



D-NOTE

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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 AN ACT ...; **relating to:** changing the terms *of* home health aide, hospice aide, and nurse's assistant *to* ~~nurse aide~~ *of the terms* changing requirements for instructional and competency evaluation programs for nurse aides, changing certain requirements for review and investigation of reports of client abuse or neglect, and requiring the exercise of rule-making authority.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided *in* a subsequent *later* version.

LPS-anal: prelim

INSERT B

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

6 SECTION 1. 46.275 (5) (b) 4. of the statutes is amended to read:
 7 46.275 (5) (b) 4. Provide services, except respite care that is approved by the
 8 department, within a skilled nursing facility, intermediate care facility or
 9 intermediate care facility for the mentally retarded *✓* persons with mental retardation.

1 as defined in s. 46.278 (1m) (am),[✓] including a state center for the developmentally
2 disabled.

History: 1983 a. 27; 1985 a. 29 ss. 896b to 896L, 3202 (23); 1985 a. 120, 176; 1987 a. 27; 1987 a. 161 s. 13m; 1987 a. 186; 1989 a. 31; 1993 a. 16; 1995 a. 27, 77; 1997 a. 27, 114; 1999 a. 9; 2001 a. 16; 2003 a. 33, 318; 2005 a. 25, 264.

3 **SECTION 2.** 46.278 (1) of the statutes is amended to read:

4 46.278 (1) The intent of the programs under this section is to provide home or
5 community-based care to serve in a noninstitutional community setting a person
6 who meets eligibility requirements under 42 USC 1396n (c) and who is diagnosed as
7 developmentally disabled under the definition specified in s. 51.01 (5) and relocated
8 from an institution other than a state center for the developmentally disabled or who
9 meets the intermediate care facility for ~~the mentally retarded persons with mental~~
10 retardation or ~~a~~[✓] ~~brain injury rehabilitation facility level of care requirements for~~
11 medical assistance reimbursement in an intermediate care facility for ~~the mentally~~
12 retarded persons with mental retardation[✓] or a brain injury rehabilitation facility[✓] and
13 is ineligible for services under s. 46.275 or 46.277. The intent of the program is also
14 that counties use all existing services for providing care under this section, including
15 those services currently provided by counties.

History: 1987 a. 27, 186; 1989 a. 31; 1991 a. 269; 1993 a. 16; 1995 a. 27; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 33.

16 **SECTION 3.** 46.278 (1m) (am) of the statutes is amended to read:

17 46.278 (1m) (am) "Intermediate care facility for ~~the mentally retarded~~[✓] persons
18 with mental retardation" has the meaning given for "intermediate care facility for
19 the mentally retarded"[✓] under 42 USC 1396d (e) ~~and (d)~~.

History: 1987 a. 27, 186; 1989 a. 31; 1991 a. 269; 1993 a. 16; 1995 a. 27; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 33.

20 **SECTION 4.** 46.278 (2) (a) of the statutes is amended to read:

21 46.278 (2) (a) The department may request one or more waivers from the
22 secretary of the federal department of health and human services, under 42 USC
23 1396n (c), authorizing the department to serve medical assistance recipients, who

1 meet the level of care requirements for medical assistance reimbursement in an
2 intermediate care facility for the ~~mentally retarded~~ [✓] persons with mental retardation
3 or in a brain injury rehabilitation facility, in their communities by providing home
4 or community-based services as part of medical assistance. If the department
5 requests a waiver, it shall include all assurances required under 42 USC 1396n (c)
6 (2) in its request.

7 History: 1987 a. 27, 186; 1989 a. 31; 1991 a. 269; 1993 a. 16; 1995 a. 27; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 33.

7 **SECTION 5.** 46.278 (4) (a) of the statutes is amended to read:

8 46.278 (4) (a) Sections 46.27 (3) (b) and 46.275 (3) (a) and (c) to (e) apply to
9 county participation in a program, except that services provided in the program shall
10 substitute for care provided a person in an intermediate care facility for [✓] ~~the mentally~~
11 ~~retarded~~ persons with mental retardation or in a [✓] brain injury rehabilitation facility
12 who meets the intermediate care facility for the ~~mentally retarded~~ persons with
13 mental retardation [✓] or brain injury rehabilitation facility level of care requirements
14 for medical assistance reimbursement to that facility rather than for care provided
15 at a state center for the developmentally disabled.

16 History: 1987 a. 27, 186; 1989 a. 31; 1991 a. 269; 1993 a. 16; 1995 a. 27; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 33.

16 **SECTION 6.** 46.278 (5) (a) of the statutes is amended to read:

17 46.278 (5) (a) Any medical assistance recipient who meets the level of care
18 requirements for medical assistance reimbursement in an intermediate care facility
19 for ~~the mentally retarded~~ persons with mental retardation [✓] or in a brain injury
20 rehabilitation facility and is ineligible for service under s. 46.275 or 46.277 is eligible
21 to participate in a program, except that persons eligible for the brain injury waiver
22 program must meet the definition of brain injury under s. 51.01 (2g), and except that
23 the number of participants may not exceed the number approved under the waiver
24 received under sub. (3). Such a recipient may apply, or any person may apply on

1 behalf of such a recipient, for participation in a program. Section 46.275 (4) (b)
2 applies to participation in a program.

3 **History:** 1987 a. 27, 186; 1989 a. 31; 1991 a. 269; 1993 a. 16; 1995 a. 27; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 33.

3 **SECTION 7.** 46.278 (6) (e) 1. a. of the statutes is amended to read:

4 46.278 (6) (e) 1. a. An intermediate care facility for ~~the mentally retarded~~
5 persons with mental retardation that closes under s. 50.03 (14).

6 **History:** 1987 a. 27, 186; 1989 a. 31; 1991 a. 269; 1993 a. 16; 1995 a. 27; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 33.

6 **SECTION 8.** 46.278 (6) (e) 1. b. of the statutes is amended to read:

7 46.278 (6) (e) 1. b. An intermediate care facility for ~~the mentally retarded~~
8 persons with mental retardation or a distinct part thereof that has a plan of closure
9 approved by the department and that intends to close within 12 months.

10 **History:** 1987 a. 27, 186; 1989 a. 31; 1991 a. 269; 1993 a. 16; 1995 a. 27; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 33.

10 **SECTION 9.** 46.278 (6) (e) 1. c. of the statutes is amended to read:

11 46.278 (6) (e) 1. c. An intermediate care facility for ~~the mentally retarded~~
12 persons with mental retardation that has a plan of closure or significant reduction
13 in capacity approved by the department and that intends to close or significantly
14 reduce its capacity within 60 months.

15 **History:** 1987 a. 27, 186; 1989 a. 31; 1991 a. 269; 1993 a. 16; 1995 a. 27; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 33.

15 **SECTION 10.** 46.279 (1) (b) of the statutes is amended to read:

16 46.279 (1) (b) "Intermediate facility" ~~means~~ has the meaning given for an
17 intermediate care facility for the mentally retarded, ~~as defined in~~ under 42 USC
18 1396d (d), other than a center for the developmentally disabled, as defined in s. 51.01
19 (3).

20 **History:** 2003 a. 33; 2005 a. 25, 47, 253, 264.

20 **SECTION 11.** 48.685 (8) of the statutes is amended to read:

21 48.685 (8) The department, a county department, a child welfare agency or a
22 school board may charge a fee for obtaining the information required under sub. (2)
23 (am) or (3) (a) or for providing information to an entity to enable the entity to comply

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1 with sub. (2) (b) 1. or (3) (b). The fee may not exceed the reasonable cost of obtaining
2 the information. No fee may be charged to a nurse's assistant nurse aide, as defined
3 in s. 146.40 (1) (d), for obtaining or maintaining information if to do so would be
4 inconsistent with federal law.

5 **History:** 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; s. 13.93 (2) (c).

6 **SECTION 12.** 48.685 (8) of the statutes, as affected by 2007 Wisconsin Acts 20
7 and (this act), is amended to read:

8 48.685 (8) The department, the department of health and family services, a
9 county department, a child welfare agency, or a school board may charge a fee for
10 obtaining the information required under sub. (2) (am) or (3) (a) or for providing
11 information to an entity to enable the entity to comply with sub. (2) (b) 1. or (3) (b).
12 The fee may not exceed the reasonable cost of obtaining the information. No fee may
13 be charged to a nurse aide, as defined in s. 146.40 (1) (d), for obtaining or maintaining
14 information if to do so would be inconsistent with federal law.

History: 2007 a. 20.

15 **SECTION 13.** 49.45 (6m) (am) 1. bm. of the statutes is amended to read:

16 49.45 (6m) (am) 1. bm. Nonbillable services of a registered nurse, licensed
17 practical nurse, and nurse's assistant nurse aide.

History: 1971 c. 40 s. 93; 1971 c. 42, 125; 1971 c. 213 s. 5; 1971 c. 215, 217, 307; 1973 c. 62, 90, 147; 1973 c. 333 ss. 106g, 106h, 106j, 201w; 1975 c. 39; 1975 c. 223 s. 28; 1975 c. 224 ss. 54h, 56 to 59m; 1975 c. 383 s. 4; 1975 c. 411; 1977 c. 29, 418; 1979 c. 34 ss. 837f to 838, 2102 (20) (a); 1979 c. 102, 177, 221, 355; 1981 c. 20 ss. 839 to 854, 2202 (20) (r); 1981 c. 93, 317; 1983 a. 27 ss. 1046 to 1062m, 2200 (42); 1983 a. 245, 447, 527; 1985 a. 29 ss. 1026m to 1031d, 3200 (23), (56), 3202 (27); 1985 a. 120, 176, 269; 1985 a. 332 ss. 91, 251 (5), 253; 1985 a. 340; 1987 a. 27 ss. 989r to 1000s, 2247, 3202 (24); 1987 a. 186, 307, 339, 399; 1987 a. 403 s. 256; 1987 a. 413; 1989 a. 6; 1989 a. 31 ss. 1402 to 1452g, 2909g, 2909i; 1989 a. 107, 173, 310, 336, 351, 359; 1991 a. 22, 39, 80, 250, 269, 315, 316; 1993 a. 16 ss. 1362g to 1403, 3883; 1993 a. 27, 107, 112, 183, 212, 246, 269, 335, 356, 437, 446, 469; 1995 a. 20; 1995 a. 27 ss. 2947 to 3002r, 7299, 9126 (19), 9130 (4), 9145 (1); 1995 a. 191, 216, 225, 289, 303, 398, 417, 457; 1997 a. 3, 13, 27, 114, 175, 191, 237, 252, 293; 1999 a. 9, 63, 103, 180, 185; 2001 a. 13, 16, 35, 38, 57, 67, 104, 109; 2003 a. 33, 318, 321; 2005 a. 22; 2005 a. 25 ss. 1120 to 1149f, 2503 to 2510; 2005 a. 107, 165, 253, 254, 264, 301, 340, 386, 441.

