



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-2557/P1

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In: 11/11/11

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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1 **AN ACT to amend** 46.22 (1) (c) 8. (intro.), 46.275 (5) (b) 4., 46.278 (1), 46.278 (1m)
2 (am), 46.278 (2) (a), 46.278 (4) (a), 46.278 (5) (a), 46.278 (6) (e) 1. a., 46.278 (6)
3 (e) 1. b., 46.278 (6) (e) 1. c., 46.284 (2) (c), 49.43 (7) (b) 1., 49.45 (6m) (ar) 1. c.,
4 49.45 (6m) (bg), 49.45 (30m) (a) 2., 50.04 (2r), 50.04 (4) (dm), 50.14 (1) (a), 50.14
5 (1) (b), 50.14 (2) (bm), 50.14 (2m), 51.01 (5) (a), 51.06 (8) (a) 1., 51.06 (8) (b)
6 (intro.), 51.06 (8) (b) 4., 51.06 (8) (b) 7., 51.42 (6m) (intro.), 51.437 (4g) (c), 51.62
7 (4), 54.01 (8), 55.01 (2), 58.05 (title), 58.05 (1), 146.40 (1) (bt), 146.40 (2) (intro.),
8 146.40 (2) (c) (intro.), 146.40 (2) (c) 2., 146.40 (2) (d), 146.40 (2) (e), 146.40 (2)
9 (g), 146.40 (2m), subchapter VIII (title) of chapter 150 [precedes 150.96], 150.96
10 (2), 150.96 (4), 150.963 (title), 150.963 (2) (a), 150.963 (2) (b), 150.965, 150.97,

Insert Analysis

defining intellectual disability and

1 150.975, 150.983, 155.20 (2) (a) 2., 155.30 (3) and 632.88 (1) (a) of the statutes;
2 **relating to:** changing terminology for those with an intellectual disability

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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

3 **SECTION 1.** 46.22 (1) (c) 8. (intro.) of the statutes is amended to read:

4 46.22 (1) (c) 8. (intro.) To administer child welfare services including services
5 to juveniles who are delinquent and to children who are ~~mentally retarded~~, have an
6 intellectual disability or are dependent, neglected or nonmarital, and to other
7 children who are in need of such services. In administering child welfare services the
8 county department of social services shall be governed by the following:

9 **SECTION 2.** 46.275 (5) (b) 4. of the statutes is amended to read:

10 46.275 (5) (b) 4. Provide services, except respite care that is approved by the
11 department, within a skilled nursing facility, intermediate care facility or
12 intermediate care facility for persons with ~~mental retardation~~ an intellectual
13 disability, as defined in s. 46.278 (1m) (am), including a state center for the
14 developmentally disabled.

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

16 46.278 (1) LEGISLATIVE INTENT. The intent of the programs under this section
17 is to provide home or community-based care to serve in a noninstitutional
18 community setting a person who meets eligibility requirements under 42 USC 1396n
19 (c) and who is diagnosed as developmentally disabled under the definition specified
20 in s. 51.01 (5) and relocated from an institution other than a state center for the

1 developmentally disabled or who meets the intermediate care facility for persons
2 with ~~mental retardation~~ an intellectual disability or brain injury rehabilitation
3 facility level of care requirements for medical assistance reimbursement in an
4 intermediate care facility for persons with ~~mental retardation~~ an intellectual
5 disability or a brain injury rehabilitation facility and is ineligible for services under
6 s. 46.275 or 46.277. The intent of the program is also that counties use all existing
7 services for providing care under this section, including those services currently
8 provided by counties.

9 **SECTION 4.** 46.278 (1m) (am) of the statutes is amended to read:

10 46.278 (1m) (am) "Intermediate care facility for persons with ~~mental~~
11 ~~retardation~~ an intellectual disability" has the meaning given for "intermediate care
12 facility for the mentally retarded" under 42 USC 1396d (d).

****NOTE: Currently, the federal government's change in terminology does not apply to the Social Security Act and thus does not apply to Medicaid. I need to leave the term "intermediate care facility for the mentally retarded" when it refers to the federal definition as that is the term used in the current federal definition. I presume that changing the state reference to that facility type to "intermediate care facility for persons with an intellectual disability" will not jeopardize federal compliance or funding, but it may be worth confirming this with DHS or the federal Department of Health and Human Services.

13 **SECTION 5.** 46.278 (2) (a) of the statutes is amended to read:

14 46.278 (2) (a) The department may request one or more waivers from the
15 secretary of the federal department of health and human services, under 42 USC
16 1396n (c), authorizing the department to serve medical assistance recipients, who
17 meet the level of care requirements for medical assistance reimbursement in an
18 intermediate care facility for persons with ~~mental retardation~~ an intellectual
19 disability or in a brain injury rehabilitation facility, in their communities by
20 providing home or community-based services as part of medical assistance. If the

1 department requests a waiver, it shall include all assurances required under 42 USC
2 1396n (c) (2) in its request.

