or guardians applying for Children's COP to provide, at the time of application or for children currently receiving such services, a declaration of income on a form prescribed by DHS and a declaration of costs paid annually for care and services related to the child's disability or special need. From this information, direct the county department to

determine the amount of the fee for Children's COP services, and require the county department to require payment by the child or parent or guardian of 100 percent of the specified fee. Require that the county use all fee revenue to pay for long-term community support services for children eligible for Children's COP.

Require participating counties to ensure individuals receiving Children's COP services meet applicable eligibility requirements, through use of a form or other procedure provided by DHS. Specify that, within the limits of available state and federal funds reimbursed by DHS and Children's COP fee revenue, the county department or private, nonprofit agency must provide Children's COP services to all eligible children, excluding room and board expenses. Permit DHS to disallow reimbursement for services provided to children who do not meet Children's COP or other eligibility requirements established by DHS. Specify that a child who is denied eligibility for services or whose services are reduced or terminated is permitted a hearing with DHS based on statutory requirements for administrative hearings, unless services are denied, reduced, or terminated due to lack of funding.

Responsibilities of DHS. Require DHS to develop guidelines for implementing Children's COP, and to review and approve or disapprove each county department selected to administer the program. Provide that DHS must approve or reject the community options plan of each participating county, based on criteria DHS develops in consultation with representatives of counties, hospitals (defined as any building, structure, institution or place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment of and medical or surgical care for three or more nonrelated patients, suffering from illness, disease, injury or disability, whether physical or mental, and including pregnancy and regularly making available at least clinical laboratory services, and diagnostic X-ray services and treatment facilities for surgery, or obstetrical care, or other definitive medical treatment), other institutional settings, and recipients of children's community support services, which address cost-effectiveness, scope, feasibility, and impact on quality and appropriateness of health and social services, and provide counties with maximum flexibility to develop programs that address local needs. Require DHS to periodically monitor program implementation.

Require DHS to, following consultation with representatives of counties, hospitals, and individuals who receive services under Children's COP, establish minimum requirements for the provision of services, including standards for care, timeliness for performance of duties, and acceptable caseload size, as well as a reasonable schedule for phasing in these minimum requirements. In addition, require DHS to provide technical consultation and assistance to the administrator of Children's COP regarding these minimum requirements. Specify that these minimum requirements and schedule do not need to be promulgated as rules.

Provide that, if DHS has a waiver from the federal requirement to review a county department or private, nonprofit agency's plans of care for each individual receiving home or community-based services because DHS or the agency has implemented effective quality assurance systems based on evaluations of the adequacy, safety, and comprehensiveness of individual care plans and services, the waiver applies to the care plans for children enrolled in Children's COP.

Advisory Committee. Require participating counties to appoint members to an advisory committee or appoint an existing advisory committee to serve as the Children's COP advisory committee, whose responsibilities include assisting in developing the program plan and monitoring the program. The membership of this committee would include, but would not be limited to: (a) a majority of the committee membership composed of parents of children with disabilities who are representative of the disability, racial, and ethnic groups in the service area, including, if possible, parents of Children's COP participants; (b) representatives of the community mental health, developmental disabilities, alcoholism and drug abuse service providers, representatives of the county department of human services or county social services board, and representatives of school districts and local health departments, at least one of which is a person providing services to children who are eligible for Children's COP; and (c) persons in the service area who provide social or educational services to disabled children other than the persons previously specified.

County Responsibilities. Require participating counties to cooperate with the Children's COP advisory committee to prepare a program plan, which includes: (a) a description of the proposed program; (b) the estimated number of families to be assessed and served; (c) a list of groups, if any, to be given priority for funding; (d) a description of proposed outreach procedures to ensure that the program will be made available to eligible children; (e) the process that will be used to determine family need; (f) a description of the process for developing and monitoring services plans and for coordinating the provision of services and goods to participating families; (g) a description of the methods that will be used to promote the creation of informal support and advocacy systems for families; and (h) a description of the method that will be used to monitor the program. Require that the proposed plan be submitted to the county board of supervisors in each county in the service area for review and, after being approved by the county boards, the plan be submitted to DHS. Require participating counties, in conjunction with county departments of social services or county social services boards and the administering agency, to coordinate the administration of Children's COP with the administration of other publicly-funded programs serving disabled children. Require participating counties to submit all information and reports required by the Department. Specify that private, nonprofit agencies with which DHS contracts to provide Children's COP services have the powers and duties of a county department designated to administer the program.

