

1985 Senate Bill 295

Date of enactment: April 21, 1986
Date of publication: April 30, 1986

1985 Wisconsin Act 281

AN ACT to repeal 46.08; and to amend 20.435 (1) (a) 1, 20.435 (3) (ho), 46.10 (2), 46.10 (2m), 46.10 (12), 46.26 (4) (e), 46.98 (3) (c), 46.98 (4) (b), 48.62 (1), 48.62 (2), 48.625, 49.19 (1) (a) 2, b and (10) (a), (c), (d) and (e), 51.47 (1), 59.97 (15) (bm), 60.63 (3), 60.71 (4) (b) and (c), 62.23 (7) (i) 2m and 141.045 (1) of the statutes, relating to: provision of care for children in group homes under the aid to families with dependent children program; licensing foster homes; foster home licenses for certain guardians; payment by a parent for child day care services; supplementing child day care services; liability for certain state care, maintenance, service and supplies; liability of minors for alcohol and other drug abuse treatment services; recovery of costs of county institutional maintenance in populous counties; certification of supervising public health nurses in public health agencies; creation of town sanitary districts; audits and estimates of expenditures of state correctional and related institutions; funding for counseling and testing services for the presence of an antibody to the virus that causes acquired immunodeficiency syndrome; and making an appropriation (suggested as remedial legislation by the department of health and social services).

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

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the department of health and social services, and introduced by the law revision committee under s. 13.83 (1) (c) 4, stats. After careful consideration of the various provisions of this 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.

SECTION 1g. 20.435 (1) (a) 1 of the statutes, as affected by 1985 Wisconsin Acts 73 and 120, is amended to read:

20.435 (1) (a) 1. In state fiscal year 1985-86 \$75,000 may not be expended and in state fiscal year 1986-87, unless approved by the joint committee on finance, no moneys may be expended for the provision of in-person counseling services and laboratory testing services for the presence of an antibody to HTLV-III at alternate testing sites.

SECTION 1r. 20.435 (3) (ho) of the statutes, as affected by 1985 Wisconsin Act 29, is amended to read:

20.435 (3) (ho) *Foster care.* Under s. 46.26 (4) (e), the amounts in the schedule for providing foster care, group home care and institutional child care to delinquent children under ss. 48.48 (4) and (14), 48.52 and 49.19 (10) (d). All moneys received in payment for providing foster care, group home care and institutional child care to delinquent children under ss. 48.48

(4) and (14), 48.52 and 49.19 (10) (d) shall be credited to this appropriation. If moneys generated by the monthly rate exceed actual calendar year foster care, group home care and institutional child care costs by 2% or more, all moneys in excess of 2% shall be remitted to the counties during the subsequent fiscal year. Each county shall receive a proportionate share of the remittance depending on the total number of days of placement in foster care, group home care or institutional child care.

NOTE: See the NOTE following SECTION 12.

SECTION 2. 46.08 of the statutes is repealed.

NOTE: Under present law, the superintendents of the various institutions of DHSS must prepare, on a monthly basis, an estimate of the institution's expenditures for the next month. The institution may not expend moneys unless the estimate is made and approved by DHSS. This bill eliminates this monthly estimate and approval process.

SECTION 3. 46.10 (2) of the statutes, as affected by 1985 Wisconsin Act 29, is amended to read:

46.10 (2) Except as provided in sub. (2m), any person, including but not limited to a person admitted or committed or placed under ss. 48.34 (4m), 51.10, 51.13, 51.15, 51.20, 51.35 (3), 51.37 (5), 51.45 (10), (11), (12) and (13), 55.05, 55.06, 971.14 (2) and (5), 971.17 (1), 975.01, 1977 stats., 975.02, 1977 stats., 975.06 and 975.17, 1977 stats., receiving care, maintenance, services and supplies provided by any institution in this state including university of Wisconsin