3 **SECTION 6.** 46.278 (4) (a) of the statutes is amended to read:

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

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

13 46.278 (5) (a) Any medical assistance recipient who meets the level of care
14 requirements for medical assistance reimbursement in an intermediate care facility
15 for persons with ~~mental retardation~~ an intellectual disability or in a brain injury
16 rehabilitation facility and is ineligible for service under s. 46.275 or 46.277 is eligible
17 to participate in a program, except that persons eligible for the brain injury waiver
18 program must meet the definition of brain injury under s. 51.01 (2g), and except that
19 the number of participants may not exceed the number approved under the waiver
20 received under sub. (3). Such a recipient may apply, or any person may apply on
21 behalf of such a recipient, for participation in a program. Section 46.275 (4) (b)
22 applies to participation in a program.

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

24 46.278 (6) (e) 1. a. An intermediate care facility for persons with ~~mental~~
25 ~~retardation~~ an intellectual disability that closes under s. 50.03 (14).

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

2 46.278 (6) (e) 1. b. An intermediate care facility for persons with ~~mental~~
3 ~~retardation~~ an intellectual disability or a distinct part thereof that has a plan of
4 closure approved by the department and that intends to close within 12 months.

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

6 46.278 (6) (e) 1. c. An intermediate care facility for persons with ~~mental~~
7 ~~retardation~~ an intellectual disability that has a plan of closure or significant
8 reduction in capacity approved by the department and that intends to close or
9 significantly reduce its capacity within 60 months.

10 **SECTION 11.** 46.284 (2) (c) of the statutes is amended to read:

11 46.284 (2) (c) The department shall require, as a term of any contract with a
12 care management organization under this section, that the care management
13 organization contract for the provision of services that are covered under the family
14 care benefit with any community-based residential facility under s. 50.01 (1g),
15 residential care apartment complex under s. 50.01 (1d), nursing home under s. 50.01
16 (3), intermediate care facility for ~~the mentally retarded~~ persons with an intellectual
17 disability under s. 50.14 (1) (b), community rehabilitation program, home health
18 agency under s. 50.49 (1) (a), provider of day services, or provider of personal care,
19 as defined in s. 50.01 (4o), that agrees to accept the reimbursement rate that the care
20 management organization pays under contract to similar providers for the same
21 service and that satisfies any applicable quality of care, utilization, or other criteria
22 that the care management organization requires of other providers with which it
23 contracts to provide the same service.

24 **SECTION 12.** 49.43 (7) (b) 1. of the statutes is amended to read:

1 49.43 (7) (b) 1. Licensed or approved under state law for ~~the mentally retarded~~
2 individuals with an intellectual disability or persons with related conditions, the
3 primary purpose of which is to provide health or rehabilitative services for ~~mentally~~
4 ~~retarded~~ individuals with an intellectual disability according to rules promulgated
5 by the department; and

6 **SECTION 13.** 49.45 (6m) (ar) 1. c. of the statutes is amended to read:

7 49.45 (6m) (ar) 1. c. If a facility has an approved program for provision of service
8 to ~~mentally retarded~~ residents who have an intellectual disability, residents
9 dependent upon ventilators, or residents requiring supplemental skilled care due to
10 complex medical conditions, a supplement to the direct care component of the facility
11 rate under subd. 1. b. may be made to that facility according to a method developed
12 by the department.

13 **SECTION 14.** 49.45 (6m) (bg) of the statutes is amended to read:

14 49.45 (6m) (bg) The department shall determine payment levels for the
15 provision of skilled, intermediate, limited, personal or residential care or care for ~~the~~
16 ~~mentally retarded~~ individuals with an intellectual disability in the state centers for
17 the developmentally disabled and in a Wisconsin veterans home operated by the
18 department of veterans affairs under s. 45.50 separately from the payment
19 principles, applicable costs and methods established under this subsection.

20 **SECTION 15.** 49.45 (30m) (a) 2. of the statutes is amended to read:

21 49.45 (30m) (a) 2. Services in an intermediate care facility for persons with
22 ~~mental retardation~~ an intellectual disability, as defined in s. 46.278 (1m) (am), other
23 than a state center for the developmentally disabled.

24 **SECTION 16.** 50.04 (2r) of the statutes is amended to read:

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

10 **SECTION 17.** 50.04 (4) (dm) of the statutes is amended to read:

11 **50.04 (4) (dm) Inspection fee.** If the department takes enforcement action
12 against a nursing home, including an intermediate care facility for ~~the mentally~~
13 ~~retarded persons with an intellectual disability~~, as defined in 42 USC 1396d (d) s.
14 50.14 (1) (b), for a violation of this subchapter or rules promulgated under it or for
15 a violation of a requirement under 42 USC 1396r, and the department subsequently
16 conducts an on-site inspection of the nursing home to review the nursing home's
17 action to correct the violation, the department may, unless the nursing home is
18 operated by the state, impose a \$200 inspection fee on the nursing home.

19 **SECTION 18.** 50.14 (1) (a) of the statutes is amended to read:

20 **50.14 (1) (a)** Notwithstanding s. 50.01 (1m), "facility" means a nursing home
21 or an intermediate care facility for persons with ~~mental retardation~~ an intellectual
22 disability that is not located outside the state.

