



1997 SENATE BILL 266

July 24, 1997 - Introduced by Senators RISSER, PLACHE, HUELSMAN and GROBSCHMIDT, cosponsored by Representatives DOBYNS, GRONEMUS, BOYLE, BLACK, WASSERMAN, MURAT and TURNER. Referred to Committee on Health, Human Services, Aging, Corrections, Veterans and Military Affairs.

1 **AN ACT to amend** 895.46 (1) (a); and **to create** 51.035, 165.25 (6) (d), 655.003 (4),
2 893.82 (2) (d) 4. and 895.46 (5) (c) of the statutes; **relating to:** state agent status
3 for certain psychiatrists who are county employes or provide services under
4 certain county contracts.

Analysis by the Legislative Reference Bureau

This bill provides that psychiatrists who are county employes or who contract directly with counties and who provide psychiatric services are state agents of the department of health and family services (DHFS) for the purposes of representation by the department of justice in any court actions that arise from their provision of these psychiatric services. The bill also provides that psychiatrists who are employed by or are under contract with private, nonprofit agencies that contract with county departments of community programs or developmental disabilities services are state agents of DHFS under the following conditions:

1. The board of the relevant county department of community programs or developmental disabilities services approves, after determining that certain criteria apply, a joint application of the psychiatrist and the private, nonprofit agency.

2. The department of administration (DOA) approves the application for a period of one year and so notifies the applicants. Prior to its approval, DOA may transmit the joint application to the medical examining board for review.

Amounts that are recoverable by civil suit against these psychiatrists as state agents of DHFS are limited to \$250,000 and judgments against them in these suits that exceed applicable liability insurance are payable by the state.

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Lastly, the bill prohibits a psychiatrist or county that is covered under the bill from being required to purchase liability insurance for the provision of the psychiatric services that are covered under the bill.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 51.035 of the statutes is created to read:

2 **51.035 Psychiatrists as state agents. (1)** In this section:

3 (a) “Medical assistance” has the meaning given under s. 49.43 (8).

4 (b) “Medicare” means coverage under Part A or Part B of Title XVIII of the
5 federal Social Security Act, 42 USC 1395 to 1395ccc.

6 (c) “Private agency” means a private, nonprofit corporation, as defined in s.
7 181.02 (8), which provides mental health services under a contract with a county
8 department under s. 46.21 (2m), 46.23, 51.42 or 51.437.

9 (d) “Psychiatrist” means a physician, as defined in s. 448.01 (5), who specializes
10 in psychiatry.

11 **(2)** All of the following are state agents of the department for the purposes of
12 ss. 165.25 (6), 893.82 (3) and 895.46:

13 (a) A psychiatrist who is employed by a county to provide, on a full-time or
14 part-time, including hourly, basis, psychiatric services that are funded under s.
15 51.42 or 51.437, for the provision of those services.

16 (b) A psychiatrist who contracts with a county to provide, on a full-time or
17 part-time, including hourly, basis, psychiatric services that are funded under s.
18 51.42 or 51.437, for the provision of those services.

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1 (c) A psychiatrist, for the employment or contracted services specified in subd.
2 1., if the conditions of subd. 2. are met:

3 1. The psychiatrist provides psychiatric services, on a full-time or part-time,
4 including hourly, basis, under employment by or under contract with a private,
5 nonprofit agency that contracts with a county department under s. 51.42 or 51.437
6 to provide psychiatric services.

7 2. a. The psychiatrist and the private agency jointly submit an application to
8 the county board appointed under s. 51.42 (4) (a) 1. or 2. or 51.437 (7) (a) 1. or 2. of
9 the county department with which the private agency contracts and the board
10 determines, after review, that the primary purpose of the private agency is to provide
11 mental health services to patients in the public interest; that contracting with the
12 private agency is a critical part of the mental health plan for the county under s. 51.42
13 (3) (ar) 5. or of the proposed budget under s. 51.437 (4m) (j); and that a substantial
14 majority of the mental health care received by a substantial majority of the patients
15 served by the private agency is funded under s. 46.031 through the county
16 department or is funded by medical assistance or medicare.