hospital and clinics, in which the state is chargeable with all or part of the person's care, maintenance, services and supplies, and any person receiving care and services ~~under boards or facilities from a department established under ss. 49.175, s. 51.42 and or 51.437 or from a facility established under s. 49.175,~~ and the person's property and estate, including the homestead, and the spouse of the person, and the spouse's property and estate, including the homestead, and, in the case of a minor child, the parents of the person, and their property and estates, including their homestead, and, in the case of a foreign child described in s. 48.839 (1) who became dependent on public funds for his or her primary support before an order granting his or her adoption, the resident of this state appointed guardian of the child by a foreign court who brought the child into this state for the purpose of adoption, and his or her property and estate, including his or her homestead, shall be liable for the cost of the care, maintenance, services and supplies in accordance with the fee schedule established by the department under s. 46.03 (18). If a spouse, widow or minor, or an incapacitated person may be lawfully dependent upon the property for their support, the court shall release all or such part of the property and estate from the charges that may be necessary to provide for those persons. The department shall make every reasonable effort to notify the liable persons as soon as possible after the beginning of the maintenance, but the notice or the receipt thereof is not a condition of liability.

NOTE: All institutional care provided by DHSS is covered by s. 46.10, stats., for collection purposes including care in juvenile correctional facilities. This bill clarifies to courts and attorneys that s. 46.10, stats., is the controlling statute in actions relating to state-provided care in a juvenile correctional facility. The bill reflects the current policy of DHSS.

SECTION 4. 46.10 (2m) of the statutes is amended to read:

46.10 (2m) The liability specified in sub. (2) shall not apply to tuberculosis patients receiving care, maintenance, services and supplies under s. 58.06 and ch. 149, ~~or to persons 18 and older receiving care, maintenance, services and supplies provided to persons 18 and older by prisons named in s. 53.01; or to minors receiving parents of a minor who receives care for alcohol or drug abuse under s. 51.47 (1) without consenting to billing~~ consent of the minor's parent or guardian.

NOTE: As currently worded, the reference in s. 46.10 (2m), stats., to minors receiving care for alcohol or other drug abuse under s. 51.47, stats., creates an exemption from liability for the minors rather than their parents. Such a construction is opposite to parallel language. Current wording is inconsistent with ss. 46.03 (18) (b) and 51.47 (1); stats., which exempt parents from liability while charging the minors based on their ability to pay. Under s. 46.10 (2m), stats., a minor can avoid his or her obligation to pay for services if services are provided without the consent of the minor's parent or guardian. The purpose of the other 2 statutes is to remove the parents' liability if they do not know that the child is receiving the service. This proposal deletes the exemption from liability for minors from s. 46.10 (2m), stats., and makes that section consistent with ss. 46.03 (18) (b) and 51.47 (1), stats.

SECTION 5. 46.10 (12) of the statutes is amended to read:

46.10 (12) The district attorney or his or her assistants in ~~counties~~ a county having a population of 500,000 or more shall, in matters pertaining to the recovery of the cost of maintenance of ~~inmates per-~~ sons in county and state institutions having a legal set- ~~tlement in such that~~ county, have the same authority as granted in this section to the department.

NOTE: The bill makes the statutes conform to current Milwaukee county practice regarding collection authority. The county is responsible for collections for county institution residents only. The state collects for state institution residents within the county.

SECTION 6. 46.26 (4) (e) of the statutes is amended to read:

46.26 (4) (e) Beginning January 1, 1983, for foster care, group home care and institutional child care to delinquent children under ss. 48.48 (4) and (14), 48.52 and 49.19 (10) (d) all payments and deductions made under this subsection and uniform fee collections under s. 46.03 (18) shall be deposited in the appropriation under s. 20.435 (3) (ho).

NOTE: See the NOTE following SECTION 12.