Specify that an agency administering the program: (a) cooperate in the development of the program plan; (b) provide information about the program and other programs for children who have disabilities to families in the service area; (c) implement the program in accordance with the program plan; and (d) designate an employee as the coordinator for each participating family.

Require the county department selected to administer the program to: (a) facilitate assessments by individuals who can determine the needs of the child being assessed and know the availability of services within the county; (b) involve county departments of social services or social service boards, community mental health, developmental disabilities, alcoholism, or drug abuse service providers, health service providers, and the child's family or guardian in assessment activities; (c) ensure the provision of necessary long-term community support services for all eligible children based on DHS standards for purchase of care and services within

the limits of state and federal funds; (d) provide for ongoing care management services, periodic case plan review, and follow-up services for any child receiving Children's COP services based on DHS standards for the provision of care management within the limits of state and federal funds; (e) determine the fee, if any, for all children eligible for Children's COP; (f) serve as or contract with a fiscal agent to perform the responsibilities of enrollees under unemployment insurance law, including remitting any federal unemployment compensation taxes or state unemployment insurance contributions, such as interest and penalties, owed by the child, serving as the representative of the child in any investigation, meeting, hearing, or appeal regarding state unemployment insurance and reserves law or the federal unemployment tax act in which the child is party, and receiving, reviewing, completing, and returning all forms, reports, and other documents required under these provisions of state and federal unemployment law; (g) allow a child to make an informed and voluntary (defined as being according to an individual's free choice, if competent, or by a choice of his or her parent or guardian, if the individual is adjudicated incompetent or is a minor) election to waive the right to a fiscal agent, including any or all of the fiscal agent's responsibilities, and allow this waiver to be rescinded at any time; and (h) develop assessments and care plans according to uniform criteria established by DHS for children in all long-term care programs.

Specify that, unless an assessment is performed under contract with a managed care organization, the fiscal responsibility of a county for an assessment, case plan, or services provided under Children's COP is: (a) the county in which the child has residence (defined as the voluntary occurrence of physical presence with the intent to remain in a fixed place of habitation), if the child is seeking admission to or about to be admitted to an institutional setting, which includes a nursing home, state-operated long-term care facility, or other residential facility that provides care to children outside of a home; (b) the county in which the child is residing if the child is residing in a long-term care facility, unless the child is residing in a state-operated long-term care facility, which includes a State Center for the Developmentally Disabled or a Wisconsin veterans home; (c) the county in which a child's legal residence is established if a child is living in an institutional setting, but has legal residence established in another county, unless the child is residing in a state-operated long-term care facility; and (d) the county in which a child was residing before he or she entered a state-operated long-term care facility or was protectively placed, if the child is residing in a state-operated long-term care facility or is in custody under protective placement.

Funding. Provide funding for Children's COP under the long-term care programs appropriation of the DHS budget. Specify that funds may be allocated from this appropriation to each county or private, nonprofit agency with which DHS contracts for the following purposes: (a) to pay assessment and case plan costs not paid by fee, under MA, or through contracts with multi-county consortia, including to reimburse consortia costs related to assessing children eligible for MA due to receipt of certain Social Security aids, Medicare benefits, MA for the medically indigent, and BadgerCare Plus, which would be reimbursed as MA administrative services; and (b) to pay the cost of providing Children's COP services not otherwise paid under MA for children who are eligible for MA due to receipt of certain Social Security aids, MA for the medically indigent, or BadgerCare Plus, as long as funds received are spent only in accordance with the child's case plan and service contract.