18 **SECTION 14.** 49.45 (8) (a) 1. of the statutes is repealed.

19 **SECTION 15.** 49.45 (8) (a) 2m. of the statutes is created to read:

20 49.45 (8) (a) 2m. "Nurse aide" has the meaning given in s. 146.40 (1) (d).

21 **SECTION 16.** 49.45 (8) (a) 4. of the statutes is amended to read:

22 49.45 (8) (a) 4. "Patient care visit" means a personal contact with a patient in
a patient's home that is made by a registered nurse, licensed practical nurse, home

SECTION 16

1 ~~health nurse~~[✓] aide, physical therapist, occupational therapist or speech-language
 2 pathologist who is on the staff of or under contract or arrangement with a home
 3 health agency, or by a registered nurse or licensed practical nurse practicing
 4 independently, to provide a service that is covered under s. 49.46 or 49.47. "Patient
 5 care visit" does not include time spent by a nurse, therapist or ~~home health~~[✓] nurse
 6 aide on case management, care coordination, travel, record keeping or supervision
 7 that is related to the patient care visit.

History: 1971 c. 40 s. 93; 1971 c. 42, 125; 1971 c. 213 s. 5; 1971 c. 215, 217, 307; 1973 c. 62, 90, 147; 1973 c. 333 ss. 106g, 106h, 106j, 201w; 1975 c. 39; 1975 c. 223 s. 28; 1975 c. 224 ss. 54h, 56 to 59m; 1975 c. 383 s. 4; 1975 c. 411; 1977 c. 29, 418; 1979 c. 34 ss. 837f to 838, 2102 (20) (a); 1979 c. 102, 177, 221, 355; 1981 c. 20 ss. 839 to 854, 2202 (20) (r); 1981 c. 93, 317; 1983 a. 27 ss. 1046 to 1062m, 2200 (42); 1983 a. 245, 447, 527; 1985 a. 29 ss. 1026m to 1031d, 3200 (23), (56), 3202 (27); 1985 a. 120, 176, 269; 1985 a. 332 ss. 91, 251 (5), 253; 1985 a. 340; 1987 a. 27 ss. 989r to 1000s, 2247, 3202 (24); 1987 a. 186, 307, 339, 399; 1987 a. 403 s. 256; 1987 a. 413; 1989 a. 6; 1989 a. 31 ss. 1402 to 1452g, 2909g, 2909i; 1989 a. 107, 173, 310, 336, 351, 359; 1991 a. 22, 39, 80, 250, 269, 315, 316; 1993 a. 16 ss. 1362g to 1403, 3883; 1993 a. 27, 107, 112, 183, 212, 246, 269, 335, 356, 437, 446, 469; 1995 a. 20; 1995 a. 27 ss. 2947 to 3002r, 7299, 9126 (19), 9130 (4), 9145 (1); 1995 a. 191, 216, 225, 289, 303, 398, 417, 457; 1997 a. 3, 13, 27, 114, 175, 191, 237, 252, 293; 1999 a. 9, 63, 103, 180, 185; 2001 a. 13, 16, 35, 38, 57, 67, 104, 109; 2003 a. 33, 318, 321; 2005 a. 22; 2005 a. 25 ss. 1120 to 1149f, 2503 to 2510; 2005 a. 107, 165, 253, 254, 264, 301, 340, 386, 441[✓]

8 **SECTION 17.** 49.45 (8) (a) 4. of the statutes, as affected by 2007 Wisconsin Acts
 9 20 and (this act)[✓], is repealed and recreated to read:

10 49.45 (8) (a) 4. "Patient care visit" means a personal contact with a patient in
 11 a patient's home that is made by a registered nurse, licensed practical nurse,[✓] nurse
 12 12 aide, physical therapist, occupational therapist, or speech-language pathologist who
 13 is on the staff of or under contract or arrangement with a home health agency, or by
 14 a registered nurse or licensed practical nurse practicing independently, to provide a
 15 service that is covered under s. 49.46, 49.47, or 49.471[✓]. "Patient care visit" does not
 16 16 include time spent by a nurse, therapist,[✓] or nurse aide[✓] on case management, care
 17 17 coordination, travel, record keeping,[✓] or supervision that is related to the patient care
 18 visit.

19 **SECTION 18.** 49.45 (30m) (a) 2. of the statutes is amended to read:

1 **49.45 (30m) (a) 2.** Services in an intermediate care facility for the mentally
2 retarded persons with mental retardation[✓], as defined in s. 46.278 (1m) (am), other
3 than a state center for the developmentally disabled.

History: 1971 c. 40 s. 93; 1971 c. 42, 125; 1971 c. 213 s. 5; 1971 c. 215, 217, 307; 1973 c. 62, 90, 147; 1973 c. 333 ss. 106g, 106h, 106j, 201w; 1975 c. 39; 1975 c. 223 s. 28; 1975 c. 224 ss. 54h, 56 to 59m; 1975 c. 383 s. 4; 1975 c. 411; 1977 c. 29, 418; 1979 c. 34 ss. 837f to 838, 2102 (20) (a); 1979 c. 102, 177, 221, 355; 1981 c. 20 ss. 839 to 854, 2202 (20) (r); 1981 c. 93, 317; 1983 a. 27 ss. 1046 to 1062m, 2200 (42); 1983 a. 245, 447, 527; 1985 a. 29 ss. 1026m to 1031d, 3200 (23), (56), 3202 (27); 1985 a. 120, 176, 269; 1985 a. 332 ss. 91, 251 (5), 253; 1985 a. 340; 1987 a. 27 ss. 989r to 1000s, 2247, 3202 (24); 1987 a. 186, 307, 339, 399; 1987 a. 403 s. 256; 1987 a. 413; 1989 a. 6; 1989 a. 31 ss. 1402 to 1452g, 2909g, 2909i; 1989 a. 107, 173, 310, 336, 351, 359; 1991 a. 22, 39, 80, 250, 269, 315, 316; 1993 a. 16 ss. 1362g to 1403, 3883; 1993 a. 27, 107, 112, 183, 212, 246, 269, 335, 356, 437, 446, 469; 1995 a. 20; 1995 a. 27 ss. 2947 to 3002r, 7299, 9126 (19), 9130 (4), 9145 (1); 1995 a. 191, 216, 225, 289, 303, 398, 417, 457; 1997 a. 3, 13, 27, 114, 175, 191, 237, 252, 293; 1999 a. 9, 63, 103, 180, 185; 2001 a. 13, 16, 35, 38, 57, 67, 104, 109; 2003 a. 33, 318, 321; 2005 a. 22; 2005 a. 25 ss. 1120 to 1149f, 2503 to 2510; 2005 a. 107, 165, 253, 254, 264, 301, 340, 386, 441.

4 **SECTION 19.** 49.45 (42) (b) of the statutes is amended to read:

5 **49.45 (42) (b)** The individual is not eligible to receive home health aide[✓] services
6 under medicare, as defined in sub. (3) (L) 1. b.

History: 1971 c. 40 s. 93; 1971 c. 42, 125; 1971 c. 213 s. 5; 1971 c. 215, 217, 307; 1973 c. 62, 90, 147; 1973 c. 333 ss. 106g, 106h, 106j, 201w; 1975 c. 39; 1975 c. 223 s. 28; 1975 c. 224 ss. 54h, 56 to 59m; 1975 c. 383 s. 4; 1975 c. 411; 1977 c. 29, 418; 1979 c. 34 ss. 837f to 838, 2102 (20) (a); 1979 c. 102, 177, 221, 355; 1981 c. 20 ss. 839 to 854, 2202 (20) (r); 1981 c. 93, 317; 1983 a. 27 ss. 1046 to 1062m, 2200 (42); 1983 a. 245, 447, 527; 1985 a. 29 ss. 1026m to 1031d, 3200 (23), (56), 3202 (27); 1985 a. 120, 176, 269; 1985 a. 332 ss. 91, 251 (5), 253; 1985 a. 340; 1987 a. 27 ss. 989r to 1000s, 2247, 3202 (24); 1987 a. 186, 307, 339, 399; 1987 a. 403 s. 256; 1987 a. 413; 1989 a. 6; 1989 a. 31 ss. 1402 to 1452g, 2909g, 2909i; 1989 a. 107, 173, 310, 336, 351, 359; 1991 a. 22, 39, 80, 250, 269, 315, 316; 1993 a. 16 ss. 1362g to 1403, 3883; 1993 a. 27, 107, 112, 183, 212, 246, 269, 335, 356, 437, 446, 469; 1995 a. 20; 1995 a. 27 ss. 2947 to 3002r, 7299, 9126 (19), 9130 (4), 9145 (1); 1995 a. 191, 216, 225, 289, 303, 398, 417, 457; 1997 a. 3, 13, 27, 114, 175, 191, 237, 252, 293; 1999 a. 9, 63, 103, 180, 185; 2001 a. 13, 16, 35, 38, 57, 67, 104, 109; 2003 a. 33, 318, 321; 2005 a. 22; 2005 a. 25 ss. 1120 to 1149f, 2503 to 2510; 2005 a. 107, 165, 253, 254, 264, 301, 340, 386, 441.

7 **SECTION 20.** 49.498 (1) (h) of the statutes is amended to read:

8 **49.498 (1) (h)** “Nurse’s assistant Nurse aide”[✓] has the meaning given[✓] for “nurse
9 aide” under 42 USC 1396r (b) (5) (F).

History: 1989 a. 31; 1991 a. 32, 39; 1993 a. 16; 1995 a. 27, 407; 1997 a. 27; 1999 a. 22; 2003 a. 33; 2005 a. 387.

10 **SECTION 21.** 49.498 (2) (e) 1. of the statutes is amended to read:

11 **49.498 (2) (e) 1.** A nursing facility shall provide, for individuals used as nurse’s
12 assistants nurse aides[✓] by the facility as of July 1, 1989, for a competency evaluation
13 program that is approved by the department under s. 146.40 (3m) and for the
14 preparation necessary for the individual to complete the program by January 1,
15 1990.

History: 1989 a. 31; 1991 a. 32, 39; 1993 a. 16; 1995 a. 27, 407; 1997 a. 27; 1999 a. 22; 2003 a. 33; 2005 a. 387.

16 **SECTION 22.** 49.498 (2) (e) 2. of the statutes is amended to read:

17 **49.498 (2) (e) 2.** A nursing facility may not use the individual as a nurse’s
18 assistant nurse aide[✓] unless the nursing facility has inquired of the department
19 concerning information about the individual in the registry under s. 146.40 (4g).

History: 1989 a. 31; 1991 a. 32, 39; 1993 a. 16; 1995 a. 27, 407; 1997 a. 27; 1999 a. 22; 2003 a. 33; 2005 a. 387.