SECTION 7. 46.98 (3) (c) of the statutes, as affected by 1985 Wisconsin Act 29, is amended to read:

46.98 (3) (c) From the funds distributed under sub. (2) (a) 1, a county may provide day care services itself or it may purchase day care services from a child care provider. In addition, from the funds distributed under sub. (2) (a) 1, each county shall, subject to the availability of funds, provide day care by offering to each eligible parent a voucher for the payment of day care services provided by a child care provider. Each county shall allocate all or a portion of its day care funding for payment of vouchers. Except for parents who are eligible under sub. (4) (a) 4, an eligible parent has the right to choose whether the care will be provided in a day care center, in the home of another person or, subject to the county's approval, in the parent's home. ~~Notwithstanding s. 46.03 (18) (a), a~~ A parent who uses vouchers for the payment of day care services may supplement the ~~uniform fee for day care services set under s. 46.03 (18) (a) maximum rate for day care services set under sub. (4) (d).~~

NOTE: Supplementation of the day care rate is necessary when the cost of service is greater than the day care rate. The current statute permits the parent to supplement the uniform fee, which covers the full allowable day care costs. Not all counties, however, provide for the full cost in their reimbursement rate. This amendment permits a parent to supplement the reimbursement rate.

SECTION 8. 46.98 (4) (b) of the statutes is amended to read:

46.98 (4) (b) Parents receiving aid under this section whose family income is equal to or greater than 50% of the state median income are liable for the cost of child care received, payable in accordance with a fee schedule developed by the department based on abil-

ity to pay. ~~Fees~~ Payment may be waived for persons receiving aid under par. (a) 4.

NOTE: Under statutes and rules of the uniform fee system in ss. 46.03 (18) and 46.10 (14), stats., "fee" is related to the cost of care and not a person's ability to pay. The word "fee" in s. 46.98 (4) (b), stats., is confusing, because day care funds are distributed based on ability to pay. The bill eliminates the confusion by substituting "payment" for "fee".

SECTION 9. 48.62 (1) of the statutes is amended to read:

48.62 (1) ~~No~~ Any person may receive who receives, with or without transfer of legal custody, 4 or fewer children or more than 4 children if all of the children are siblings to provide care and maintenance for those children ~~unless he or she obtains~~ shall obtain a license to operate a foster home from the department or from a county agency or licensed child welfare agency as provided in s. 48.75.

NOTE: Under the definition of "foster home" in s. 48.02 (6), stats., a foster home may have more than 4 children if all of the children are siblings. The bill amends s. 48.62 (1), stats., so it is consistent with the definition.

SECTION 10. 48.62 (2) of the statutes, as affected by 1985 Wisconsin Act 29, is amended to read:

48.62 (2) Relatives ~~A relative~~ as defined in s. 48.02 (15) or as specified in s. 49.19 (1) (a) or a guardian of a child, who ~~provide~~ provides care and maintenance for a child, ~~are~~ is not required to obtain the license specified in this section. The department or a county agency or licensed child welfare agency as provided in s. 48.75 may issue a license to operate a foster home to ~~those relatives who have a relative who has~~ no duty of support under s. 49.90 (1) (a) and who ~~request~~ requests a license to operate a foster home for a specific child who is either placed by court order or who is the subject of a voluntary placement agreement under s. 48.63. The department, a county agency or a licensed child welfare agency may, at the request of a guardian appointed under ch. 880, license the guardian's home as a foster home for the guardian's minor ward who is living in the home and who is placed in the home by court order. Relatives with no duty of support ~~and guardians appointed under ch. 880~~ who ~~seek licenses~~ are licensed to operate foster homes are subject to the department's licensing rules.

NOTE: In some instances, county social and human service departments and licensed child welfare agencies have requested and obtained court appointment of foster parents as guardians under ch. 880, stats. Often these guardians are given the power to sign for education purposes, such as report cards, and to authorize medical procedures. This authority provides some permanence for the child, allowing the foster child to be more like an adopted child, but still retain the parental rights of the natural parents.

Current s. 48.62, stats., does not allow licensing of ch. 880, stats., guardians as foster parents. This bill allows guardians appointed under ch. 880, stats., to be licensed as foster parents.