23 **SECTION 19.** 50.14 (1) (b) of the statutes is amended to read:

1 50.14 (1) (b) “Intermediate care facility for persons with ~~mental retardation an~~
2 intellectual disability” has the meaning given for “intermediate care facility for the
3 mentally retarded” under 42 USC 1396d (d).

4 **SECTION 20.** 50.14 (2) (bm) of the statutes is amended to read:

5 50.14 (2) (bm) For intermediate care facilities for persons with ~~mental~~
6 retardation an intellectual disability, an amount calculated by multiplying the
7 projected annual gross revenues of all intermediate care facilities for persons with
8 ~~mental retardation an intellectual disability~~ in this state by 0.055, dividing the
9 product by the number of licensed beds of intermediate care facilities for persons
10 with ~~mental retardation an intellectual disability~~ in this state and dividing the
11 quotient by 12.

12 **SECTION 21.** 50.14 (2m) of the statutes is amended to read:

13 50.14 (2m) Prior to each state fiscal year, the department shall calculate the
14 amount of the assessment under sub. (2) (bm) that shall apply during the fiscal year.
15 The department may reduce the assessment amount during a state fiscal year to
16 avoid collecting for the fiscal year an amount in bed assessment receipts under sub.
17 (2) (bm) that exceeds 5.5 percent of the aggregate gross revenues for intermediate
18 care facilities for ~~the mentally retarded persons with an intellectual disability~~ for the
19 fiscal year.

20 **SECTION 22.** 51.01 (5) (a) of the statutes is amended to read:

21 51.01 (5) (a) “Developmental disability” means a disability attributable to
22 brain injury, cerebral palsy, epilepsy, autism, Prader-Willi syndrome, ~~mental~~
23 retardation intellectual disability, or another neurological condition closely related
24 to ~~mental retardation an intellectual disability~~ or requiring treatment similar to that
25 required for individuals with ~~mental retardation an intellectual disability~~, which has

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1 continued or can be expected to continue indefinitely and constitutes a substantial
2 handicap to the afflicted individual. "Developmental disability" does not include
3 dementia that is primarily caused by degenerative brain disorder.

****NOTE: I changed "mental retardation" to "intellectual disability" here, but in this instance "mental retardation" is being used as the technical term for a clinical diagnosis just as cerebral palsy is here. The Diagnostic and Statistical Manual of Mental Disorders, 4th edition (or DSM-IV) specifies the clinical diagnosis for mental retardation as having a certain below-average IQ and additional impairments in adaptive functioning, such as communication and home living. If the mental health community has not changed the name for this diagnosis from "mental retardation" to "intellectual disability," the change of terminology in the statute may be seen to expand the numbers of people who are classified as having a developmental disability. Furthermore, this definition of "developmental disability" may be a federal government definition. One way to resolve this issue would be to define "intellectual disability" in chapter 51 using the diagnostic criteria that the DSM-IV uses for "mental retardation."

4 **SECTION 23.** 51.06 (8) (a) 1. of the statutes is amended to read:

5 51.06 (8) (a) 1. "Intermediate care facility for persons with ~~mental retardation~~
6 an intellectual disability" has the meaning given for "intermediate care facility for
7 the mentally retarded" under 42 USC 1396d (d).

8 **SECTION 24.** 51.06 (8) (b) (intro.) of the statutes is amended to read:

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

16 **SECTION 25.** 51.06 (8) (b) 4. of the statutes is amended to read:

17 51.06 (8) (b) 4. An accounting of the costs and savings under the Medical
18 Assistance program of relocations and diversions and the resulting reduction in
19 capacity for services of nursing homes, intermediate care facilities for persons with

1 ~~mental retardation~~ an intellectual disability, and centers for the developmentally
2 disabled. The accounting shall include the per individual savings as well as the
3 collective savings of relocations and diversions.

4 **SECTION 26.** 51.06 (8) (b) 7. of the statutes is amended to read:

5 51.06 (8) (b) 7. Staff turnover rates for nursing homes, intermediate care
6 facilities for persons with ~~mental retardation~~ an intellectual disability, and centers
7 for the developmentally disabled in communities in which an individual relocated or
8 diverted from a nursing home, intermediate care facility for persons with ~~mental~~
9 ~~retardation~~ an intellectual disability, or center for the developmentally disabled
10 currently resides.