1 **SECTION 23.** 49.498 (2) (e) 3. of the statutes is amended to read:

2 49.498 (2) (e) 3. A nursing facility shall provide the regular performance review
3 and regular in-service education that assures that individuals used as nurse's
4 assistants nurse aides ✓ are competent to perform services as nurse's assistants nurse
5 aides, ✓ including training for individuals to provide nursing and nursing-related
6 services to nursing facility residents with cognitive impairments.

7 History: 1989 a. 31; 1991 a. 32, 39; 1993 a. 16; 1995 a. 27, 407; 1997 a. 27; 1999 a. 22; 2003 a. 33; 2005 a. 387.

7 **SECTION 24.** 50.01 (2) of the statutes is amended to read:

8 50.01 (2) "Nurse's assistant Nurse aide" ✓ means a person who performs routine
9 patient care duties delegated by a registered nurse or licensed practical nurse who
10 supervises the person, for the direct health care of a patient or resident. ✓ "Nurse's
11 assistant Nurse aide" does not mean a feeding assistant, ✓ as defined in s. 146.40 (1)
12 (aw); ✓ a person who is licensed, permitted, certified, or registered under ch. 441, 448,
13 449, 450, 451, 455, 459, or 460; ✓ or a person whose duties primarily involve skills that
14 are different than those taught in instructional programs for nurse's assistants
15 nurse aides. ✓

16 History: 1975 c. 413; 1977 c. 170, 418; 1979 c. 111; 1983 a. 189 s. 329 (18); 1985 a. 29, 276; 1985 a. 332 s. 251 (1); 1987 a. 127, 161; 1989 a. 31, 136, 199; 1991 a. 39;
1993 a. 327, 446, 491; 1995 a. 27; 1997 a. 13, 27, 156, 237; 1999 a. 22, 32; 2001 a. 74, 107; 2003 a. 33; 2005 a. 187.

16 **SECTION 25.** 50.04 (2) (c) 2. b. of the statutes is amended to read:

17 50.04 (2) (c) 2. b. A shortage of nurses or nurse's assistants nurse aides ✓
18 available for employment by the nursing home exists.

19 History: 1977 c. 170 ss. 6, 29; 1977 c. 272; 1979 c. 34; 1981 c. 20, 121, 317, 391; 1983 a. 27 s. 2200 (1); 1985 a. 29; 1985 a. 182 s. 57; 1985 a. 332 s. 251 (1), (7); 1987
a. 27, 127, 399; 1989 a. 31, 336; 1991 a. 39, 269, 315; 1995 a. 27; 1997 a. 27, 114, 237, 252, 280; 1999 a. 9, 32, 103; 2003 a. 33.

19 **SECTION 26.** 50.04 (2) (d) (intro.) of the statutes is amended to read:

20 50.04 (2) (d) (intro.) Each nursing home, other than nursing homes that
21 primarily serve the developmentally disabled, shall provide at least the following
22 hours of service by registered nurses, licensed practical nurses, ✓ or nurse's assistants

1 nurse aides and may not use hours of service by a feeding assistant, as defined in s.
2 146.40 (1) (aw), in fulfilling these requirements:

History: 1977 c. 170 ss. 6, 29; 1977 c. 272; 1979 c. 34; 1981 c. 20, 121, 317, 391; 1983 a. 27 s. 2200 (1); 1985 a. 29; 1985 a. 182 s. 57; 1985 a. 332 s. 251 (1), (7); 1987 a. 27, 127, 399; 1989 a. 31, 336; 1991 a. 39, 269, 315; 1995 a. 27; 1997 a. 27, 114, 237, 252, 280; 1999 a. 9, 32, 103; 2003 a. 33.

3 **SECTION 27.** 50.04 (2r) of the statutes is amended to read:

4 50.04 (2r) ADMISSIONS REQUIRING APPROVAL. Except in an emergency, a nursing
5 home that is not certified as a provider of medical assistance or that is an
6 intermediate care facility for the mentally retarded persons with mental retardation,
7 as defined in s. 46.278 (1m) (am), or an institution for mental diseases, as defined
8 under 42 CFR 435.1009, may not admit as a resident an individual who has a
9 developmental disability, as defined in s. 51.01 (5), or who is both under age 65 and
10 has mental illness, as defined in s. 51.01 (13), unless the county department under
11 s. 46.23, 51.42 or 51.437 of the individual's county of residence has recommended the
12 admission.

History: 1977 c. 170 ss. 6, 29; 1977 c. 272; 1979 c. 34; 1981 c. 20, 121, 317, 391; 1983 a. 27 s. 2200 (1); 1985 a. 29; 1985 a. 182 s. 57; 1985 a. 332 s. 251 (1), (7); 1987 a. 27, 127, 399; 1989 a. 31, 336; 1991 a. 39, 269, 315; 1995 a. 27; 1997 a. 27, 114, 237, 252, 280; 1999 a. 9, 32, 103; 2003 a. 33.

13 **SECTION 28.** 50.065 (8) of the statutes is amended to read:

14 50.065 (8) The department may charge a fee for obtaining the information
15 required under sub. (2) (am) or (3) (a) or for providing information to an entity to
16 enable the entity to comply with sub. (2) (b) or (3) (b). No fee may be charged to a
17 ~~nurse's assistant~~ nurse aide, as defined in s. 146.40 (1) (d), for obtaining or
18 maintaining the information if to do so would be inconsistent with federal law.

History: 1997 a. 27, 105, 237; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2005 a. 25, 184, 277, 351; s. 13.93 (2) (c).

19 **SECTION 29.** 50.095 (3) (b) of the statutes is amended to read:

20 50.095 (3) (b) The staff replacement rates for full-time and part-time nursing
21 staff, ~~nurse's assistants~~ nurse aides, and administrators for the previous year for the

1 nursing home and for all similar nursing homes in the same geographical area, as
2 determined by the department.

History: 1987 a. 27, 127; 1997 a. 114 ss. 20 to 25; 1997 a. 237.

3 SECTION 30. 50.097 of the statutes is amended to read:

4 50.097 Registry. Any person may receive, upon specific written request to the
5 department, requested information that is contained in the registry of nurse's
6 assistants and home health aides ^{individuals} under s. 146.40 (4g) (a) or that is contained in the
7 registry of hospice aides under s. 146.40 (4g) (a) 1.

History: 1989 a. 31; 1991 a. 39.

8 SECTION 31. 50.14 (1) (a) of the statutes is amended to read:

9 50.14 (1) (a) Notwithstanding s. 50.01 (1m), "facility" means a nursing home
10 or an intermediate care facility for the mentally retarded ^{persons with mental}
11 retardation that is not located outside the state.

History: 1991 a. 269; 1993 a. 16; 1995 a. 27; 1997 a. 114; 2003 a. 33; 2005 a. 25, 49; s. 13.93 (2) (c).

12 SECTION 32. 50.14 (1) (b) of the statutes is amended to read:

13 50.14 (1) (b) "Intermediate care facility for the mentally retarded persons with
14 mental retardation" ^{has the meaning given for} "intermediate care facility for the
15 mentally retarded" under 42 USC 1396d ^(e) and (d).

History: 1991 a. 269; 1993 a. 16; 1995 a. 27; 1997 a. 114; 2003 a. 33; 2005 a. 25, 49; s. 13.93 (2) (c).

16 SECTION 33. 50.14 (2) (bm) of the statutes, as created by 2007 Wisconsin Act
17 20, ^{is} amended to read:

18 50.14 (2) (bm) For intermediate care facilities for the mentally retarded
19 ^{persons with mental retardation}, an amount calculated by multiplying the projected
20 annual gross revenues of all intermediate care facilities for the mentally retarded
21 ^{persons with mental retardation} in this state by 0.055, dividing the product by the
22 number of licensed beds of intermediate care facilities in this state and dividing the
23 quotient by 12.

History: 2007 a. 20.

1 **SECTION 34.** 51.06 (8) (a) 1. of the statutes is amended to read:

2 51.06 (8) (a) 1. “Intermediate care facility for ~~the mentally retarded persons~~
3 with mental retardation”[✓] has the meaning given in for “intermediate care facility for
4 the mentally retarded”[✓] under 42 USC 1396d (d).

History: 1975 c. 430; 1981 c. 20; 1985 a. 29 ss. 1061 to 1064, 3200 (56); 1985 a. 176; 1991 a. 39; 1993 a. 16; 1995 a. 27 s. 9145 (1); 1997 a. 27, 164; 1999 a. 9; 2001 a. 16; 2003 a. 33; 2005 a. 386.

5 **SECTION 35.** 51.06 (8) (b) (intro.) of the statutes is amended to read:

6 51.06 (8) (b) (intro.) Annually by October 1, the department shall submit to the
7 joint committee on finance and to the appropriate standing committees of the
8 legislature under s. 13.172 (3) a report that includes information collected from the
9 previous fiscal year on the relocation or diversion of individuals who are Medical
10 Assistance eligibles or recipients from nursing homes, intermediate care facilities for
11 ~~the mentally retarded persons with mental retardation~~[✓], and centers for the
12 developmentally disabled. The report shall include all of the following information:

History: 1975 c. 430; 1981 c. 20; 1985 a. 29 ss. 1061 to 1064, 3200 (56); 1985 a. 176; 1991 a. 39; 1993 a. 16; 1995 a. 27 s. 9145 (1); 1997 a. 27, 164; 1999 a. 9; 2001 a. 16; 2003 a. 33; 2005 a. 386.

13 **SECTION 36.** 51.06 (8) (b) 4. of the statutes is amended to read:

14 51.06 (8) (b) 4. An accounting of the costs and savings under the Medical
15 Assistance program of relocations and diversions and the resulting reduction in
16 capacity for services of nursing homes, intermediate care facilities for ~~the mentally~~
17 ~~retarded persons with mental retardation~~[✓], and centers for the developmentally
18 disabled. The accounting shall include the per individual savings as well as the
19 collective savings of relocations and diversions.

History: 1975 c. 430; 1981 c. 20; 1985 a. 29 ss. 1061 to 1064, 3200 (56); 1985 a. 176; 1991 a. 39; 1993 a. 16; 1995 a. 27 s. 9145 (1); 1997 a. 27, 164; 1999 a. 9; 2001 a. 16; 2003 a. 33; 2005 a. 386.

20 **SECTION 37.** 51.06 (8) (b) 7. of the statutes is amended to read:

21 51.06 (8) (b) 7. Staff turnover rates for nursing homes, intermediate care
22 facilities for ~~the mentally retarded persons with mental retardation~~[✓], and centers for
23 the developmentally disabled in communities in which an individual relocated or

1 diverted from a nursing home, intermediate care facility for ~~the mentally retarded~~
2 persons with mental retardation[✓], or center for the developmentally disabled
3 currently resides.