Specify that no funds could be released without approval by DHS of the county's community options plan, that no county could use funds to pay for services provided to a child who resides in a nursing home, unless this restriction is waived by DHS and funds are provided in accordance with a discharge plan, and that no county may use Children's COP funds to purchase land or construct buildings. Specify that receipt of funds by counties must be contingent on county compliance with requirements regarding the distribution of community aids to counties, and that counties may use any excess funds appropriated under the long-term care programs appropriation to pay the cost of providing long-term community support services and for risk reserves. Provide that counties may jointly receive funds if they sign a contract approved by the Secretary of DHS that explains their plans for joint sponsorship. Specify that DHS may require a county to reserve a portion of funds allocated for Children's COP to provide services to enrollees whose cost-of-care significantly exceeds the average cost of care of children enrolled in the program if the county demonstrates a pattern of failure to serve such clients.

Authorize DHS to, at the request of a county, carry forward up to five percent of the amount allocated to the county for a calendar year for use in the next calendar year if up to five percent of the amount allocated has not been spent or encumbered in the current calendar year, except that the amount carried forward would be reduced by the amount the county wishes to place in a risk reserve, and allow DHS to transfer funds within the long-term care appropriation to accomplish this purpose. Provide that the sum carried forward would not affect a county's base allocation, and would lapse to the general fund if not spent in the calendar year to which the funds were carried forward. Prohibit a county from using funds carried forward for administrative or staff costs, unless those costs are associated with implementation of the MA waiver requested to operate Children's COP and use of the funds in this manner is approved by DHS. DHS could carry forward funds for a private, nonprofit organization if the organization continues to be eligible to provide services in the subsequent calendar year. Specify that the current policy that allows DHS to carry forward 10 percent of funds for emergencies, justifiable unit service costs above planned levels, and increased costs due to population shifts also applies to private, nonprofit organizations providing Children's COP services, and that the amount carried forward would not affect the private, nonprofit organization's base allocation.

Authorize DHS to request a waiver from the U.S. Department of Health and Human Services to allow for the provision of services under the MA program to children who are eligible for Children's COP services. Require that reimbursement for services to a county or private, nonprofit agency administering the program be made from the long-term care, federal aid for MA, and community aids and MA payments appropriations, and that payments made for assessment, service, and administrative costs may be used as the state share for the purposes of MA reimbursement. Allow DHS to contract with a county or private, nonprofit agency to provide Children's COP services under the MA waiver. Prohibit counties and nonprofit agencies from using funds received under an MA waiver to provide residential services in a group home, defined as any licensed facility operated by a person for the care and maintenance of five to eight children, with more than five beds, unless DHS approves the provision of services in a home with six to eight beds.

Risk Reserve. Specify that a county may place funds allocated for Children's COP that are

not expended or encumbered in a risk reserve. Specify that the county must notify DHS of the decision and the amount to be placed in the risk reserve. DHS must review and approve or disapprove the terms of the risk reserve escrow account. Provide that if DHS approves the risk escrow account, the county must maintain the risk reserve in an interest-bearing escrow account with a financial institution, and any interest earned on the account must be reinvested in the account. Specify that a county may not expend more than 10 percent of the county's most recent allocation or $750,000, whichever is less, for a risk reserve, and that the total amount of the risk reserve, including interest, may not exceed 15 percent of the county's most recent Children's COP allocation. Provide that a county may expend risk reserve funds to pay Children's COP expenses, and for administrative or staff costs if approved by DHS. Require counties that maintain risk reserves to annually report the status of the risk reserve, including revenue and disbursements, on a form provided by DHS.

Permit DHS to carry forward to the next fiscal year any funds allocated to counties but not encumbered or carried forward by counties, and to transfer money within the long-term care appropriation to accomplish this purpose. Permit DHS to allocate transferred moneys to counties during the subsequent fiscal year for the improvement or expansion of long-term community support services for clients whose cost of care significantly exceeds the average cost of care, including to provide the following: (a) specialized training for individuals providing services to Children's COP recipients; (b) start-up costs for developing needed services; (c) home modifications; and (d) purchase of medical or other specially adapted equipment. Specify that funds allocated through this process may not be used to replace other state, federal, or county funds provided under any program to a family whose child is receiving services through Children's COP.

Family Support Program. Repeal all statutory references to the FSP.

Effective Date. Provide that all of these provisions would take effect January 1, 2016.