SECTION 11. 48.625 of the statutes is amended to read:

48.625 Licensing of group homes. ~~No~~ Any person may receive who receives, with or without transfer of

legal custody, 5 to 8 children, to provide care and maintenance for those children ~~unless that person obtains~~ shall obtain a license to operate a group home from the department. This section does not apply to a foster home licensed under s. 48.62 in which care and maintenance is provided for more than 4 siblings.

NOTE: See the NOTE following the amendment of s. 48.62 (1), stats.

SECTION 12. 49.19 (1) (a) 2. b and (10) (a), (c), (d) and (e) of the statutes are amended to read:

49.19 (1) (a) 2. b. Is living in a foster home licensed under s. 48.62 if a license is required under that section ~~or~~, in a foster home located within the boundaries of a federally recognized American Indian reservation in this state and licensed by the tribal governing body of the reservation, ~~or is living in a group home licensed under s. 48.625~~ or in a child-caring institution licensed under s. 48.60, and has been placed in the foster home, group home or institution by a county agency under ch. 48, by the department or by a federally recognized American Indian tribal governing body in this state under an agreement with a county agency.

(10) (a) Aid under this section may also be granted to a nonrelative who cares for a child dependent upon the public for proper support in a foster home having a license under s. 48.62 ~~or~~, in a foster home located within the boundaries of a federally recognized American Indian reservation in this state and licensed by the tribal governing body of the reservation or in a group home licensed under s. 48.625, regardless of the cause or prospective period of dependency. The state shall reimburse counties pursuant to the procedure and the percentage rate of participation set forth in s. 49.52 for aid granted under this subsection except that if the child does not have legal settlement in the granting county, state reimbursement shall be at 100%. The county agency shall determine the legal settlement of the child. A child under one year of age shall be eligible for aid under this subsection irrespective of any other residence requirement for eligibility within this section.

(c) Reimbursement under par. (a) may also be paid to the county when the child is placed in a licensed foster home, group home or child-caring institution by a licensed child welfare agency or by a federally recognized American Indian tribal governing body in this state or by its designee, if the child is in the legal custody of the county agency providing child welfare services or if the child was removed from the home of a relative specified in sub. (1) (a) as a result of a judicial determination that continuance in the home of the relative would be contrary to the child's welfare for any reason and the placement is made pursuant to an agreement with the county agency.

(d) Aid may also be paid under this section to a foster home, to a group home licensed under s. 48.625 or to a ~~child-care~~ child-caring institution by the state when the child is in the custody or guardianship of the state, when the child is a ward of an American Indian

tribal court in this state and the placement is made under an agreement between the department and the tribal governing body or when the child was part of the state's direct service case load and was removed from the home of a relative specified in sub. (1) (a) as a result of a judicial determination that continuance in the home of a relative would be contrary to the child's welfare for any reason and the child is placed by the department.

(e) Notwithstanding pars. (a), (c) and (d), aid under this section may not be granted for placement of a child in a foster home licensed by a federally recognized American Indian tribal governing body, for placement of a child in a foster home or child-caring institution by a tribal governing body or its designee ~~or~~ for the placement of a child who is a ward of a tribal court if the tribal governing body is receiving or is eligible to receive funds from the federal government for that type of placement or for placement of a child in a group home licensed under s. 48.625.

NOTE: These statutes authorize alternate care payments in the aid to families with dependent children program. Under the current statutes, alternate care payments can be made to group homes. The bill clarifies the current statutes to state explicitly that these payments can be made.

SECTION 13. 51.47 (1) of the statutes is amended to read:

51.47 (1) Except as provided in subs. (2) and (3), any physician or health care facility licensed, approved or certified by the state for the provision of health services may render preventive, diagnostic, assessment, evaluation or treatment services for the abuse of alcohol or other drugs to a minor 12 years of age or over without obtaining the consent of or notifying the minor's parent or guardian. Unless consent of the minor's parent or guardian is required under sub. (2), the physician or health care facility shall obtain the minor's consent prior to billing a 3rd party for services under this section. If the minor does not consent, the minor shall be solely responsible for paying for the services, which the department shall bill to the minor under s. 46.03 (18) (b).