History: 1975 c. 430; 1981 c. 20; 1985 a. 29 ss. 1061 to 1064, 3200 (56); 1985 a. 176; 1991 a. 39; 1993 a. 16; 1995 a. 27 s. 9145 (1); 1997 a. 27, 164; 1999 a. 9; 2001 a. 16; 2003 a. 33; 2005 a. 386.

4 **SECTION 38.** 51.62 (4) of the statutes is amended to read:

5 51.62 (4) DEPARTMENTAL DUTIES. The department shall provide the protection
6 and advocacy agency with copies of annual surveys and plans of correction for
7 intermediate care facilities for ~~the mentally retarded~~ persons with mental[✓]
8 retardation on or before the first day of the 2nd month commencing after completion
9 of the survey or plan.

History: 1985 a. 29; 1987 a. 161 s. 13m; 1987 a. 399; 1989 a. 31; 1993 a. 27; 1995 a. 27, 169; 1997 a. 27, 35; 2005 a. 388.

10 **SECTION 39.** 146.40 (title) of the statutes is amended to read:

11 **146.40**[✓](title) **Instructional programs for nurse's** nurse[✓]**aides; reporting**
12 **client abuse.**

History: 1987 a. 128; 1989 a. 31, 84, 336; 1991 a. 39; 1993 a. 27, 399; 1995 a. 27; 1997 a. 27, 35, 156, 237, 252; 1999 a. 9, 22, 32; 2001 a. 74.

13 **SECTION 40.** 146.40 (1) (aw) of the statutes is created to read:

14 146.40 (1) (aw) "Feeding assistant"[✓] means an individual who has completed a
15 state-approved training and testing program, as specified by the department by
16 rule, to perform one nursing-related[✓] duty.

17 **SECTION 41.** 146.40 (1) (bm)^x of the statutes is repealed.

18 **SECTION 42.** 146.40 (1) (bo) of the statutes is amended to read:

19 146.40 (1) (bo) "Hospice" means a hospice that is licensed under subch. IV of
20 ch. 50[✓] ~~and that is certified as a provider of services under 42 USC 1395 to 1395ccc.~~

History: 1987 a. 128; 1989 a. 31, 84, 336; 1991 a. 39; 1993 a. 27, 399; 1995 a. 27; 1997 a. 27, 35, 156, 237, 252; 1999 a. 9, 22, 32; 2001 a. 74.

21 **SECTION 43.** 146.40 (1) (bp)[✓] of the statutes is repealed.

22 **SECTION 44.** 146.40 (1) (bt) of the statutes is amended to read:

1 146.40 (1) (bt) “Intermediate care facility for ~~the mentally retarded persons~~
2 with mental retardation” has the meaning [✓]given for “intermediate care facility for
3 the mentally retarded” under 42 USC 1396d (e) and (d).
↑ score quotation mark

History: 1987 a. 128; 1989 a. 31, 84, 336; 1991 a. 39; 1993 a. 27, 399; 1995 a. 27; 1997 a. 27, 35, 156, 237, 252; 1999 a. 9, 22, 32; 2001 a. 74.

4 **SECTION 45.** 146.40 (1) (d) of the statutes is amended to read:

5 146.40 (1) (d) “~~Nurse’s assistant~~ Nurse aide” means an individual who
6 performs routine patient care duties delegated by a registered nurse or licensed
7 practical nurse who supervises the individual, for the direct health care of a patient
8 or resident. “~~Nurse’s assistant~~ Nurse aide” [✓]does not mean a feeding assistant, [✓]an
9 individual who is licensed, permitted, certified, or registered under ch. 441, 448, 449,
10 450, 451, 455, 459, or 460, or an individual whose duties primarily involve skills that
11 are different than those taught in instructional and ~~competency evaluation~~
12 programs for ~~nurse’s assistants certified~~ nurse aides [✓]approved under sub. (3) or
13 evaluated by competency evaluation programs for ~~nurse’s assistants~~ [✓]nurse aides
14 approved under sub. (3m).

History: 1987 a. 128; 1989 a. 31, 84, 336; 1991 a. 39; 1993 a. 27, 399; 1995 a. 27; 1997 a. 27, 35, 156, 237, 252; 1999 a. 9, 22, 32; 2001 a. 74.

15 **SECTION 46.** 146.40 (2) (intro.) of the statutes is amended to read:

16 146.40 (2) (intro.) A hospital, nursing home ~~or~~, intermediate care facility for the
17 ~~mentally retarded persons with mental retardation~~, [✓]home health agency, or hospice
18 may not employ or contract for the services of an individual as a ~~nurse’s assistant~~,
19 a ~~home health agency may not employ or contract for the services of an individual~~
20 as a ~~home health aide and a hospice may not employ or contract for the services of~~
21 ~~an individual as a hospice~~ [✓]nurse aide, regardless of the title under which the
22 individual is employed or contracted for, [✓]unless one of the following is true:

History: 1987 a. 128; 1989 a. 31, 84, 336; 1991 a. 39; 1993 a. 27, 399; 1995 a. 27; 1997 a. 27, 35, 156, 237, 252; 1999 a. 9, 22, 32; 2001 a. 74.

23 **SECTION 47.** 146.40 (2) (a) of the statutes is amended to read:

SECTION 47

1 146.40 (2) (a) ~~For hospitals, nursing homes, home health agencies or hospices,~~
 2 ~~whether or not certified providers of medical assistance, except as provided in par.~~
 3 ~~(g), and intermediate care facilities for the mentally retarded that are certified~~
 4 ~~providers of medical assistance, the~~ [✓]The individual has successfully completed
 5 instruction in an instructional and ~~competency evaluation~~ program for nurse's
 6 assistants, ~~home health aides or hospice~~ nurse [✓]aides that is certified [✓]approved by the
 7 department under sub. (3).

History: 1987 a. 128; 1989 a. 31, 84, 336; 1991 a. 39; 1993 a. 27, 399; [✓]1995 a. 27; 1997 a. 27, 35, 156, 237, 252; 1999 a. 9, 22, 32; 2001 a. 74.

8 **SECTION 48.** 146.40 (2) (am) of the statutes is repealed.

9 **SECTION 49.** 146.40 (2) (b) of the statutes is repealed.

10 **SECTION 50.** 146.40 (2) (bm) of the statutes is repealed.

11 **SECTION 51.** 146.40 (2) (c) [✓]of the statutes is repealed.

12 **SECTION 52.** 146.40 (2) (d) of the statutes is amended to read:

13 146.40 (2) (d) For hospitals, nursing homes, home health agencies, or hospices,
 14 whether or not certified providers of medical assistance, and intermediate care
 15 facilities for ~~the mentally retarded~~ persons with mental retardation that are certified
 16 providers of medical assistance, the individual has successfully completed
 17 ~~instruction in an instructional and competency evaluation~~ [✓] program or has
 18 ~~successfully completed and~~ a competency evaluation program for nurse's assistants,
 19 ~~for home health aides or for hospice~~ [✓] nurse aides that is certified in another state that
 20 meets criteria for acceptance in this state as specified by the department by rule, ~~or~~
 21 ~~the individual is certified as a nurse's assistant, home health aide or hospice aide in~~
 22 ~~another state that meets criteria for acceptance in this state as specified by the~~
 23 ~~department by rule, except that after December 31, 1991, par. (a) applies.~~ [✓]

History: 1987 a. 128; 1989 a. 31, 84, 336; 1991 a. 39; 1993 a. 27, 399; 1995 a. 27; 1997 a. 27, 35, 156, 237, 252; 1999 a. 9, 22, 32; 2001 a. 74.

24 **SECTION 53.** 146.40 (2) (e) of the statutes is amended to read:

1 146.40 (2) (e) For hospitals, home health agencies, or hospices, whether or not
2 certified providers of medical assistance, nursing homes that are not certified
3 providers of medical assistance and intermediate care facilities for ~~the mentally~~
4 retarded persons with mental retardation that are certified providers of medical
5 assistance, the individual is a student nurse who has successfully completed a basic
6 nursing course from a school that is on the accredited list of schools specified under
7 s. 441.01 (4) or who successfully completes a competency evaluation program for
8 ~~nurse's assistants, home health aides or hospice~~ nurse aides that is approved by the
9 department under sub. (3m).

History: 1987 a. 128; 1989 a. 31, 84, 336; 1991 a. 39; 1993 a. 27, 399; 1995 a. 27; 1997 a. 27, 35, 156, 237, 252; 1999 a. 9, 22, 32; 2001 a. 74.

10 **SECTION 54.** 146.40 (2) (em) of the statutes is amended to read:

11 146.40 (2) (em) For nursing homes that are certified providers of medical
12 assistance, the individual is a student nurse who successfully completes a
13 competency evaluation program for ~~nurse's assistants~~ nurse aides that is approved
14 by the department under sub. (3m).

History: 1987 a. 128; 1989 a. 31, 84, 336; 1991 a. 39; 1993 a. 27, 399; 1995 a. 27; 1997 a. 27, 35, 156, 237, 252; 1999 a. 9, 22, 32; 2001 a. 74.

15 **SECTION 55.** 146.40 (2) (f) of the statutes is repealed.

16 **SECTION 56.** 146.40 (2) (g) of the statutes is amended to read:

17 146.40 (2) (g) For hospitals, nursing homes, home health agencies, or hospices,
18 whether or not certified providers of medical assistance, and intermediate care
19 facilities for persons with mental retardation that are certified providers of medical
20 assistance, the individual, if he or she has performed no nursing-related service for
21 monetary compensation for 24 consecutive months after having satisfied the
22 requirement under par. (a), again successfully completes ~~instruction in an~~
23 ~~instructional and~~ a competency evaluation program for ~~nurse's assistants~~ nurse
24 aides that is ~~certified approved~~ by the department under sub. (3) ~~or a competency~~

1 ~~evaluation program for nurse's assistants that is approved by the department~~ ✓
2 sub. (3m).

3 History: 1987 a. 128; 1989 a. 31, 84, 336; 1991 a. 39; 1993 a. 27, 399; 1995 a. 27; 1997 a. 27, 35, 156, 237, 252; 1999 a. 9, 22, 32; 2001 a. 74.

3 SECTION 57. 146.40 (2m) of the statutes is created to read:

4 146.40 (2m) A nursing home or intermediate care facility for persons with
5 mental retardation, ✓ whether or not the nursing home or intermediate care facility
6 is a certified provider of medical assistance, ✓ may not employ or contract for the
7 services of an individual as a feeding assistant, ✓ regardless of the title under which
8 the individual is employed or contracted for, unless the individual has successfully
9 completed a ✓ state-approved training and testing program, as specified by the
10 department by rule. ✓

11 SECTION 58. 146.40 (3) of the statutes is amended to read:

12 146.40 (3) Except as provided in sub. (4d), the department shall ~~certify~~ ✓ approve
13 ~~instructional and competency evaluation programs for nurse's assistants, for home~~
14 ~~health aides and for hospice~~ nurse aides that apply for certification, and satisfy
15 standards for certification, ✓ approval that are promulgated by rule by the
16 department. The department shall review the curriculum of each ~~certified~~ approved
17 ~~instructional and competency evaluation~~ program at least once every ~~36~~ ✓ 24 months
18 following the date of ~~certification~~ approval ✓ to determine whether the program
19 ~~satisfies~~ continues to satisfy the standards for ~~certification~~ approval. ✓ Under this
20 subsection, the department may, after providing notice, suspend or revoke the
21 ~~certification~~ approval of an instructional ✓ and ~~competency evaluation~~ program or
22 impose a plan of correction on the program if the program ~~does not~~ ✓ fails to satisfy the

1 standards for ~~certification~~ approval or operates under conditions that are other than
2 those contained in the application approved by the department.