17 b. After a determination, if any, is made under subd. 2. a. that the conditions
18 specified under subd. 2. a. apply, the psychiatrist and the private agency jointly
19 submit the application to the department of administration and that department
20 approves the application. Before approving an application, the department of
21 administration may send the application to the medical examining board for
22 evaluation. The medical examining board shall evaluate any application submitted
23 by the department of administration and return the application to the department
24 of administration with the board's recommendation regarding approval. The

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1 department of administration shall notify the psychiatrist and the private agency of
2 the department's decision to approve or disapprove the application.

3 **(3)** Approval by the department of administration of a joint application of a
4 psychiatrist and a private agency submitted under sub. (2) (c) 2. b. is valid for one
5 year. If a psychiatrist and a private agency wish to renew approval, they shall submit
6 a joint renewal application to the department of administration. The department of
7 administration shall provide renewal application forms that are developed by the
8 department of health and family services and that include questions about the
9 activities that the psychiatrist has undertaken as an employe of the private agency
10 in the previous 12 months.

11 **SECTION 2.** 165.25 (6) (d) of the statutes is created to read:

12 165.25 **(6)** (d) Psychiatrists under s. 51.035 are covered by this section and shall
13 be considered agents of the department of health and family services for purposes of
14 determining which agency head may request the attorney general to appear and
15 defend them.

16 **SECTION 3.** 655.003 (4) of the statutes is created to read:

17 655.003 **(4)** A psychiatrist who provides professional services under the
18 conditions described in s. 51.035 (2), with respect to those professional services
19 provided by the psychiatrist for which he or she is covered by s. 165.25 and considered
20 an agent of the department, as provided in s. 165.25 (6) (d).

21 **SECTION 4.** 893.82 (2) (d) 4. of the statutes is created to read:

22 893.82 **(2)** (d) 4. A psychiatrist under s. 51.035.

23 **SECTION 5.** 895.46 (1) (a) of the statutes is amended to read:

24 895.46 **(1)** (a) If the defendant in any action or special proceeding is a public
25 officer or employe and is proceeded against in an official capacity or is proceeded

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1 against as an individual because of acts committed while carrying out duties as an
2 officer or employe and the jury or the court finds that the defendant was acting within
3 the scope of employment, the judgment as to damages and costs entered against the
4 officer or employe in excess of any insurance applicable to the officer or employe shall
5 be paid by the state or political subdivision of which the defendant is an officer or
6 employe, except that the state shall pay a judgment entered against a psychiatrist
7 for the psychiatric services described in s. 51.035 (2) (a), (b) or (c). This paragraph
8 may not be construed to require that a psychiatrist or the county of a county
9 department under s. 51.42 or 51.437 purchase liability insurance for the psychiatric
10 services described in s. 51.035 (2) (a), (b) or (c). Agents of any department of the state
11 shall be covered by this section while acting within the scope of their agency.
12 Regardless of the results of the litigation the governmental unit, if it does not provide
13 legal counsel to the defendant officer or employe, shall pay reasonable attorney fees
14 and costs of defending the action, unless it is found by the court or jury that the
15 defendant officer or employe did not act within the scope of employment. The duty
16 of a governmental unit to provide or pay for the provision of legal representation does
17 not apply to the extent that applicable insurance provides that representation. If the
18 employing state agency or the attorney general denies that the state officer, employe
19 or agent was doing any act growing out of or committed in the course of the discharge
20 of his or her duties, the attorney general may appear on behalf of the state to contest
21 that issue without waiving the state's sovereign immunity to suit. Failure by the
22 officer or employe to give notice to his or her department head of an action or special
23 proceeding commenced against the defendant officer or employe as soon as
24 reasonably possible is a bar to recovery by the officer or employe from the state or
25 political subdivision of reasonable attorney fees and costs of defending the action.

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1 The attorney fees and expenses shall not be recoverable if the state or political
2 subdivision offers the officer or employe legal counsel and the offer is refused by the
3 defendant officer or employe. If the officer, employe or agent of the state refuses to
4 cooperate in the defense of the litigation, the officer, employe or agent is not eligible
5 for any indemnification or for the provision of legal counsel by the governmental unit
6 under this section.

7 **SECTION 6.** 895.46 (5) (c) of the statutes is created to read:

8 895.46 (5) (c) A psychiatrist under s. 51.035.

9 (END)