11 **SECTION 27.** 51.42 (6m) (intro.) of the statutes is amended to read:

12 51.42 (6m) COUNTY COMMUNITY PROGRAMS DIRECTOR IN CERTAIN COUNTIES WITH A
13 COUNTY EXECUTIVE OR COUNTY ADMINISTRATOR. (intro.) In any county with a county
14 executive or county administrator in which the county board of supervisors has
15 established a single-county department of community programs, the county
16 executive or county administrator shall appoint and supervise the county
17 community programs director. In any county with a population of 500,000 or more,
18 the county executive or county administrator shall appoint the director of the county
19 department of human services under s. 46.21 as the county community programs
20 director. The appointment of a county community programs director under this
21 subsection shall be on the basis of recognized and demonstrated interest in and
22 knowledge of the problems of mental health, ~~mental retardation~~ intellectual
23 disability, alcoholism and drug addiction, with due regard to training, experience,
24 executive and administrative ability, and general qualification and fitness for the
25 performance of the duties of the director. The appointment of a county community

1 programs director under this subsection is subject to confirmation by the county
2 board of supervisors unless the county board of supervisors, by ordinance, elects to
3 waive confirmation or unless the appointment is made under a civil service system
4 competitive examination procedure established under s. 59.52 (8) or ch. 63. The
5 county community programs director, subject only to the supervision of the county
6 executive or county administrator, shall:

7 **SECTION 28.** 51.437 (4g) (c) of the statutes is amended to read:

8 51.437 (4g) (c) In a county with a population of 500,000 or more, the county
9 board of supervisors shall integrate day care programs for ~~mentally retarded~~ persons
10 with an intellectual disability and those programs for persons with other
11 developmental disabilities into the county developmental disabilities program.

12 **SECTION 29.** 51.62 (4) of the statutes is amended to read:

13 51.62 (4) DEPARTMENTAL DUTIES. The department shall provide the protection
14 and advocacy agency with copies of annual surveys and plans of correction for
15 intermediate care facilities for persons with ~~mental retardation~~ an intellectual
16 disability on or before the first day of the 2nd month commencing after completion
17 of the survey or plan.

18 **SECTION 30.** 54.01 (8) of the statutes is amended to read:

19 54.01 (8) "Developmental disability" means a disability attributable to ~~mental~~
20 ~~retardation~~ intellectual disability, cerebral palsy, epilepsy, autism, or another
21 neurological condition closely related to ~~mental retardation~~ an intellectual disability
22 or requiring treatment similar to that required for individuals with ~~mental~~
23 ~~retardation~~ an intellectual disability, which has continued or can be expected to
24 continue indefinitely, substantially impairs an individual from adequately providing
25 for his or her own care or custody, and constitutes a substantial handicap to the

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1 afflicted individual. The term does not include dementia that is primarily caused by
2 degenerative brain disorder.

****NOTE: See note under s. 51.01 (5) (a).

3 SECTION 31. 55.01 (2) of the statutes is amended to read:

4 55.01 (2) "Developmental disability" means a disability attributable to ~~mental~~
5 ~~retardation~~ intellectual disability, cerebral palsy, epilepsy, autism or another
6 neurological condition closely related to ~~mental retardation~~ an intellectual disability
7 or requiring treatment similar to that required for individuals with ~~mental~~
8 ~~retardation~~ an intellectual disability, which has continued or can be expected to
9 continue indefinitely, substantially impairs an individual from adequately providing
10 for his or her own care or custody, and constitutes a substantial handicap to the
11 afflicted individual. The term does not include dementia that is primarily caused by
12 degenerative brain disorder.

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****NOTE: See note under s. 51.01 (5) (a).

13 SECTION 32. 58.05 (title) of the statutes is amended to read:

14 **58.05 (title) Private institutions for persons who are mentally ill or**
15 **retarded have an intellectual disability.**

16 SECTION 33. 58.05 (1) of the statutes is amended to read:

17 58.05 (1) The articles of organization of any corporation organized under the
18 laws of this state for the establishment and maintenance of any hospital or other
19 institution for the care, treatment or relief of persons who are mentally ill or ~~retarded~~
20 have an intellectual disability may contain provisions authorizing it to receive
21 general, special, permanent or temporary endowments and to secure the repayment
22 of the same in accordance with the terms and conditions upon which they may be

1 made by a mortgage upon its real or personal property, or both, or otherwise, in the
2 manner in such articles provided.

3 **SECTION 34.** 146.40 (1) (bt) of the statutes is amended to read:

4 146.40 (1) (bt) “Intermediate care facility for persons with ~~mental retardation~~
5 an intellectual disability” has the meaning given for “intermediate care facility for
6 the mentally retarded” under 42 USC 1396d (d).

7 **SECTION 35.** 146.40 (2) (intro.) of the statutes is amended to read:

8 146.40 (2) (intro.) A hospital, nursing home, intermediate care facility for
9 persons with ~~mental retardation~~ an intellectual disability, home health agency, or
10 hospice may not employ or contract for the services of an individual as a nurse aide,
11 regardless of the title under which the individual is employed or contracted for,
12 unless one of the following is true:

13 **SECTION 36.** 146.40 (2) (c) (intro.) of the statutes is amended to read:

14 146.40 (2) (c) (intro.) For hospitals, nursing homes, home health agencies or
15 hospices, whether or not certified providers of medical assistance, and intermediate
16 care facilities persons with ~~mental retardation~~ an intellectual disability that are
17 certified providers of medical assistance, the individual is enrolled in an
18 instructional program for nurse aides that is approved under sub. (3) and is
19 employed or under contract as a nurse’s assistant, home health aide or hospice aide
20 fewer than 120 calendar days by the hospital, nursing home, home health agency,
21 hospice or intermediate care facility for ~~the mentally retarded~~ persons with an
22 intellectual disability. All of the following applies to an individual specified under
23 this paragraph:

24 **SECTION 37.** 146.40 (2) (c) 2. of the statutes is amended to read:

1 146.40 (2) (c) 2. The hospital, nursing home, home health agency, hospice, or
2 intermediate care facility for persons with ~~mental retardation~~ an intellectual
3 disability may not include the individual in meeting or complying with a
4 requirement for nursing care staff and functions, including a minimum nursing staff
5 requirement.