3 **History:** 1987 a. 128; 1989 a. 31, 84, 336; 1991 a. 39; 1993 a. 27, 399; 1995 a. 27; 1997 a. 27, 35, 156, 237, 252; 1999 a. 9, 22, 32; 2001 a. 74.

3 **SECTION 59.** 146.40 (3m) of the statutes is amended to read:

4 146.40 (3m) The department shall review competency evaluation programs for
5 nurse's assistants, ~~for home health aides and for hospice~~ nurse aides and, except as
6 provided in sub. (4d), may approve those competency evaluation programs that
7 satisfy standards for approval that are specified in rules of promulgated by the
8 department. Under this subsection, the department may, after providing notice,
9 suspend or revoke approval of a competency evaluation program or impose a plan of
10 correction on the program if the competency evaluation program fails to satisfy the
11 standards for approval or operates under conditions that are other than those
12 contained in the application approved by the department.

13 **History:** 1987 a. 128; 1989 a. 31, 84, 336; 1991 a. 39; 1993 a. 27, 399; 1995 a. 27; 1997 a. 27, 35, 156, 237, 252; 1999 a. 9, 22, 32; 2001 a. 74.

13 **SECTION 60.** 146.40 (4) of the statutes is amended to read:

14 146.40 (4) ~~An instructional and~~ A competency evaluation program certified
15 ~~under sub. (3) or a competency evaluation program approved under sub. (3m) shall~~
16 ~~notify the department, on a form provided by the department, within 30 days to~~
17 ~~include an individual~~ on the registry under sub. (4g) (a) 1. after ~~an~~ the individual has
18 ~~successfully completed the program competency examination.~~

19 **History:** 1987 a. 128; 1989 a. 31, 84, 336; 1991 a. 39; 1993 a. 27, 399; 1995 a. 27; 1997 a. 27, 35, 156, 237, 252; 1999 a. 9, 22, 32; 2001 a. 74.

19 **SECTION 61.** 146.40 (4d) (a) of the statutes is amended to read:

20 146.40 (4d) (a) Except as provided in par. (am), the department shall require
21 each applicant to provide the department with his or her social security number, if
22 the applicant is an individual, or the applicant's federal employer identification

1 number, if the applicant is not an individual, as a condition of issuing a certification
2 an approval under sub. (3) or ~~an approval under sub. (3m).~~

3 History: 1987 a. 128; 1989 a. 31, 84, 336; 1991 a. 39; 1993 a. 27, 399; 1995 a. 27; 1997 a. 27, 35, 156, 237, 252; 1999 a. 9, 22, 32; 2001 a. 74.

SECTION 62. 146.40 (4d) (am) of the statutes is amended to read:

4 146.40 (4d) (am) If an individual ~~who applies for a certification or approval~~
5 specified under par. (a) does not have a social security number, the individual, as a
6 condition of obtaining ~~certification or~~ approval, shall submit a statement made or
7 subscribed under oath or affirmation to the department that the applicant does not
8 have a social security number. The form of the statement shall be prescribed by the
9 department of workforce development. ~~A certification or~~ An approval issued in
10 reliance upon a false statement submitted under this paragraph is invalid.

11 History: 1987 a. 128; 1989 a. 31, 84, 336; 1991 a. 39; 1993 a. 27, 399; 1995 a. 27; 1997 a. 27, 35, 156, 237, 252; 1999 a. 9, 22, 32; 2001 a. 74.

SECTION 63. 146.40 (4d) (am) of the statutes, as affected by 2007 Wisconsin Act ^S

12 ~~20~~ ^{and (this act)} is repealed and recreated to read:

13 146.40 (4d) (am) If an individual specified under par. (a) does not have a social
14 security number, the individual, as a condition of obtaining approval, shall submit
15 a statement made or subscribed under oath or affirmation to the department that the
16 applicant does not have a social security number. The form of the statement shall
17 be prescribed by the department of children and families. ~~A certification of~~ approval
18 issued in reliance upon a false statement submitted under this paragraph is invalid.

History: 2007 a. 20.

19 SECTION 64. 146.40 (4d) (c) of the statutes is amended to read:

20 146.40 (4d) (c) Except as provided in par. (am), the department shall deny an
21 application for the issuance of ~~a certification or~~ an approval specified in par. (a) if the
22 applicant does not provide the information specified in par. (a).

23 History: 1987 a. 128; 1989 a. 31, 84, 336; 1991 a. 39; 1993 a. 27, 399; 1995 a. 27; 1997 a. 27, 35, 156, 237, 252; 1999 a. 9, 22, 32; 2001 a. 74.

SECTION 65. 146.40 (4d) (d) of the statutes is amended to read:

1 146.40 (4d) (d) The department shall deny an application for the issuance of
 2 ~~a certification or~~ an approval specified in par. (a) or shall revoke ~~a certification or~~ an
 3 approval if the department of revenue certifies under s. 73.0301 that the applicant
 4 for or holder of ~~a certification or~~ an approval is liable for delinquent taxes.

History: 1987 a. 128; 1989 a. 31, 84, 336; 1991 a. 39; 1993 a. 27, 399; 1995 a. 27; 1997 a. 27, 35, 156, 237, 252; 1999 a. 9, 22, 32; 2001 a. 74.

5 **SECTION 66.** 146.40 (4m) of the statutes is amended to read:

6 146.40 (4m) An instructional ~~and competency evaluation~~ program under sub.
 7 (3) for which the department has suspended or revoked ~~certification~~ approval or
 8 imposed a plan of correction or a competency evaluation program under sub. (3m) for
 9 which the department has suspended or revoked approval or imposed a plan of
 10 correction may contest the department's action by sending, within 10 days after
 11 receipt of notice of the contested action, a written request for hearing under s. 227.44
 12 to the division of hearings and appeals created under s. 15.103 (1). The
 13 administrator of the division may designate a hearing examiner to preside over the
 14 case and recommend a decision to the administrator under s. 227.46. The decision
 15 of the administrator of the division shall be the final administrative decision. The
 16 division shall commence the hearing within 30 days after receipt of the request for
 17 hearing and shall issue a final decision within 15 days after the close of the hearing.
 18 Proceedings before the division are governed by ch. 227. In any petition for judicial
 19 review of a decision by the division, the party, other than the petitioner, who was in
 20 the proceeding before the division shall be the named respondent. This subsection
 21 does not apply to a revocation of ~~certification~~ approval under sub. (4d) (d).

History: 1987 a. 128; 1989 a. 31, 84, 336; 1991 a. 39; 1993 a. 27, 399; 1995 a. 27; 1997 a. 27, 35, 156, 237, 252; 1999 a. 9, 22, 32; 2001 a. 74.

22 **SECTION 67.** 146.40 (4r) (am) 1. of the statutes is amended to read:

23 146.40 (4r) (am) 1. ~~Except as provided in subd. 2.,~~ an An entity shall report to
 24 the department any allegation of misappropriation of the property of a client or of

1 neglect or abuse of a client by any ~~person~~ individual employed by or under contract
2 with the entity if the ~~person~~ individual is under the control of the entity.

3 **History:** 1987 a. 128; 1989 a. 31, 84, 336; 1991 a. 39; 1993 a. 27, 399; 1995 a. ~~27~~; 1997 a. 27, 35, 156, 237, 252; 1999 a. 9, 22, 32; 2001 a. 74.

3 **SECTION 68.** 146.40 (4r) (am) 2. of the statutes is repealed.

4 **SECTION 69.** 146.40 (4r) (b) of the statutes is amended to read:

5 146.40 (4r) (b) Except as provided in pars. (em) and (er), the department shall
6 review and investigate any report received under par. (a) or (am) and, if the
7 allegation is substantiated, make specific, documented findings concerning the
8 misappropriation of property or the neglect or abuse. The department shall, in
9 writing by certified mail, notify the ~~person~~ individual specified in the report that the
10 ~~person's~~ individual's name and the department's findings about the ~~person~~
11 individual shall be listed in the registry under sub. (4g) (a) 2. and 3. unless the ~~person~~
12 individual contests the listings in a hearing before the division of hearings and
13 appeals created under s. 15.103 (1). The written notification shall describe the
14 investigation conducted by the department, enumerate the findings alleging
15 misappropriation of property or neglect or abuse of a client and explain the
16 consequence to the ~~person~~ individual specified in the report of waiving a hearing to
17 contest the findings. The ~~person~~ individual specified in the report shall have 30
18 calendar days after receipt of the notification to indicate to the department in writing
19 whether he or she intends to contest the listing or to waive the hearing.

20 **History:** 1987 a. 128; 1989 a. 31, 84, 336; 1991 a. 39; 1993 a. 27, 399; 1995 a. 27; 1997 a. 27, 35, 156, 237, 252; 1999 a. 9, 22, 32; 2001 a. 74.

20 **SECTION 70.** 146.40 (4r) (c) of the statutes is amended to read:

21 146.40 (4r) (c) If the ~~nurse's assistant or home health aide~~ an individual under
22 par. (b) notifies the department that he or she waives a hearing to contest the listings
23 in the registry under par. (b), or fails to notify the department within 30 calendar
24 days after receipt of a notice under par. (b), the department shall enter the name of

1 the individual under sub. (4g) (a) 2. and the department's findings about the
2 individual under sub. (4g) (a) 3.

3 History: 1987 a. 128; 1989 a. 31, 84, 336; 1991 a. 39; 1993 a. 27, 399; 1995 a. 27; 1997 a. 27, 35, 156, 237, 252; 1999 a. 9, 22, 32; 2001 a. 74.

3 **SECTION 71.** 146.40 (4r) (e) of the statutes is amended to read:

4 146.40 (4r) (e) The ~~nurse's assistant or home health aide~~ individual [✓] may
5 provide the department with a brief statement disputing the department's findings
6 under par. (b) or the hearing officer's findings under par. (d) and, if so provided, the
7 department shall enter the statement under sub. (4g) (a) 4.

8 History: 1987 a. 128; 1989 a. 31, 84, 336; 1991 a. 39; 1993 a. 27, 399; 1995 a. 27; 1997 a. 27, 35, 156, 237, 252; 1999 a. 9, 22, 32; 2001 a. 74.

