

1999 ASSEMBLY BILL 823

March 2, 2000 – Introduced by Representatives MUSSER, UNDERHEIM and PETTIS, cosponsored by Senator MOEN. Referred to Committee on Health.

1 **AN ACT to amend** 48.685 (1) (bm), 48.685 (2) (b) 4., 48.685 (3) (a), 48.685 (4m) (a)
2 (intro.), 48.685 (5) (a), 48.685 (5c) (c), 48.685 (6) (b) 1., 50.065 (1) (cn), 50.065 (5),
3 146.40 (4g) (a) 4., 146.40 (4r) (a), 146.40 (4r) (am) 1., 146.40 (4r) (c), 146.40 (4r)
4 (d) and 146.40 (4r) (e); and **to create** 48.685 (5d) (c), 48.685 (5d) (d), 48.685 (7)
5 (bm), 50.065 (5d) (c), 50.065 (5d) (d), 50.065 (7) (bm) and 146.40 (1) (cn) of the
6 statutes; **relating to:** tribal administration of rehabilitation reviews for
7 persons who otherwise may not operate, be employed at, contract with or reside
8 at an entity that provides care for children or adults, reporting certain
9 individuals to the department of health and family services who are alleged to
10 have neglected or abused a client or misappropriated the property of a client
11 and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, the department of health and family services (DHFS) may not license, certify, issue a certificate of approval to or register a person to operate an adult treatment facility, organization or service and may not license a person to operate a foster home, treatment foster home, group home, shelter care facility, child

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welfare agency or day care center; a county department of human services or social services (county department) or a child welfare agency may not license a person to operate a foster home or treatment foster home; a county department may not certify a person as a day care provider for purposes of reimbursement under the Wisconsin works program; and a school board may not contract with a person to operate a day care program; if the person has been convicted of certain serious crimes, has abused or neglected a client or misappropriated the property of a client, has abused or neglected a child or has credentials that are not current or that are limited so as to restrict the person from providing adequate care to a client. Currently, a facility, organization or service that provides care for adults or children and that is subject to this law is defined as an “entity”. Current law also prohibits an entity from employing, contracting with or permitting to reside at the entity a nonclient resident if any of those factors apply to the person. A “nonclient resident” is defined as a person who resides, or is expected to reside, at an entity who is not a client of the entity and who has or is expected to have regular direct contact with the entity.

Current law, however, permits DHFS, a county department, a child welfare agency, a school board or an entity to license, certify, issue a certificate of approval to, register, employ, contract with or permit to reside at an entity a person who has been convicted of certain serious crimes, has abused or neglected a client or misappropriated the property of a client, has abused or neglected a child or has credentials that are not current if the person demonstrates that the person has been rehabilitated. Current law permits DHFS, a county department, a child welfare agency, a school board or, in the case of an entity that is located within the boundaries of a reservation, a person or body designated by the tribe to conduct rehabilitation reviews.

This bill permits a tribe to request DHFS to grant the tribe the authority to conduct rehabilitation reviews with respect to some, but not all, entities within the boundaries of the tribe’s reservation, and requires DHFS to grant that authority if the criteria that DHFS is required under the bill to establish by rule are satisfied. The bill also permits a tribe to request DHFS to grant the tribe the authority to conduct rehabilitation reviews with respect to an entity located outside the boundaries of the tribe’s reservation that is owned or operated by the tribe or a tribal corporation and, if that authority is granted, to conduct rehabilitation reviews with respect to that off-reservation tribal entity. The bill requires DHFS to consider factors such as the proximity of the off-reservation tribal entity to the reservation and the population to be served by the off-reservation tribal entity in evaluating a tribe’s request for the authority to conduct rehabilitation reviews of an off-reservation tribal entity, and permits DHFS to grant that authority if DHFS determines that the conduct of rehabilitation reviews by the tribe with respect to the off-reservation tribal entity is rationally related to the protection of clients.