DISCUSSION POINTS

1. Currently, children with disabilities may receive long-term care services under several programs, including the MA-funded CLTS waiver program, non-MA waiver COP, and FSP. Funding provided under non-MA waiver COP and FSP may be used as the non-federal share for MA-supported services provided under CLTS. Each of these programs requires an assessment to determine the child's needs, as well as a care plan to determine what services the child will receive under the program.

2. Under current law, funding for the FSP is considered the funding of last resort, meaning that all other funding sources, including private pay and MA, should be considered prior to using FSP funding to meet a child's needs. However, for children who are eligible for both non-waiver COP and FSP, it is at the discretion of the local administering agency which program will provide funding to support a child's long-term care needs. As noted previously, a child may receive services under both programs.

3. This provision would create the children's community options program (Children's COP) on January 1, 2016, by repealing the FSP and combining base funding budgeted for that program ($2,544,500 GPR in 2015-16 and $5,089,000 GPR in 2016-17) with base funds that currently support services to disabled children under COP (approximately $4.0 million GPR in calendar year 2013) to fund Children's COP. Children's COP would provide services to children previously served under FSP and COP.

4. The administration indicates that Children's COP would combine features of the current COP program and FSP. In particular, Children's COP would have the same functional eligibility criteria as under both programs, would use the FSP financial eligibility criteria, would have the same allowable services as under both programs (excluding room and board, which is currently only available under COP), would have no per child expenditure limit in accordance with the current COP program, and could be used as a match for MA services in accordance with both programs under current law. The following table shows the eligibility requirements for and features of Children's COP, and a brief description of which program's features would be retained in the creation of the new program, as specified under the bill.

Features of Children's COP

Program Feature	Under Children's COP
Functional Eligibility	Children with long-term support needs, as determined by a functional screen (COP and FSP)
Financial Eligibility	No income limit, but graduated cost share based on parental income level (FSP)
Allowable Services	Any services approved as supporting the child's service plan (FSP and COP, but excludes room and board)
Assessment and Care Plan	Uniform assessment and criteria, to be established by DHS
MA Match	Funds may be used as the local match for MA-allowable services (COP and FSP)
Program Administration	Would continue to have an advisory council, as under both programs. In addition, would maintain the current COP funding carryover, including a risk reserve and state high-cost fund.

5. The most significant change to current policy under this provision would be the application of the COP risk reserve policy to funding provided under Children's COP. Under COP, counties are permitted to establish a risk reserve fund of up to 10% of a county's most recent allocation or $750,000, whichever is less. In addition, counties may request that the Department carry over up to 5% of the county's COP allocation to the subsequent year. Finally, under current policy, the Department is permitted to carry forward COP funds that are not allocated during a fiscal year to the next fiscal year, to be used for planning, implementation, and improvements to the state's long-term care resources, with particular attention to the provision of services to high-cost clients.

Conversely, under FSP, the Department may carry forward up to 5% of a county's FSP allocation, but the funds carried forward must be used for the purposes for which allocated, excluding administrative costs. Further, any unspent carryover dollars lapse to the general fund. The Department indicates that the application of the current COP risk reserve policies to Children's COP is intended to mitigate risk and aid in the provision of services to high-cost clients.

6. On April 13, 2015, as a part of the State Budget Office Errata Report, the administration indicated that the bill should be modified to clarify eligibility requirements for the program. Specifically, the administration indicated its intent that only individuals ages 18 through 21 who do not have access to adult long-term care services are eligible for Children's COP. Additionally, the bill should be modified to add hospital level-of-care under the bill's definition of disability, which would allow those children who have limitations in their ability to function that are equivalent to a nursing home, hospital, or institution for mental disease level-of-care to be eligible for the program, in order to reflect eligibility requirements for other children's programs. Further, the administration requested that the bill be modified to clarify county responsibilities related to proposing how to operate the program, county department responsibilities with respect to approving the county plan for the program, and DHS authority to contract with counties or nonprofit entities for all program services. These changes have been incorporated into the Governor's recommendation (Alternative 1a. through h.).

