



## 1995 SENATE BILL 661

March 27, 1996 - Introduced by Senators RISSER, BURKE and BRESKE, cosponsored by Representatives TURNER, BOYLE, WASSERMAN and FOTI. Referred to Committee on Health, Human Services and Aging.

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 cer-  
4           tain county contracts.

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### *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 social services (DHSS) 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 DHSS 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 DHSS are limited to \$250,000 and judgments against them in these suits that exceed applicable liability insurance are payable by the state.

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.

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*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 fed-  
5 eral 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 de-  
8 partment 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 part-  
17 time, including hourly, basis, psychiatric services that are funded under s. 51.42 or  
18 51.437, for the provision of those services.

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

1           1. The psychiatrist provides psychiatric services, on a full-time or part-time,  
2 including hourly, basis, under employment by or under contract with a private, non-  
3 profit agency that contracts with a county department under s. 51.42 or 51.437 to pro-  
4 vide psychiatric services.

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

15           b. After a determination, if any, is made under subd. 2. a. that the conditions  
16 specified under subd. 2. a. apply, the psychiatrist and the private agency jointly sub-  
17 mit the application to the department of administration and that department ap-  
18 proves the application. Before approving an application, the department of adminis-  
19 tration may send the application to the medical examining board for evaluation. The  
20 medical examining board shall evaluate any application submitted by the depart-  
21 ment of administration and return the application to the department of administra-  
22 tion with the board's recommendation regarding approval. The department of ad-  
23 ministration shall notify the psychiatrist and the private agency of the department's  
24 decision to approve or disapprove the application.

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

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

10           165.25 **(6)** (d) Psychiatrists under s. 51.035 are covered by this section and shall  
11           be considered agents of the department of health and social services for purposes of  
12           determining which agency head may request the attorney general to appear and de-  
13           fend them.

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

15           655.003 **(4)** A psychiatrist who provides professional services under the condi-  
16           tions described in s. 51.035 (2), with respect to those professional services provided  
17           by the psychiatrist for which he or she is covered by s. 165.25 and considered an agent  
18           of the department, as provided in s. 165.25 (6) (d).

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

20           893.82 **(2)** (d) 4. A psychiatrist under s. 51.035.

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

22           895.46 **(1)** (a) If the defendant in any action or special proceeding is a public  
23           officer or employe and is proceeded against in an official capacity or is proceeded  
24           against as an individual because of acts committed while carrying out duties as an  
25           officer or employe and the jury or the court finds that the defendant was acting within

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

1 employe. If the officer, employe or agent of the state refuses to cooperate in the de-  
2 fense of the litigation, the officer, employe or agent is not eligible for any indemnifica-  
3 tion or for the provision of legal counsel by the governmental unit under this section.

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

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

6 (END)