Also under current law, an individual may report to DHFS that he or she believes an individual who is employed by or under contract with an entity has neglected or abused a client or misappropriated the property of a client. In addition, an entity is required to report to DHFS any allegation made that an individual who is employed by or under contract with the entity has neglected or abused a client or

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misappropriated the property of a client. If, after providing an individual with an opportunity for a hearing, DHFS or a hearing examiner finds there is reasonable cause to believe the allegations, DHFS is required to enter the name of the individual in a registry maintained by DHFS. The registry must also contain the findings of DHFS or the hearing examiner with respect to the allegations made against the individual and, if the individual makes a statement disputing DHFS's or the hearing examiner's findings, the individual's statement. This bill expands the reporting and registry listing requirements to include nonclient residents ten years of age or older.

Finally, the bill makes various technical changes to the reporting and registry listing law and to the law governing who may operate, be employed at, contract with or reside at an entity, including a change specifying that the latter law does not apply to nonclient residents under ten years of age.

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.** 48.685 (1) (bm) of the statutes, as created by 1999 Wisconsin Act
2 9, is amended to read:

3 48.685 (1) (bm) "Nonclient resident" means a person 10 years of age or over who
4 resides, or is expected to reside, at an entity, who is not a client of the entity and who
5 has, or is expected to have, regular, direct contact with clients of the entity.

6 **SECTION 2.** 48.685 (2) (b) 4. of the statutes, as affected by 1999 Wisconsin Act
7 9, is amended to read:

8 48.685 (2) (b) 4. Subdivision 1. does not apply with respect to a person under
9 18 years of age, but not under 12 years of age, who is a caregiver-~~or nonclient resident~~
10 of a day care center that is licensed under s. 48.65 or established or contracted for
11 under s. 120.13 (14) or of a day care provider that is certified under s. 48.651 and with
12 respect to whom the department, a county department or a school board is required
13 under par. (am) (intro.) to obtain the information specified in par. (am) 1. to 5.

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1 **SECTION 3.** 48.685 (3) (a) of the statutes, as affected by 1999 Wisconsin Act 9,
2 is amended to read:

3 48.685 **(3)** (a) Every 4 years or at any time within that period that the
4 department, a county department, a child welfare agency or a school board considers
5 appropriate, the department, county department, child welfare agency or school
6 board shall request the information specified in sub. (2) (am) 1. to 5. for all persons
7 who are licensed, certified or contracted to operate an entity, for all persons who are
8 nonclient residents of an entity and for all persons under 18 years of age, but not
9 under 12 years of age, who are caregivers of a day care center that is licensed under
10 s. 48.65 or established or contracted for under s. 120.13 ~~(4)~~ (14) or of a day care
11 provider that is certified under s. 48.651.

12 **SECTION 4.** 48.685 (4m) (a) (intro.) of the statutes, as affected by 1999 Wisconsin
13 Act 9, is amended to read:

14 48.685 **(4m)** (a) (intro.) Notwithstanding s. 111.335, and except as provided in
15 par. (ad) and sub. (5), the department may not license, or continue or renew the
16 license of, a person to operate an entity, a county department may not certify, or
17 continue or renew the certification of, a day care provider under s. 48.651, a county
18 department or a child welfare agency may not license, or continue or renew the
19 license of, a foster home or treatment foster home under s. 48.62 and a school board
20 may not contract with, or continue, extend or renew a contract with, a person under
21 s. 120.13 (14), if the department, county department, child welfare agency or school
22 board knows or should have known any of the following:

23 **SECTION 5.** 48.685 (5) (a) of the statutes, as affected by 1999 Wisconsin Act 9,
24 is amended to read:

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1 48.685 (5) (a) The Except as provided in par. (bm), the department may license
2 to operate an entity, a county department may certify under s. 48.651, a county
3 department or a child welfare agency may license under s. 48.62 and a school board
4 may contract with under s. 120.13 (14) a person who otherwise may not be licensed,
5 certified or contracted with for a reason specified in sub. (4m) (a) 1. to 5., and an entity
6 may employ, contract with or permit to reside at the entity a person who otherwise
7 may not be employed, contracted with or permitted to reside at the entity for a reason
8 specified in sub. (4m) (b) 1. to 5., if the person demonstrates to the department, the
9 county department, the child welfare agency or the school board or, in the case of an
10 entity located outside the boundaries of a reservation that is owned or operated by
11 a tribe or tribal corporation and that is subject to rehabilitation reviews by the tribe
12 under sub. (5d) (d) or an entity that is located within the boundaries of a reservation,
13 to the person or body designated by the tribe under sub. (5d) (a) 3., by clear and
14 convincing evidence and in accordance with procedures established by the
15 department by rule or by the tribe that he or she has been rehabilitated.