8 History: 1987 a. 128; 1989 a. 31, 84, 336; 1991 a. 39; 1993 a. 27, 399; 1995 a. 27; 1997 a. 27, 35, 156, 237, 252; 1999 a. 9, 22, 32; 2001 a. 74.

8 **SECTION 72.** 146.40 (4r) (em) of the statutes is amended to read:

9 146.40 (4r) (em) If the department of ~~health and family services~~ receives a
10 report under par. (a) or (am) and determines that [↓] a ~~person~~ an individual who is the
11 subject of the report holds a credential that is related to the ~~person's~~ individual's [✓]
12 employment at, or contract with, the entity, the department of ~~health and family~~
13 ~~services~~ shall refer the report to the department of regulation and licensing.

14 History: 1987 a. 128; 1989 a. 31, 84, 336; 1991 a. 39; 1993 a. 27, 399; 1995 a. 27; 1997 a. 27, 35, 156, 237, 252; 1999 a. 9, 22, 32; 2001 a. 74.

14 **SECTION 73.** 146.40 (5) (a) of the statutes is amended to read:

15 146.40 (5) (a) The department, ~~in consultation with the technical college~~
16 ~~system board~~, shall promulgate rules specifying standards for ~~certification~~ approval [✓]
17 in this state of instructional programs and competency evaluation programs for
18 ~~nurse's assistants, home health aides and hospice~~ nurse aides. The standards shall
19 include specialized training in providing care to individuals with special needs.

20 History: 1987 a. 128; 1989 a. 31, 84, 336; 1991 a. 39; 1993 a. 27, 399; 1995 a. 27; 1997 a. 27, 35, 156, 237, 252; 1999 a. 9, 22, 32; 2001 a. 74.

20 **SECTION 74.** 146.40 (5) (b) (intro.) of the statutes is amended to read:

21 146.40 (5) (b) (intro.) The department shall promulgate rules specifying
22 criteria for acceptance by this state of an instructional program and a competency
23 evaluation program ~~or a competency evaluation program~~ that is certified in another

1 state, including whether the other state grants ~~nurse's assistant privileges, home~~
2 ~~health aide privileges or hospice~~ nurse [✓] ~~aide~~ privileges to persons who have completed
3 instruction in an instructional ~~and competency evaluation~~ program that is certified
4 approved [✓] under sub. (3) and whether one of the following is true:

5 History: 1987 a. 128; 1989 a. 31, 84, 336; 1991 a. 39; 1993 a. 27, 399; 1995 a. 27; 1997 a. 27, 35, 156, 237, 252; 1999 a. 9, 22, 32; 2001 a. 74.

6 **SECTION 75.** 146.40 (5) (b) 1. of the statutes is amended to read:

7 146.40 (5) (b) 1. If the other state certifies instructional programs [✓] and
8 competency evaluation programs for ~~nurse's assistants, home health aides or hospice~~
9 ~~nurse~~ [✓] ~~aides~~, the state's requirements are substantially similar, as determined by the
department, to certification requirements in this state.

10 History: 1987 a. 128; 1989 a. 31, 84, 336; 1991 a. 39; 1993 a. 27, 399; 1995 a. 27; 1997 a. 27, 35, 156, 237, 252; 1999 a. 9, 22, 32; 2001 a. 74.

11 **SECTION 76.** 146.40 (5) (b) 2. (intro.) of the statutes is amended to read:

12 146.40 (5) (b) 2. (intro.) If the other state certifies ~~nurse's assistants, home~~
13 ~~health aides or hospice~~ nurse [✓] ~~aides~~, that state's requirements are such that one of
the following applies:

14 History: 1987 a. 128; 1989 a. 31, 84, 336; 1991 a. 39; 1993 a. 27, 399; 1995 a. 27; 1997 a. 27, 35, 156, 237, 252; 1999 a. 9, 22, 32; 2001 a. 74.

15 **SECTION 77.** 146.40 (5) (b) 2. a. of the statutes is amended to read:

16 146.40 (5) (b) 2. a. The instructional ~~and competency evaluation~~ programs
17 required for attendance by persons receiving certificates are substantially similar,
18 as determined by the department, to instructional ~~and competency evaluation~~
programs certified approved [✓] under sub. (3).

19 History: 1987 a. 128; 1989 a. 31, 84, 336; 1991 a. 39; 1993 a. 27, 399; 1995 a. 27; 1997 a. 27, 35, 156, 237, 252; 1999 a. 9, 22, 32; 2001 a. 74.

20 **SECTION 78.** 155.20 (2) (a) 2. of the statutes is amended to read:

21 155.20 (2) (a) 2. An intermediate care facility for ~~the mentally retarded~~ persons [✓]
22 with mental retardation, as defined in s. 46.278 (1m) (am).

History: 1989 a. 200; 1991 a. 84, 269, 281; 1995 a. 200; 1997 a. 206.

SECTION 79. 155.30 (3) of the statutes is amended to read:

1 155.30 (3) The department shall prepare and provide copies of a power of
2 attorney for health care instrument and accompanying information for distribution
3 in quantities to health care professionals, hospitals, nursing homes, multipurpose
4 senior centers, county clerks, and local bar associations and individually to private
5 persons. The department shall include, in information accompanying the copy of the
6 instrument, at least the statutory definitions of terms used in the instrument,
7 statutory restrictions on who may be witnesses to a valid instrument, a statement
8 explaining that valid witnesses acting in good faith are statutorily immune from civil
9 or criminal liability and a statement explaining that an instrument may, but need
10 not, be filed with the register in probate of the principal's county of residence. The
11 department may charge a reasonable fee for the cost of preparation and distribution.
12 The power of attorney for health care instrument distributed by the department
13 shall include the notice specified in sub. (1) and shall be in the following form:

14 POWER OF ATTORNEY

15 FOR HEALTH CARE

16 Document made this.... day of.... (month),.... (year).

17 CREATION OF POWER OF

18 ATTORNEY FOR HEALTH CARE

19 I,.... (print name, address and date of birth), being of sound mind, intend by this
20 document to create a power of attorney for health care. My executing this power of
21 attorney for health care is voluntary. Despite the creation of this power of attorney
22 for health care, I expect to be fully informed about and allowed to participate in any
23 health care decision for me, to the extent that I am able. For the purposes of this
24 document, "health care decision" means an informed decision to accept, maintain,

1 discontinue or refuse any care, treatment, service or procedure to maintain, diagnose
2 or treat my physical or mental condition.

3 In addition, I may, by this document, specify my wishes with respect to making
4 an anatomical gift upon my death.

5 DESIGNATION OF HEALTH CARE AGENT

6 If I am no longer able to make health care decisions for myself, due to my
7 incapacity, I hereby designate.... (print name, address and telephone number) to be
8 my health care agent for the purpose of making health care decisions on my behalf.
9 If he or she is ever unable or unwilling to do so, I hereby designate.... (print name,
10 address and telephone number) to be my alternate health care agent for the purpose
11 of making health care decisions on my behalf. Neither my health care agent nor my
12 alternate health care agent whom I have designated is my health care provider, an
13 employee of my health care provider, an employee of a health care facility in which
14 I am a patient or a spouse of any of those persons, unless he or she is also my relative.
15 For purposes of this document, "incapacity" exists if 2 physicians or a physician and
16 a psychologist who have personally examined me sign a statement that specifically
17 expresses their opinion that I have a condition that means that I am unable to receive
18 and evaluate information effectively or to communicate decisions to such an extent
19 that I lack the capacity to manage my health care decisions. A copy of that statement
20 must be attached to this document.

21 GENERAL STATEMENT OF

22 AUTHORITY GRANTED

23 Unless I have specified otherwise in this document, if I ever have incapacity I
24 instruct my health care provider to obtain the health care decision of my health care
25 agent, if I need treatment, for all of my health care and treatment. I have discussed

1 my desires thoroughly with my health care agent and believe that he or she
2 understands my philosophy regarding the health care decisions I would make if I
3 were able. I desire that my wishes be carried out through the authority given to my
4 health care agent under this document.

5 If I am unable, due to my incapacity, to make a health care decision, my health
6 care agent is instructed to make the health care decision for me, but my health care
7 agent should try to discuss with me any specific proposed health care if I am able to
8 communicate in any manner, including by blinking my eyes. If this communication
9 cannot be made, my health care agent shall base his or her decision on any health
10 care choices that I have expressed prior to the time of the decision. If I have not
11 expressed a health care choice about the health care in question and communication
12 cannot be made, my health care agent shall base his or her health care decision on
13 what he or she believes to be in my best interest.

14 LIMITATIONS ON

15 MENTAL HEALTH TREATMENT

16 My health care agent may not admit or commit me on an inpatient basis to an
17 institution for mental diseases, an intermediate care facility for [✓]the mentally
18 retarded persons with mental retardation, a state treatment facility or a treatment
19 facility. My health care agent may not consent to experimental mental health
20 research or psychosurgery, electroconvulsive treatment or drastic mental health
21 treatment procedures for me.

22 ADMISSION TO NURSING HOMES

23 OR COMMUNITY-BASED RESIDENTIAL FACILITIES

24 My health care agent may admit me to a nursing home or community-based
25 residential facility for short-term stays for recuperative care or respite care.

1 If I have checked "Yes" to the following, my health care agent may admit me for
2 a purpose other than recuperative care or respite care, but if I have checked "No" to
3 the following, my health care agent may not so admit me:

4 1. A nursing home — Yes.... No....

5 2. A community-based residential facility — Yes.... No....

6 If I have not checked either "Yes" or "No" immediately above, my health care
7 agent may admit me only for short-term stays for recuperative care or respite care.

8 PROVISION OF A FEEDING TUBE

9 If I have checked "Yes" to the following, my health care agent may have a
10 feeding tube withheld or withdrawn from me, unless my physician has advised that,
11 in his or her professional judgment, this will cause me pain or will reduce my comfort.

12 If I have checked "No" to the following, my health care agent may not have a feeding
13 tube withheld or withdrawn from me.

14 My health care agent may not have orally ingested nutrition or hydration
15 withheld or withdrawn from me unless provision of the nutrition or hydration is
16 medically contraindicated.

17 Withhold or withdraw a feeding tube — Yes.... No....

18 If I have not checked either "Yes" or "No" immediately above, my health care
19 agent may not have a feeding tube withdrawn from me.

20 HEALTH CARE DECISIONS

21 FOR PREGNANT WOMEN

22 If I have checked "Yes" to the following, my health care agent may make health
23 care decisions for me even if my agent knows I am pregnant. If I have checked "No"
24 to the following, my health care agent may not make health care decisions for me if
25 my health care agent knows I am pregnant.

1 Health care decision if I am pregnant — Yes.... No....

2 If I have not checked either "Yes" or "No" immediately above, my health care
3 agent may not make health care decisions for me if my health care agent knows I am
4 pregnant.