6 **SECTION 38.** 146.40 (2) (d) of the statutes is amended to read:

7 146.40 (2) (d) For hospitals, nursing homes, home health agencies, or hospices,
8 whether or not certified providers of medical assistance, and intermediate care
9 facilities for persons with ~~mental retardation~~ an intellectual disability that are
10 certified providers of medical assistance, the individual has successfully completed
11 an instructional program and a competency evaluation program for nurse aides that
12 is certified in another state that meets criteria for acceptance in this state as
13 specified by the department by rule.

14 **SECTION 39.** 146.40 (2) (e) of the statutes is amended to read:

15 146.40 (2) (e) For hospitals, home health agencies, or hospices, whether or not
16 certified providers of medical assistance, nursing homes that are not certified
17 providers of medical assistance and intermediate care facilities for persons with
18 ~~mental retardation~~ an intellectual disability that are certified providers of medical
19 assistance, the individual is a student nurse who has successfully completed a basic
20 nursing course from a school that is on the accredited list of schools specified under
21 s. 441.01 (4) or who successfully completes a competency evaluation program for
22 nurse aides that is approved by the department under sub. (3m).

23 **SECTION 40.** 146.40 (2) (g) of the statutes is amended to read:

24 146.40 (2) (g) For hospitals, nursing homes, home health agencies, or hospices,
25 whether or not certified providers of medical assistance, and intermediate care

1 facilities for persons with ~~mental retardation~~ an intellectual disability that are
2 certified providers of medical assistance, the individual, if he or she has performed
3 no nursing-related service for monetary compensation for 24 consecutive months
4 after having satisfied the requirement under par. (a), again successfully completes
5 a competency evaluation program for nurse aides that is approved by the department
6 under sub. (3m).

7 **SECTION 41.** 146.40 (2m) of the statutes is amended to read:

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

15 **SECTION 42.** Subchapter VIII (title) of chapter 150 [precedes 150.96] of the
16 statutes is amended to read:

17 **CHAPTER 150**

18 **SUBCHAPTER VIII**

19 **MENTAL RETARDATION FACILITIES FOR THE INTELLECTUALLY**

20 **DISABLED AND COMMUNITY MENTAL HEALTH**

21 **CENTERS CONSTRUCTION**

22 **SECTION 43.** 150.96 (2) of the statutes is amended to read:

23 150.96 (2) "Facility for the ~~mentally retarded~~ individuals with an intellectual
24 disability" means a facility specially designed for the diagnosis, treatment,
25 education, training or custodial care of the ~~mentally retarded~~ individuals with an

1 intellectual disability; including facilities for training specialists and sheltered
2 workshops for ~~the mentally retarded~~ individuals with an intellectual disability, but
3 only if such workshops are part of facilities which provide or will provide
4 comprehensive services for ~~the mentally retarded~~ individuals with an intellectual
5 disability.

6 SECTION 44. 150.96 (4) of the statutes is amended to read:

7 150.96 (4) "Nonprofit facility for ~~the mentally retarded~~ individuals with an
8 intellectual disability", and "nonprofit community mental health center" mean,
9 respectively, a facility for ~~the mentally retarded~~ individuals with an intellectual
10 disability, and a community mental health center which is owned and operated by
11 one or more nonprofit corporations or associations no part of the net earnings of
12 which inures, or may lawfully inure, to the benefit of any private shareholder or
13 individual.

14 SECTION 45. 150.963 (title) of the statutes is amended to read:

15 **150.963** (title) **Construction of mentally retarded facilities for the**
16 **intellectually disabled and community mental health centers.**

****NOTE: I am changing the name of these facilities, but I am not sure this facility type exists any longer, and if it does, there is an interaction with federal law. These facilities are defined in federal law in the "Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963." From my research, it appears that act has been, in relevant part, repealed. I cannot find that DHS is operating any facilities under this name or referring to this facility type. You may want to confirm with DHS that this subchapter of chapter 150 is obsolete. If there are facilities under this subchapter, the change in terminology may affect federal compliance or funding.

17 SECTION 46. 150.963 (2) (a) of the statutes is amended to read:

18 150.963 (2) (a) Making inventories of existing facilities, surveying the need for
19 construction for facilities for ~~the mentally retarded~~ individuals with an intellectual
20 disability and community mental health centers, and developing programs of
21 construction.