16 **SECTION 6.** 48.685 (5c) (c) of the statutes is amended to read:

17 48.685 (5c) (c) Any person who is permitted but fails under sub. (5) (a) to
18 demonstrate to the school board that he or she has been rehabilitated may appeal to
19 the secretary superintendent of public instruction or his or her designee. Any person
20 who is adversely affected by a decision of the secretary superintendent of public
21 instruction or his or her designee under this paragraph has a right to a contested case
22 hearing under ch. 227.

23 **SECTION 7.** 48.685 (5d) (c) of the statutes is created to read:

24 48.685 (5d) (c) A tribe may request the department to grant the tribe the
25 authority to conduct rehabilitation reviews under sub. (5) with respect to some, but

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1 not all, entities within the boundaries of the tribe's reservation. The department
2 shall grant that authority if the criteria established by rule under sub. (7) (bm) are
3 satisfied.

4 **SECTION 8.** 48.685 (5d) (d) of the statutes is created to read:

5 48.685 (5d) (d) A tribe may request the department to grant the tribe the
6 authority to conduct rehabilitation reviews under sub. (5) with respect to an entity
7 located outside the boundaries of the tribe's reservation that is owned or operated by
8 the tribe or a tribal corporation. The department shall evaluate the tribe's request,
9 considering factors such as the proximity of the off-reservation tribal entity to the
10 reservation and the population to be served by the off-reservation tribal entity, and,
11 if the department determines that the conduct of rehabilitation reviews by the tribe
12 with respect to the off-reservation tribal entity is rationally related to the protection
13 of clients, the department may authorize the tribe to conduct rehabilitation reviews
14 with respect to the off-reservation tribal entity.

15 **SECTION 9.** 48.685 (6) (b) 1. of the statutes, as affected by 1999 Wisconsin Act
16 9, is amended to read:

17 48.685 (6) (b) 1. For caregivers who are licensed by the department, for persons
18 under 18 years of age, but not under 12 years of age, who are caregivers of a day care
19 center that is licensed under s. 48.65 or established or contracted for under s. 120.13
20 ~~(4)~~ (14) or of a day care provider that is certified under s. 48.651, for persons who are
21 nonclient residents of an entity that is licensed by the department, and for other
22 persons specified by the department by rule, the entity shall send the background
23 information form to the department.

24 **SECTION 10.** 48.685 (7) (bm) of the statutes is created to read:

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1 48.685 (7) (bm) Establish by rule criteria for the department to use in
2 determining whether a tribe whose plan is approved under sub. (5d) (b) may be
3 authorized to conduct rehabilitation reviews under sub. (5) for some, but not all,
4 entities within the boundaries of the tribe’s reservation.

5 **SECTION 11.** 50.065 (1) (cn) of the statutes, as created by 1999 Wisconsin Act
6 9, is amended to read:

7 50.065 (1) (cn) “Nonclient resident” means a person 10 years of age or older who
8 resides, or is expected to reside, at an entity, who is not a client of the entity and who
9 has, or is expected to have, regular, direct contact with clients of the entity.