NOTE: This amendment clarifies s. 51.47 (1), stats., by adding the word "solely". A corresponding amendment in the bill affects s. 46.10 (2m), stats.

SECTION 14. 59.97 (15) (bm) of the statutes is amended to read:

59.97 (15) (bm) A foster family home which is the primary domicile of a foster parent, ~~which is for 4 or fewer children~~ and which is licensed under s. 48.62 shall be a permitted use in all residential areas and is not subject to pars. (a) and (b) except that foster homes operated by corporations, child welfare agencies, churches, associations or public agencies shall be subject to pars. (a) and (b).

NOTE: See the NOTE following the amendment of s. 48.62 (1), stats.

SECTION 15. 60.63 (3) of the statutes is amended to read:

60.63 (3) A foster family home which is the primary domicile of a foster parent, ~~which is for 4 or fewer children~~ and which is licensed under s. 48.62 shall be a permitted use in all residential areas and is not subject to subs. (1) and (2) except that foster homes operated by corporations, child welfare agencies, churches, associations or public agencies shall be subject to subs. (1) and (2).

NOTE: See the NOTE following the amendment of s. 48.62 (1), stats.

SECTION 16. 60.71 (4) (b) and (c) of the statutes are amended to read:

60.71 (4) (b) The town board shall publish a class 2 notice, under ch. 985, of the hearing. The notice shall contain an announcement of the hearing and a description of the boundaries of the proposed town sanitary district. The town board shall mail the notice to the department of ~~health and social services~~ industry, labor and human relations and the department of natural resources at least 10 days prior to the hearing.

(c) Any person may file written comments on the formation of the district with the town clerk. Any owner of property within the boundary of the proposed district may appear at the hearing and offer objections, criticisms or suggestions as to the necessity of the proposed district and the question of whether his or her property will be benefited by the establishment of the district. A representative of the department of ~~health and social services~~ industry, labor and human relations and of the department of natural resources shall attend the hearing and advise the town board.

NOTE: The statute refers to petitions to create or expand town sanitary districts. Chapter 221, laws of 1979, transferred the plumbing unit from DHSS to the department of industry, labor and human relations (DILHR). There are currently no DHSS program staff to review sanitary district petitions and the petition should be submitted to DILHR.

SECTION 17. 62.23 (7) (i) 2m of the statutes is amended to read:

62.23 (7) (i) 2m. A foster family home which is the primary domicile of a foster parent, ~~which is for 4 or fewer children~~ and which is licensed under s. 48.62 shall be a permitted use in all residential areas and is not subject to subs. 1 and 2 except that foster homes operated by corporations, child welfare agencies, churches, associations or public agencies shall be subject to subs. 1 and 2.

NOTE: See the NOTE following the amendment of s. 48.62 (1), stats.

SECTION 18. 141.045 (1) of the statutes is amended to read:

141.045 (1) The qualifications of all public health nurses shall be prescribed by rules adopted by the department. All public health nurses shall be registered nurses. Practical nurses may be employed by health agencies under the supervision of a certified public health nurse to perform services for which licensed.

NOTE: Chapter 29, laws of 1977, section 1157m, repealed s. 141.045 (2) and (5), 1975 stats., which gave authority to DHSS to issue certificates to nurses meeting the qualifications specified by rule for public health nurses. Since the authority

to certify public health nurses was repealed, the reference in s. 141.045 (1), stats., to "certified public health nurse" is no longer appropriate.

SECTION 19. Program responsibility changes. In the sections of the statutes listed in Column A, the program responsibilities references shown in Column B are deleted and the program responsibilities references shown in Column C are inserted:

A	B	C
Statute Sections	References Deleted	References Inserted
15.191 (intro.)	60.71 (4)(c)	none
15.221 (intro.)	none	60.71 (4)(c)