1 **SECTION 47.** 150.963 (2) (b) of the statutes is amended to read:

2 150.963 (2) (b) Developing and administering a state plan for the construction
3 of public and other nonprofit facilities for ~~the mentally retarded~~ individuals with an
4 intellectual disability, and a state plan for the construction of public and other
5 nonprofit community mental health centers.

6 **SECTION 48.** 150.965 of the statutes is amended to read:

7 **150.965 Construction programs.** The department is directed to develop
8 construction programs for facilities for ~~the mentally retarded~~ individuals with an
9 intellectual disability and community mental health centers for the mentally ill,
10 which shall be based respectively on statewide inventories of existing facilities for
11 ~~the mentally retarded~~ individuals with an intellectual disability and the mentally
12 ill and surveys of need, and which shall provide in accordance with regulations
13 prescribed under the federal act, for facilities which will provide adequate services
14 for ~~the mentally retarded~~ individuals with an intellectual disability and adequate
15 community mental health services for the people residing in this state and for
16 furnishing needed services to persons unable to pay therefor.

17 **SECTION 49.** 150.97 of the statutes is amended to read:

18 **150.97 Standards for maintenance and operation.** The department shall
19 by regulation prescribe, and shall be authorized to enforce, standards for the
20 maintenance and operation of facilities for ~~the mentally retarded~~ individuals with
21 an intellectual disability, and community mental health centers which receive
22 federal aid for construction under the state plans.

23 **SECTION 50.** 150.975 of the statutes is amended to read:

24 **150.975 Applications.** Applications for mental ~~retardation~~ facility for
25 individuals with an intellectual disability or community mental health center

1 construction projects for which federal funds are requested shall be submitted to the
2 department by the state, a political subdivision thereof or by a public or other
3 nonprofit agency. Each application for a construction project shall conform to federal
4 and state requirements.

5 **SECTION 51.** 150.983 of the statutes is amended to read:

6 **150.983 ~~Mental retardation facilities~~ Facilities for individuals with an**
7 **intellectual disability and community mental health centers construction**
8 **funds.** The department may receive federal funds in behalf of, and transmit them
9 to, applicants. In the general fund there is hereby established, separate and apart
10 from all public moneys of this state, ~~a mental retardation~~ an intellectual disability
11 facilities construction fund and a community mental health centers construction
12 fund. Money received from the federal government for a construction project under
13 this subchapter approved by the secretary shall be deposited to the credit of the
14 appropriate fund and shall be used solely for payments to applicants for work
15 performed, or purchases made, in carrying out the approved project.

16 **SECTION 52.** 155.20 (2) (a) 2. of the statutes is amended to read:

17 155.20 (2) (a) 2. An intermediate care facility for persons with ~~mental~~
18 ~~retardation~~ an intellectual disability, as defined in s. 46.278 (1m) (am).

19 **SECTION 53.** 155.30 (3) of the statutes is amended to read:

20 155.30 (3) The department shall prepare and provide copies of a power of
21 attorney for health care instrument and accompanying information for distribution
22 in quantities to health care professionals, hospitals, nursing homes, multipurpose
23 senior centers, county clerks, and local bar associations and individually to private
24 persons. The department shall include, in information accompanying the copy of the
25 instrument, at least the statutory definitions of terms used in the instrument,

1 statutory restrictions on who may be witnesses to a valid instrument, a statement
2 explaining that valid witnesses acting in good faith are statutorily immune from civil
3 or criminal liability and a statement explaining that an instrument may, but need
4 not, be filed with the register in probate of the principal's county of residence. The
5 department may charge a reasonable fee for the cost of preparation and distribution.
6 The power of attorney for health care instrument distributed by the department
7 shall include the notice specified in sub. (1) and shall be in the following form:

8 **POWER OF ATTORNEY FOR HEALTH CARE**

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

10 **CREATION OF POWER OF ATTORNEY**

11 **FOR HEALTH CARE**

12 I,.... (print name, address and date of birth), being of sound mind, intend by this
13 document to create a power of attorney for health care. My executing this power of
14 attorney for health care is voluntary. Despite the creation of this power of attorney
15 for health care, I expect to be fully informed about and allowed to participate in any
16 health care decision for me, to the extent that I am able. For the purposes of this
17 document, "health care decision" means an informed decision to accept, maintain,
18 discontinue or refuse any care, treatment, service or procedure to maintain, diagnose
19 or treat my physical or mental condition.

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

22 **DESIGNATION OF HEALTH CARE AGENT**

23 If I am no longer able to make health care decisions for myself, due to my
24 incapacity, I hereby designate.... (print name, address and telephone number) to be
25 my health care agent for the purpose of making health care decisions on my behalf.

1 If he or she is ever unable or unwilling to do so, I hereby designate.... (print name,
2 address and telephone number) to be my alternate health care agent for the purpose
3 of making health care decisions on my behalf. Neither my health care agent nor my
4 alternate health care agent whom I have designated is my health care provider, an
5 employee of my health care provider, an employee of a health care facility in which
6 I am a patient or a spouse of any of those persons, unless he or she is also my relative.
7 For purposes of this document, "incapacity" exists if 2 physicians or a physician and
8 a psychologist who have personally examined me sign a statement that specifically
9 expresses their opinion that I have a condition that means that I am unable to receive
10 and evaluate information effectively or to communicate decisions to such an extent
11 that I lack the capacity to manage my health care decisions. A copy of that statement
12 must be attached to this document.