5 STATEMENT OF DESIRES, SPECIAL

6 PROVISIONS OR LIMITATIONS

7 In exercising authority under this document, my health care agent shall act
8 consistently with my following stated desires, if any, and is subject to any special
9 provisions or limitations that I specify. The following are specific desires, provisions
10 or limitations that I wish to state (add more items if needed):

11 1) -

12 2) -

13 3) -

14 INSPECTION AND DISCLOSURE OF INFORMATION

15 RELATING TO MY PHYSICAL OR MENTAL HEALTH

16 Subject to any limitations in this document, my health care agent has the
17 authority to do all of the following:

18 (a) Request, review and receive any information, oral or written, regarding my
19 physical or mental health, including medical and hospital records.

20 (b) Execute on my behalf any documents that may be required in order to obtain
21 this information.

22 (c) Consent to the disclosure of this information.

23 (The principal and the witnesses all must sign the document at the same time.)

24 SIGNATURE OF PRINCIPAL

25 (person creating the power

1 of attorney for health care)

2 Signature....

Date.... *3 fr*

3 (The signing of this document by the principal revokes all previous powers of
4 attorney for health care documents.)

5 STATEMENT OF WITNESSES

6 I know the principal personally and I believe him or her to be of sound mind and
7 at least 18 years of age. I believe that his or her execution of this power of attorney
8 for health care is voluntary. I am at least 18 years of age, am not related to the
9 principal by blood, marriage or adoption and am not directly financially responsible
10 for the principal's health care. I am not a health care provider who is serving the
11 principal at this time, an employee of the health care provider, other than a chaplain
12 or a social worker, or an employee, other than a chaplain or a social worker, of an
13 inpatient health care facility in which the declarant is a patient. I am not the
14 principal's health care agent. To the best of my knowledge, I am not entitled to and
15 do not have a claim on the principal's estate.

16 Witness No. 1:

17 (print) Name....

Date.... *3 fr*

18 Address....

19 Signature....

20 Witness No. 2:

21 (print) Name....

Date.... *3 fr*

22 Address....

23 Signature....

24 STATEMENT OF HEALTH CARE AGENT

25 AND ALTERNATE HEALTH CARE AGENT

1 I understand that.... (name of principal) has designated me to be his or her
2 health care agent or alternate health care agent if he or she is ever found to have
3 incapacity and unable to make health care decisions himself or herself. (name of
4 principal) has discussed his or her desires regarding health care decisions with me.

5 Agent's signature....

6 Address....

7 Alternate's signature....

8 Address....

9 Failure to execute a power of attorney for health care document under chapter
10 155 of the Wisconsin Statutes creates no presumption about the intent of any
11 individual with regard to his or her health care decisions.

12 This power of attorney for health care is executed as provided in chapter 155
13 of the Wisconsin Statutes.

14 ANATOMICAL GIFTS (optional)

15 Upon my death:

16 I wish to donate only the following organs or parts: (specify the organs or
17 parts).

18 I wish to donate any needed organ or part.

19 I wish to donate my body for anatomical study if needed.

20 I refuse to make an anatomical gift. (If this revokes a prior commitment that
21 I have made to make an anatomical gift to a designated donee, I will attempt to notify
22 the donee to which or to whom I agreed to donate.)

23 Failing to check any of the lines immediately above creates no presumption
24 about my desire to make or refuse to make an anatomical gift.

Signature....

Date.... 3 fr

History: 1989 a. 200; 1991 a. 281; 1993 a. 213, 491; 1997 a. 206.

SECTION 80. 250.042 (4) (a) 3. of the statutes is amended to read:

250.042 (4) (a) 3. "Health care provider" means an individual who, at any time within 10 years before a state of emergency is declared under s. 166.03 (1) (b) 1. or 166.23, has met requirements for a nurse's assistant nurse aide under s. 146.40 (2) (a), ~~(b)~~, ~~(bm)~~, ~~(c)~~, (e), (em), (f), or (g), has been licensed as a physician, a physician assistant, or a podiatrist under ch. 448, licensed as a registered nurse, licensed practical nurse, or nurse-midwife under ch. 441, licensed as a dentist under ch. 447, licensed as a pharmacist under ch. 450, licensed as a veterinarian under ch. 453, or has been certified as a respiratory care practitioner under ch. 448.

History: 2001 a. 109; 2003 a. 186; 2005 a. 96.

SECTION 81. 250.042 (4) (b) of the statutes is amended to read:

250.042 (4) (b) A behavioral health provider, health care provider, pupil services provider, or substance abuse prevention provider who, during a state of emergency declared under s. 166.03 (1) (b) 1. or 166.23, provides behavioral health services, health care services, pupil services, or substance abuse prevention services for which the behavioral health provider, health care provider, pupil services provider, or substance abuse prevention provider has been licensed or certified or, as a nurse's assistant nurse aide, has met requirements under s. 146.40, is, for the provision of these services a state agent of the department for purposes of ss. 165.25 (6), 893.82, and 895.46 and is an employee of the state for purposes of worker's compensation benefits. The behavioral health services, health care services, pupil services, or substance abuse prevention services shall be provided on behalf of a health care facility on a voluntary, unpaid basis, except that the behavioral health

2005 ✓

1 provider, health care provider, pupil services provider, or substance abuse
2 prevention provider may accept reimbursement for travel, lodging, and meals.

3 **History:** 2001 a. 109; 2003 a. 186; 2005 a. 96.

SECTION 82. 250.042 (4) (c) 12. of the statutes is amended to read:

4 250.042 (4) (c) 12. A nurse's assistant nurse aide whose name is listed under
5 s. 146.40 (4g) (a) 2., ~~2007~~ stats., or a nurse aide whose name is listed under s. 146.40
6 (4g) (a) 2.

7 **History:** 2001 a. 109; 2003 a. 186; 2005 a. 96.

SECTION 83. 440.03 (3q) of the statutes is amended to read:

8 440.03 (3q) Notwithstanding sub. (3m), the department of regulation and
9 licensing shall investigate any report that it receives under s. 146.40 (4r) ~~(am) 2.~~ or
10 (em).

History: 1977 c. 418 ss. 24, 792; 1979 c. 34, 221, 337; 1981 c. 94; 1985 a. 29, 340; 1989 a. 31, 340; 1991 a. 39; 1993 a. 16, 102, 107, 443, 445, 490, 491; 1995 a. 27 ss. 6472g, 6472j, 9126 (19); 1995 a. 233; 1997 a. 27, 75, 79; 1997 a. 191 ss. 312, 313, 318; 1997 a. 231, 237; 1997 a. 261 ss. 1 to 4, 7, 10, 13; 1997 a. 311; 1999 a. 9, 32; 2001 a. 16, 66, 80; 2003 a. 151; 2005 a. 25.

11 **SECTION 84.** 632.895 (1) (b) 2. of the statutes is amended to read:

12 632.895 (1) (b) 2. Part-time or intermittent home health aide services which
13 that are medically necessary as part of the home care plan, under the supervision of
14 a registered nurse or medical social worker, which consist solely of caring for the
15 patient.

History: 1981 c. 39 ss. 4 to 12, 18, 20; 1981 c. 85, 99; 1981 c. 314 ss. 122, 123, 125; 1983 a. 36, 429; 1985 a. 29, 56, 311; 1987 a. 195, 327, 403; 1989 a. 129, 201, 229, 316, 332, 359; 1991 a. 32, 45, 123; 1993 a. 443, 450; 1995 a. 27 ss. 7048, 9126 (19); 1995 a. 201, 225; 1997 a. 27, 35, 75, 175, 237; 1999 a. 32, 115; 1999 a. 150 s. 672; 2001 a. 16, 82.

16 **SECTION 85.** 632.895 (2) (d) of the statutes is amended to read:

17 632.895 (2) (d) Each visit by a person providing services under a home care plan
18 or evaluating the need for or developing a plan shall be considered as one home care
19 visit. The policy may contain a limit on the number of home care visits, but not less
20 than 40 visits in any 12-month period, for each person covered under the policy. Up

1 to 4 consecutive hours in a 24-hour period of home health aide service shall be
2 considered as one home care visit.

History: 1981 c. 39 ss. 4 to 12, 18, 20; 1981 c. 85, 99; 1981 c. 314 ss. 122, 123, 125; 1983 a. 36, 429; 1985 a. 29, 56, 311; 1987 a. 195, 327, 403; 1989 a. 129, 201, 229, 316, 332, 359; 1991 a. 32, 45, 123; 1993 a. 443, 450; 1995 a. 27 ss. 7048, 9126 (19); 1995 a. 201, 225; 1997 a. 27, 35, 75, 175, 237; 1999 a. 32, 115; 1999 a. 150 s. 672; 2001 a. 16, 82.

3 **SECTION 86. Effective dates.** This act takes effect on the day after publication,
4 except as follows:

5 (1) The treatment of sections 48.685 (8) (by SECTION ~~86~~) and 146.40 (4d) (am)
6 of the statutes takes effect on July 1, 2008.

7 (2) The repeal and recreation of section 49.45 (8) (a) 4. of the statutes takes
8 effect on the date stated in the Wisconsin Administrative Register by the department
9 of health and family services under section 49.471 (12) (b) of the statutes as the
10 implementation date for Badger Care Plus.

11 (END)

✓
AUTOREF
A

D-NOTE

2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1127/?ins
DAK:.....

INSERT A

1 *PS* (suggested as remedial legislation by the Department of Health and Family
2 Services) ✓

INSERT B

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the Department of Health and Family Services and introduced by the Law Revision Committee under s. 13.83 (1) (c) 4. ~~and 5~~, stats. After careful consideration of the various provisions of the bill, the Law Revision Committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

PI
LRB-1127/3dn

DAK:.....
Jld

date

To Don Dyke:

1. This bill changes the definition of "home health aide" to "nurse aide." However, it is unclear whether the term "home health aide services" when referring to Medicare or insurance should correspondingly be changed. I have changed the term to be "home health services," but am unsure if this is correct. See ss. 49.45 (42) (b) and 632.895 (1) (b) 2. and (2) (d), stats. Please advise.
2. The instructions concerning s. 146.40 (4g) (a) (intro.), (b), and (c), stats., were very unclear; was it intended that s. 146.40 (4g) (b) and (c), stats., be repealed? (I have not done so.) If that was intended, ss. 49.498 (2) (e) 2., 50.097, and 250.042 (4) (c) 12., stats. (which are amended in this bill) should also be repealed. If these statutes are repealed, how does the public (and how do facilities) access this information?
3. I did not draft the definition of "caregiver" proposed for s. 146.40 (1) (a). The instructions provided by e-mail of August 31, 2007, do not include this term.
4. I did not draft the amendment to s. 146.40 (4), stats., as proposed; the proposed language required the competency evaluation program to list an individual on the registry under s. 146.40 (4g) (a), stats. Since DHFS maintains the registry, that requirement could not work.
5. It is unclear what is a "nursing-related duty," as specified in the definition of "feeding assistant" under s. 146.40 (1) (aw); the term is vague. Should DHFS be required to promulgate rules to define it?
6. I did not draft the proposed change to s. 146.40 (4g) (a) 1., stats. I did not understand it.
7. This bill repeals all references to "hospice aide." Presumably, under the bill, nurse aides will perform the same tasks formerly performed by hospice aides. Changes have been made in the bill, particularly in s. 146.40 (4r), stats., to remove provisions that formerly excluded hospice aides. I am not sure if some of these provisions can be used for nurse aides who are employed by or contract for work with hospices, because the definition of "entity" under s. 50.065 (1) (c), stats. (which is cross-referenced in s. 146.40 (1) (as), stats.), may be read not to include hospices (hospices don't necessarily provide direct care or treatment to patients); I don't know how DHFS has treated s. 50.065, stats., with respect to hospices. Please advise.

