

1993 Senate Bill 427

Date of enactment: April 6, 1994  
Date of publication\*: April 20, 1994

## 1993 WISCONSIN ACT 212

AN ACT to amend 46.266 (3), 46.266 (7), 46.266 (8) (a), 46.266 (8) (b) (intro.), 46.266 (8) (b) 2 and 3, 46.266 (9), 49.45 (6c) (b), 49.45 (6c) (c) (intro.), 49.45 (6c) (d) 1, 49.45 (6c) (d) 2, 49.45 (6c) (e) 2. (intro.) and 49.45 (6c) (f); and to create 46.266 (2) (a) 8 of the statutes, relating to: preadmission screening and resident review for and relocation from institutions for mental diseases and granting rule-making authority.

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

**SECTION 1.** 46.266 (2) (a) 8. of the statutes is created to read:

46.266 (2) (a) 8. Funding under this paragraph requires compliance by an institution for mental diseases with the requirements under s. 49.45 (6c).

**SECTION 2.** 46.266 (3) of the statutes, as affected by 1993 Wisconsin Act 16, is amended to read:

46.266 (3) The total number of beds in skilled nursing facilities or intermediate care facilities that are funded at any one time under subs. (1) and (2) may not exceed the number of beds available for the persons specified in sub. (1) (a), minus the number of beds reduced under sub. (8) (a), plus the number of beds added for persons who are specified under sub. (1) (c). The department may redistribute funds for a vacant bed from one county to another county that is seeking to effect the placement of a person in an institution for mental diseases.

**SECTION 3.** 46.266 (7) of the statutes, as affected by 1993 Wisconsin Act 16, is amended to read:

46.266 (7) The department is not required to decrease the statewide nursing home bed limit under s. 150.31 to account for ~~nursing home~~ institution for mental diseases beds closed under this section and, notwithstanding subch. II of ch. 150, may redistribute the ~~nursing home~~ institution for mental diseases beds made available by the provision of services under this section if the department

promulgates rules establishing a method by which the beds will be redistributed.

**SECTION 4.** 46.266 (8) (a) of the statutes, as affected by 1993 Wisconsin Act 16, is amended to read:

46.266 (8) (a) Except as provided in sub. (9), if a county department ~~relocates~~ seeks to relocate a person from a ~~nursing home~~ an institution for mental diseases to the community using funds provided under sub. (1), the ~~nursing home county department~~ shall first obtain approval of the institution for mental diseases to terminate use of the bed occupied by the individual as part of a plan submitted by the ~~nursing home~~ institution for mental diseases and approved by the department.

**SECTION 5.** 46.266 (8) (b) (intro.) of the statutes, as affected by 1993 Wisconsin Act 16, is amended to read:

46.266 (8) (b) (intro.) The department may waive the requirement under par. (a) for relocations that are part of a plan submitted by the ~~nursing home~~ institution for mental diseases and approved by the department that the department expects will result in all of the following:

**SECTION 6.** 46.266 (8) (b) 2. and 3. of the statutes, as affected by 1993 Wisconsin Act 16, are amended to read:

46.266 (8) (b) 2. Licensure of the ~~nursing home~~ institution for mental diseases as a nursing home under s. 50.03.

3. Certification by the department of the ~~nursing home~~ institution for mental diseases as a provider of medical assistance.

**SECTION 7.** 46.266 (9) of the statutes, as affected by 1993 Wisconsin Act 16, is amended to read:

46.266 (9) If approved by the department, a ~~nursing home~~ an institution for mental diseases may, instead of closing a bed, agree to receive a permanent limitation on the facility's payment as a facility under s. 49.45 (6m) for each person relocated under this section. The department shall promulgate rules to administer this subsection.

**SECTION 8.** 49.45 (6c) (b) of the statutes, as affected by 1993 Wisconsin Act 16, is amended to read:

49.45 (6c) (b) *Preadmission screening.* Except as provided in par. (e), beginning on August 9, 1989, every individual who applies for admission to a facility or to an institution for mental diseases shall be screened to determine if the individual has developmental disability or mental illness. Beginning on August 9, 1989, the department or an entity to which the department has delegated authority shall screen every individual who has been identified as having a developmental disability or mental illness to determine if the individual needs facility care. If the individual is determined to need facility care, the department or an entity to which the department has delegated authority shall also assess the individual to determine if he or she requires active treatment for developmental disability or active treatment for mental illness.

**SECTION 9.** 49.45 (6c) (c) (intro.) of the statutes, as affected by 1993 Wisconsin Act 16, is amended to read:

49.45 (6c) (c) *Resident review.* (intro.) Except as provided in par. (e), by April 1, 1990, and at least annually thereafter, the department or an entity to which the department has delegated authority shall review every resident of a facility or institution for mental diseases who has a developmental disability or mental illness to determine if any of the following applies:

**SECTION 10.** 49.45 (6c) (d) 1. of the statutes is amended to read:

49.45 (6c) (d) 1. No payment may be made under sub. (6m) to a facility or to an institution for mental diseases for the care of an individual who is otherwise eligible for medical assistance under s. 49.46 or 49.47, who has developmental disability or mental illness and for whom under par. (b) or (c) it is determined that he or she does not need facility care, unless it is determined that the individual requires active treatment for developmental disability or active treatment for mental illness and has continuously resided in a facility or institution for mental diseases for at least 30 months prior to the date of the determination. If that individual requires active treatment and has so continuously resided, he or she shall be

offered the choice of receiving active treatment for developmental disability or active treatment for mental illness in the facility or institution for mental diseases or in an alternative setting. A facility resident who has developmental disability or mental illness, for whom under par. (c) it is determined that he or she does not need facility care and who has not continuously resided in a facility for at least 30 months prior to the date of the determination, may not continue to reside in the facility after December 31, 1993, and shall, if the department so determines, be relocated from the facility after March 31, 1990, and before December 31, 1993. The county department shall be responsible for securing alternative residence on behalf of an individual who is required to be relocated from a facility under this subdivision, and the facility shall cooperate with the county department in the relocation.

**SECTION 11.** 49.45 (6c) (d) 2. of the statutes is amended to read:

49.45 (6c) (d) 2. Payment may be made under sub. (6m) to a facility or institution for mental diseases for the care of an individual who is otherwise eligible for medical assistance under s. 49.46 or 49.47 and who has developmental disability or mental illness and is determined under par. (b) or (c) to need facility care, regardless of whether it is determined under par. (b) or (c) that the individual does or does not require active treatment for developmental disability or active treatment for mental illness.

**SECTION 12.** 49.45 (6c) (e) 2. (intro.) of the statutes is amended to read:

49.45 (6c) (e) 2. (intro.) Payment under sub. (6m) may be made to a facility or institution for mental diseases for an individual who is 65 years of age or older, is medically diagnosed as having developmental disability or mental illness, is not a danger to himself or herself or to others and is competent to make an independent decision, if, following screening under par. (b) or review under par. (c), all of the following apply:

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

49.45 (6c) (f) *Hearing.* An individual for whom ~~facility admission to a facility~~ or institution for mental diseases is denied under par. (b) or for whom a determination under par. (c) results in prohibition of payment to a facility or institution for mental diseases under par. (d) and relocation from the facility to a facility or institution for mental diseases may request a hearing from the department.