13 GENERAL STATEMENT OF AUTHORITY GRANTED

14 Unless I have specified otherwise in this document, if I ever have incapacity I
15 instruct my health care provider to obtain the health care decision of my health care
16 agent, if I need treatment, for all of my health care and treatment. I have discussed
17 my desires thoroughly with my health care agent and believe that he or she
18 understands my philosophy regarding the health care decisions I would make if I
19 were able. I desire that my wishes be carried out through the authority given to my
20 health care agent under this document.

21 If I am unable, due to my incapacity, to make a health care decision, my health
22 care agent is instructed to make the health care decision for me, but my health care
23 agent should try to discuss with me any specific proposed health care if I am able to
24 communicate in any manner, including by blinking my eyes. If this communication
25 cannot be made, my health care agent shall base his or her decision on any health

1 care choices that I have expressed prior to the time of the decision. If I have not
2 expressed a health care choice about the health care in question and communication
3 cannot be made, my health care agent shall base his or her health care decision on
4 what he or she believes to be in my best interest.

5 LIMITATIONS ON MENTAL HEALTH TREATMENT

6 My health care agent may not admit or commit me on an inpatient basis to an
7 institution for mental diseases, an intermediate care facility for persons with ~~mental~~
8 ~~retardation~~ an intellectual disability, a state treatment facility or a treatment
9 facility. My health care agent may not consent to experimental mental health
10 research or psychosurgery, electroconvulsive treatment or drastic mental health
11 treatment procedures for me.

12 ADMISSION TO NURSING HOMES OR 13 COMMUNITY-BASED RESIDENTIAL FACILITIES

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

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

- 19 1. A nursing home — Yes.... No....
- 20 2. A community-based residential facility — Yes.... No....

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

23 PROVISION OF A FEEDING TUBE

24 If I have checked "Yes" to the following, my health care agent may have a
25 feeding tube withheld or withdrawn from me, unless my physician has advised that,

1 in his or her professional judgment, this will cause me pain or will reduce my comfort.
2 If I have checked "No" to the following, my health care agent may not have a feeding
3 tube withheld or withdrawn from me.

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

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

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

10 HEALTH CARE DECISIONS FOR
11 PREGNANT WOMEN

12 If I have checked "Yes" to the following, my health care agent may make health
13 care decisions for me even if my agent knows I am pregnant. If I have checked "No"
14 to the following, my health care agent may not make health care decisions for me if
15 my health care agent knows I am pregnant.

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

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

20 STATEMENT OF DESIRES,
21 SPECIAL PROVISIONS OR LIMITATIONS

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

1 1) -

2 2) -

3 3) -

4 INSPECTION AND DISCLOSURE OF
5 INFORMATION RELATING TO MY PHYSICAL
6 OR MENTAL HEALTH

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

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

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

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

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

15 SIGNATURE OF PRINCIPAL

16 (person creating the power of attorney for health care)

17 Signature.... Date....

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

20 STATEMENT OF WITNESSES

21 I know the principal personally and I believe him or her to be of sound mind and
22 at least 18 years of age. I believe that his or her execution of this power of attorney
23 for health care is voluntary. I am at least 18 years of age, am not related to the
24 principal by blood, marriage, or adoption, am not the domestic partner under ch. 770
25 of the principal, and am not directly financially responsible for the principal's health

1 care. I am not a health care provider who is serving the principal at this time, an
 2 employee of the health care provider, other than a chaplain or a social worker, or an
 3 employee, other than a chaplain or a social worker, of an inpatient health care facility
 4 in which the declarant is a patient. I am not the principal's health care agent. To
 5 the best of my knowledge, I am not entitled to and do not have a claim on the
 6 principal's estate.

7 Witness No. 1:

8 (print) Name.... Date....

9 Address....

10 Signature....

11 Witness No. 2:

12 (print) Name.... Date....

13 Address....

14 Signature....

15 STATEMENT OF HEALTH CARE AGENT AND
 16 ALTERNATE HEALTH CARE AGENT

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

21 Agent's signature....

22 Address....

23 Alternate's signature....

24 Address....

1 Failure to execute a power of attorney for health care document under chapter
2 155 of the Wisconsin Statutes creates no presumption about the intent of any
3 individual with regard to his or her health care decisions.

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

6 ANATOMICAL GIFTS (optional)

7 Upon my death:

8 I wish to donate only the following organs or parts: (specify the organs or
9 parts).

10 I wish to donate any needed organ or part.

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

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

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

17 Signature.... Date....

18 **SECTION 54.** 632.88 (1) (a) of the statutes is amended to read:

19 632.88 (1) (a) Incapable of self-sustaining employment because of ~~mental~~
20 ~~retardation~~ intellectual disability or physical handicap; and

21 (END)

D-note

1 INSERT ANALYSIS

This bill substitutes the phrase “intellectual disability” for “mental retardation” and “mentally retarded” in the statutes. Additionally, the bill defines an intellectual disability as a condition in which an individual has significantly subaverage intellectual functioning and deficits or impairments in adaptive function in certain areas before that individual has attained the age of 18.