8. The instructions propose a substantive limitation in the definition of "feeding assistant" (that a feeding assistant not be counted toward meeting or complying with any requirements for nursing care staff and functions of a facility, including minimum nursing staffing requirements). This provision is inappropriate as part of a definition; see my amendment to s. 50.04 (2) (d) (intro.)[✓]stats. Please review and advise if any other provisions should be so amended.

9. This bill creates numerous requirements for rules promulgation, which must be accomplished before certain provisions can be implemented. Therefore, it needs a delayed effective date to allow the rules promulgation to take place; I suggest giving DHFS at least ^{one} year to do so (so, a general effective date of January 1, 2009). Please advise. Also, should there be a provision requiring DHFS to submit proposed rules to the Legislative Council rules clearinghouse by a certain date to ensure that the process goes forward?

10. Please see my amendment to s. 250.042 (4) (c) 12.[✓]stats.; without the amendment, previously ^{JA}listed nurse's assistants could be state agents under s. 250.042 (4) (b)[✓]stats. Also, is it appropriate that the term "nurse aide," as it has been expanded under this bill, be included under s. 250.042 (4) (b)[✓]stats.?

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137
E-mail: debora.kennedy@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1127/P1dn
DAK:jld:rs

December 11, 2007

To Don Dyke:

1. This bill changes the definition of "home health aide" to "nurse aide." However, it is unclear whether the term "home health aide services" when referring to Medicare or insurance should correspondingly be changed. I have changed the term to be "home health services," but am unsure if this is correct. See ss. 49.45 (42) (b) and 632.895 (1) (b) 2. and (2) (d), stats. Please advise.
2. The instructions concerning s. 146.40 (4g) (a) (intro.), (b), and (c), stats., were very unclear; was it intended that s. 146.40 (4g) (b) and (c), stats., be repealed? (I have not done so.) If that was intended, ss. 49.498 (2) (e) 2., 50.097, and 250.042 (4) (c) 12., stats. (which are amended in this bill) should also be repealed. If these statutes are repealed, how does the public (and how do facilities) access this information?
3. I did not draft the definition of "caregiver" proposed for s. 146.40 (1) (a). The instructions provided by e-mail of August 31, 2007, do not include this term.
4. I did not draft the amendment to s. 146.40 (4), stats., as proposed; the proposed language required the competency evaluation program to list an individual on the registry under s. 146.40 (4g) (a), stats. Since DHFS maintains the registry, that requirement could not work.
5. It is unclear what is a "nursing-related duty," as specified in the definition of "feeding assistant" under s. 146.40 (1) (aw); the term is vague. Should DHFS be required to promulgate rules to define it?
6. I did not draft the proposed change to s. 146.40 (4g) (a) 1., stats. I did not understand it.
7. This bill repeals all references to "hospice aide." Presumably, under the bill, nurse aides will perform the same tasks formerly performed by hospice aides. Changes have been made in the bill, particularly in s. 146.40 (4r), stats., to remove provisions that formerly excluded hospice aides. I am not sure if some of these provisions can be used for nurse aides who are employed by or contract for work with hospices, because the definition of "entity" under s. 50.065 (1) (c), stats. (which is cross-referenced in s. 146.40 (1) (as), stats.), may be read not to include hospices (hospices don't necessarily provide direct care or treatment to patients); I don't know how DHFS has treated s. 50.065, stats., with respect to hospices. Please advise.

8. The instructions propose a substantive limitation in the definition of "feeding assistant" (that a feeding assistant not be counted toward meeting or complying with any requirements for nursing care staff and functions of a facility, including minimum nursing staffing requirements). This provision is inappropriate as part of a definition; see my amendment to s. 50.04 (2) (d) (intro.), stats. Please review and advise if any other provisions should be so amended.

9. This bill creates numerous requirements for rules promulgation, which must be accomplished before certain provisions can be implemented. Therefore, it needs a delayed effective date to allow the rules promulgation to take place; I suggest giving DHFS at least one year to do so (so, a general effective date of January 1, 2009). Please advise. Also, should there be a provision requiring DHFS to submit proposed rules to the Legislative Council rules clearinghouse by a certain date to ensure that the process goes forward?

10. Please see my amendment to s. 250.042 (4) (c) 12., stats.; without the amendment, previously listed nurse's assistants could be state agents under s. 250.042 (4) (b), stats. Also, is it appropriate that the term "nurse aide," as it has been expanded under this bill, be included under s. 250.042 (4) (b), stats.?

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137
E-mail: debora.kennedy@legis.wisconsin.gov

ok ✓
Page 7, lines 20-25 should be repealed, not amended, since the timeframe has passed

SECTION 21. 49.498 (2) (e) 1. of the statutes is amended to read:
~~49.498 (2) (e) 1. A nursing facility shall provide, for individuals used as nurse's assistants nurse aides by the facility as of July 1, 1989, for a competency evaluation program that is approved by the department under s. 146.40 (3m) and for the preparation necessary for the individual to complete the program by January 1, 1990.~~

ok ✓
Page 13, lines 18 should be amended to include completing both an instruction program and a competency evaluation program

SECTION 47. 146.40 (2) (a) of the statutes is amended to read:

146.40 (2) (a) The individual has successfully completed instruction in an instructional program **and successfully completed a competency evaluation program** for nurse aides that is approved by the department under sub. (3).

Page 13, line 24 should be amended, not repealed, to include the following language

SECTION 49. 146.40 (2) (c) of the statutes is amended to read:

(b) For hospitals, nursing homes, home health agencies or hospices, whether or not certified providers of medical assistance, and intermediate care facilities for persons with mental retardation that are certified providers of medical assistance, the individual is **enrolled in a nurse aide instructional program** and employed or under contract as a nurse aide fewer than 120 calendar days by the hospital, nursing home, home health agency, hospice or intermediate care facility for persons with mental retardation. **This individual shall be allowed to perform only services for which they have been trained and found proficient by the instructor. This individual shall not be counted toward meeting or complying with any requirements for nursing care staff and functions of a facility, including minimum nursing staffing requirements, until satisfactory completion of a competency evaluation.**

successful
the individual has
program

unnecessary -
can't complete it
while enrolled in
instructional program

Kennedy, Debora

From: Katie Plona [PlonaKP@dhfs.state.wi.us]
Sent: Tuesday, February 12, 2008 12:24 PM
To: Kennedy, Debora
Subject: DHFS request for revisions to LRB 1127 for tomorrow's lawrevision committee

Attachments: LRB 1127_ law revision on nurse aide training with DQA comments.doc



LRB 1127_ law
revision on nurs...

Hi Debora,

I just left you a voice message about these changes. I totally understand if you are unable to make them this afternoon. But, if you are, that would be great. Either way, please let me know. Sorry again for the lateness of this request for revisions. There was a communication breakdown over there and we thought we had looked at the most recent draft but had not.

Thanks, Katie

Katie Plona
Legislative Liaison
Department of Health and Family Services
(608) 266-3262
plonakp@dhfs.state.wi.us

*Contact
Shawni Busse
261-8395*

1. This bill changes the definition of "home health aide" to "nurse aide." However, it is unclear whether the term "home health aide services" when referring to Medicare or insurance should correspondingly be changed. I have changed the term to be "home health services," but am unsure if this is correct. See ss. 49.45 (42) (b) and 632.895 (1) (b) 2. and (2) (d), stats. Please advise. ***Agree** — *change in those sections is ok*

2. The instructions concerning s. 146.40 (4g) (a) (intro.), (b), and (c), stats., were very unclear; was it intended that s. 146.40 (4g) (b) and (c), stats., be repealed? ***No changes to this section**

3. I did not draft the definition of "caregiver" proposed for s. 146.40 (1) (a). The instructions provided by e-mail of August 31, 2007 do not include this term, but it is fine as drafted.

4. I did not draft the amendment to s. 146.40 (4), stats., as proposed; the proposed language required the competency evaluation program to list an individual on the registry under s. 146.40 (4g) (a), stats. Since DHFS maintains the registry, that requirement could not work. ***DHFS contracts for registry services and the contractor enters the individual on the registry but this language is fine.**

5. It is unclear what is a "nursing-related duty," as specified in the definition of "feeding assistant" under s. 146.40 (1) (aw); the term is vague. Should DHFS be required to promulgate rules to define it? ***Defined in rule, this is fine** *Will be as defined by the department by rule*

6. I did not draft the proposed change to s. 146.40 (4g) (a) 1., stats. I did not understand it. **This is fine not drafted.**

7. This bill repeals all references to "hospice aide." Presumably, under the bill, nurse aides will perform the same tasks formerly performed by hospice aides. I don't know how DHFS has treated s. 50.065, stats., with respect to hospices. Please advise. ***Hospices are included under 50.065** *NO*

8. The instructions propose a substantive limitation in the definition of "feeding assistant" (that a feeding assistant not be counted toward meeting or complying with any requirements for nursing care staff and functions of a facility, including minimum nursing staffing requirements). This provision is inappropriate as part of a definition; see my amendment to s. 50.04 (2) (d) (intro.), stats. Please review and advise if any other provisions should be so amended. ***Ok**; *none others needed*

9. This bill creates numerous requirements for rules promulgation, which must be accomplished before certain provisions can be implemented. Therefore, it needs a delayed effective date to allow the rules promulgation to take place; I suggest giving DHFS at least one year to do so (so, a general effective date of January 1, 2009). ***HES 129 revisions already drafted, so we do not need a delayed effective date.** *Jan 1, 2009*

10. Please see my amendment to s. 250.042 (4) (c) 12., stats.; without the amendment, previously listed nurse's assistants could be state agents under s. 250.042 (4) (b), stats. Also, is it appropriate that the term "nurse aide," as it has been expanded under this bill, be included under s. 250.042 (4) (b), stats.? ***OK.**

ok?

already defined?

Should "entity" definition be amended to say so?

Still needs some delay