7. The Department indicates that the consolidation of the two programs is intended to ease service provision at the county level. Counties are currently responsible for offering children's services under multiple programs, which entails developing care plans and conducting assessments for children that may enroll in several programs concurrently. Additionally, counties are required to maintain the administrative structures required under both programs, including advisory committees for both programs. This provision is intended to simply these processes for counties, while allowing children the same services provided under the current programs.

8. In addition, the administration indicates that this proposal is intended to phase down the provision of services under the COP program in accordance with other policies that have led to the increased provision of services through other long-term care programs. In particular, as Family Care has expanded to additional counties, COP services have been reduced in the counties that offer Family Care to only serving children and individuals with mental illness or alcohol or drug abuse-related problems. The COP program currently only serves all target groups in the 15 non-Family Care counties and, by the end of calendar year 2015, the full COP program will only operate in eight counties. Therefore, this proposal would phase down the current COP program with respect to providing services to children as the expansion of Family Care progresses. A separate but related provision previously approved by the Committee would consolidate current COP funding that provides services to individuals with mental illness or alcohol or drug-abuse related problems with other county mental health programs, thereby eliminating the current non-waiver COP program in Family Care counties.

9. With respect to program enrollees, the Department indicates that there will be no phase-in period, and that children enrolled in the program should experience no differences in program administration when the change would occur on January 1, 2016.

10. Some have expressed concern that children currently eligible for COP or FSP would no longer be eligible for Children's COP. However, the Department indicates that children functionally eligible for FSP are typically also functionally eligible for COP.

11. Additionally, some may argue that services currently available to children served under COP or FSP would no longer be available. DHS indicates that, under the proposed changes, services provided to children currently enrolled in Children's COP and FSP would largely be unchanged, in that services available under the two programs are nearly identical. The Department does note that COP funds may be used for certain room and board expenses, and that this would not be allowable under Children's COP. However, the Department indicates that room and board services are largely intended for adults served under the program, and that very few children utilize these services.

12. Finally, some may argue that the funding allocations provided to children under Children's COP could be changed, as compared with the funding allocations provided under FSP and COP. The Department indicates that the Children's COP program is intended to allow counties flexibility with respect to the administration of these long-term support programs by removing the current $3,000 limit under FSP. Therefore, counties would be permitted to expend greater funds on some children if those children have higher levels of diagnosed care needs. However, such changes in funding levels would be at the discretion of the administering county, and are not inherent or requisite under the proposed changes in the bill.

13. If the Committee wishes to consolidate funding for FSP and COP under Children's COP, the Committee could approve the Governor's recommendation, including the proposed changes recommended in the administration's budget errata letter (Alternative 1a. through h.).

14. If the Committee has concerns related to potential changes in funding allocations and services that would be provided under Children's COP, the Committee could delete the Governor's recommendation (Alternative 2).

ALTERNATIVES

1. Adopt the Governor's recommendation, modified to add statutory language to reflect the following:

a. Add to the definition of "child" that a child is considered someone who is not eligible to receive services in or be on a waitlist for adult long-term care programs;

b. Add to the definition of "disability" that the limitation on the ability to function should be equivalent to a nursing home, hospital, or institution for mental disease level of care;

c. Under 46.272(2)(b), replace "hospitals, and other institutional settings" with "programs that provide community-based services to children or families, other publicly funded programs, the social services, mental health, and developmental disabilities programs under ss. 46.495, 51.42, and 51.437; the independent living center program under s. 46.96; and the Medical Assistance program

under subch. IV of chapter 49 of the statutes";

d. Modify 46.272(4)(b)1. to read "A description of the proposed program operations";

e. Under 46.272(4)(b)4., replace "mental impairments" with "developmental disabilities";

f. Replace 46.272(4)(b)8.(c) with "The county department shall submit the proposed program plan to the department upon approval by the children's community options program advisory committee.";

g. Replace 46.272(5) with "POWERS AND DUTIES OF A PRIVATE NONPROFIT AGENCY. The Department may contract with a private nonprofit agency for services under this section. The agency shall have the powers and duties under this section of a county department designated to administer the program."; and

h. Under 46.272(6), replace "administering agency" with "county or agency described under sub. (5)."

2. Delete provision.

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