(END INSERT ANALYSIS)

2 INSERT 9-4

3 **SECTION 1.** 51.01 (10d) of the statutes is created to read:

4 51.01 (10d) “Intellectual disability” means a condition of an individual that
5 meets all of the following criteria:

6 (a) If the individual is not an infant, the individual has significantly
7 subaverage intellectual functioning as demonstrated by an intelligence quotient of
8 approximately 70 or below on an individually administered test of intelligence
9 quotient.

10 (b) If the individual is an infant, the infant has significantly subaverage
11 intellectual functioning under the clinical judgment of a health care provider.

12 (c) The individual has deficits or impairments in adaptive function in at least

13 two of the following areas:

- 14 1. Communication.
- 15 2. Self-care.
- 16 3. Home living.
- 17 4. Social or interpersonal skills.
- 18 5. Use of community resources.
- 19 6. Self-direction.

1 7. Functional academic skills.

2 8. Work.

3 9. Leisure.

4 10. Health.

5 11. Safety. or (b)

6 (c) The individual displays the subaverage intellectual functioning described
7 in par. (a) and the deficits or impairments described in par. (b) before the individual
8 has attained the age of 18.

(END INSERT 9-4)

9 INSERT 12-3

10 SECTION 2. 54.01 (16m) of the statutes is created to read:

11 54.01 (16m) "Intellectual disability" means a condition of an individual that
12 meets all of the following criteria:

13 (a) If the individual is not an infant, the individual has significantly
14 subaverage intellectual functioning as demonstrated by an intelligence quotient of
15 approximately 70 or below on an individually administered test of intelligence
16 quotient.

17 (b) If the individual is an infant, the infant has significantly subaverage
18 intellectual functioning under the clinical judgment of a health care provider.

19 (c) The individual has deficits or impairments in adaptive function in at least
20 two of the following areas:

21 1. Communication.

22 2. Self-care.

23 3. Home living.

- 1 4. Social or interpersonal skills.
- 2 5. Use of community resources.
- 3 6. Self-direction.
- 4 7. Functional academic skills.
- 5 8. Work.
- 6 9. Leisure.
- 7 10. Health.

8 11. Safety. or (b)

9 (c) The individual displays the subaverage intellectual functioning described
 10 in par. (a) and the deficits or impairments described in par. (b) before the individual
 11 has attained the age of 18.

(END INSERT 12-3)

12 INSERT 12-13

13 SECTION 3. 55.01 (3t) of the statutes is created to read:

14 55.01 (3t) "Intellectual disability" means a condition of an individual that
 15 meets all of the following criteria:

16 (a) If the individual is not an infant, the individual has significantly
 17 subaverage intellectual functioning as demonstrated by an intelligence quotient of
 18 approximately 70 or below on an individually administered test of intelligence
 19 quotient.

20 (b) If the individual is an infant, the infant has significantly subaverage
 21 intellectual functioning under the clinical judgment of a health care provider.

22 (c) The individual has deficits or impairments in adaptive function in at least
 23 (two) of the following areas:

- 1 1. Communication.
- 2 2. Self-care.
- 3 3. Home living.
- 4 4. Social or interpersonal skills.
- 5 5. Use of community resources.
- 6 6. Self-direction.
- 7 7. Functional academic skills.
- 8 8. Work.
- 9 9. Leisure.
- 10 10. Health.

11 d 11. Safety. or (b)

12 (c) The individual displays the subaverage intellectual functioning described
13 in par. (a) and the deficits or impairments described in par. (b) before the individual
14 has attained the age of 18.

(END INSERT 12-13)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2557/P2dn

TJD:/:....

med

Date

To Adam Johnson:

Please review this preliminary draft to ensure it complies with your intent, especially the newly added definition of intellectual disability.

Should you have any questions or redraft instructions, please contact me.

Tamara J. Dodge
Legislative Attorney
Phone: (608) 267-7380
E-mail: tamara.dodge@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2557/P2dn
TJD:med:imp

November 16, 2011

To Adam Johnson:

Please review this preliminary draft to ensure it complies with your intent, especially the newly added definition of intellectual disability.

Should you have any questions or redraft instructions, please contact me.

Tamara J. Dodge
Legislative Attorney
Phone: (608) 267-7380
E-mail: tamara.dodge@legis.wisconsin.gov

Dodge, Tamara

From: Johnson, Adam
Sent: Thursday, November 17, 2011 3:37 PM
To: Dodge, Tamara
Subject: LRB - 2557

Tami,

Thanks for making the changes. After reviewing the draft, it looks great and I think we are ready for a final copy of the bill.

Please let me know if you have any further questions (or if I forgot a step in this process),

Adam

Adam Johnson

Policy Intern
Representative Erik Severson
Wisconsin 28th Assembly District