10 **SECTION 12.** 50.065 (5) of the statutes, as affected by 1999 Wisconsin Act 9, is
11 amended to read:

12 50.065 (5) The department may license, certify, issue a certificate of approval
13 to or register to operate an entity a person who otherwise may not be licensed,
14 certified, issued a certificate of approval or registered for a reason specified in sub.
15 (4m) (a) 1. to 5., and an entity may employ, contract with or permit to reside at the
16 entity a person who otherwise may not be employed, contracted with or permitted
17 to reside at the entity for a reason specified in sub. (4m) (b) 1. to 5., if the person
18 demonstrates to the department, or, in the case of an entity located outside the
19 boundaries of a reservation that is owned or operated by a tribe or tribal corporation
20 and that is subject to rehabilitation reviews by the tribe under sub. (5d) (d) or an
21 entity that is located within the boundaries of a reservation, to the person or body
22 designated by the tribe under sub. (5d) (a) 3., by clear and convincing evidence and
23 in accordance with procedures established by the department by rule, or by the tribe,
24 that he or she has been rehabilitated.

25 **SECTION 13.** 50.065 (5d) (c) of the statutes is created to read:

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1 50.065 (5d) (c) A tribe may request the department to grant the tribe the
2 authority to conduct rehabilitation reviews under sub. (5) with respect to some, but
3 not all, entities within the boundaries of the tribe’s reservation. The department
4 shall grant that authority if the criteria established by rule under sub. (7) (bm) are
5 satisfied.

6 **SECTION 14.** 50.065 (5d) (d) of the statutes is created to read:

7 50.065 (5d) (d) A tribe may request the department to grant the tribe the
8 authority to conduct rehabilitation reviews under sub. (5) with respect to an entity
9 located outside the boundaries of the tribe’s reservation that is owned or operated by
10 the tribe or a tribal corporation. The department shall evaluate the tribe’s request,
11 considering factors such as proximity of the off-reservation tribal entity to the
12 reservation and the population to be served by the off-reservation tribal entity, and,
13 if the department determines that the conduct of rehabilitation reviews by the tribe
14 with respect to the off-reservation tribal entity is rationally related to the protection
15 of clients, the department may authorize the tribe to conduct rehabilitation reviews
16 with respect to the off-reservation tribal entity.

17 **SECTION 15.** 50.065 (7) (bm) of the statutes is created to read:

18 50.065 (7) (bm) Establish by rule criteria for the department to use in
19 determining whether a tribe whose plan is approved under sub. (5d) (b) may be
20 authorized to conduct rehabilitation reviews under sub. (5) for some, but not all,
21 entities within the boundaries of the tribe’s reservation.

22 **SECTION 16.** 146.40 (1) (cn) of the statutes is created to read:

23 146.40 (1) (cn) “Nonclient resident” has the meaning given in s. 50.065 (1) (cn).

24 **SECTION 17.** 146.40 (4g) (a) 4. of the statutes is amended to read:

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1 146.40 (4g) (a) 4. A brief statement, if any, of an individual about whom the
2 department is notified lists on the registry under sub. (4) subd. 2. and who disputes
3 the department's findings under sub. (4r) (b) or the hearing officer's findings under
4 sub. (4r) (d).

5 **SECTION 18.** 146.40 (4r) (a) of the statutes is amended to read:

6 146.40 (4r) (a) Any individual may report to the department that he or she
7 believes that any person who is employed by or under contract with an entity or who
8 is a nonclient resident at an entity has neglected or abused a client or
9 misappropriated the client's property.

10 **SECTION 19.** 146.40 (4r) (am) 1. of the statutes is amended to read:

11 146.40 (4r) (am) 1. Except as provided in subd. 2., an entity shall report to the
12 department any allegation of misappropriation of the property of a client or of neglect
13 or abuse of a client by any person who is employed by or under contract with the
14 entity or who is a nonclient resident at the entity if the person is under the control
15 of the entity.

16 **SECTION 20.** 146.40 (4r) (c) of the statutes is amended to read:

17 146.40 (4r) (c) ~~If the nurse's assistant or home health aide under par. (b) a~~
18 person whom the department proposes under par. (b) to list on the registry notifies
19 the department that he or she waives a hearing to contest the listings in the registry
20 ~~under par. (b), or fails to notify the department within 30 days after receipt of a the~~
21 ~~notice under specified in par. (b), the department shall enter the name of the~~
22 individual under sub. (4g) (a) 2. and the department's findings about the individual
23 under sub. (4g) (a) 3.

24 **SECTION 21.** 146.40 (4r) (d) of the statutes is amended to read:

