

1999 DRAFTING REQUEST

Bill

Received: **01/25/2000**

Received By: **malaigm**

Wanted: **Soon**

Identical to LRB:

For: **Terry Musser (608) 266-7461**

By/Representing: **Joyce Kiel**

This file may be shown to any legislator: NO

Drafter: **malaigm**

May Contact:

Alt. Drafters:

Subject: **Health - facility licensure
Children - day care
Children - out-of-home placement**

Extra Copies: **Joyce Kiel**

Pre Topic:

No specific pre topic given

Topic:

Tribal administration of rehabilitation reviews of child or adult caregivers

Instructions:

See attached--convert WLCS-0238/1 to LRB draft.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Reauired</u>
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/2	malaigm 02/04/2000 isagerro 02/11/2000	jgeller 02/15/2000	martykr 02/16/2000	_____	lrb-docadmin 02/16/2000		S&L

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/4	malaigm 02/28/2000	jgeller 02/29/2000	kfollet 02/29/2000	_____	lrb_docadmin 02/29/2000	lrb_docadminS&L 02/29/2000	

FE Sent For:

02-29-00
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Drafting History:

Table with columns: Vers., Drafted, Reviewed, Typed, Proofed, Submitted, Jacketed, Reauired. Row 1: /1, malaigm, jgeller, jfrantze, lrb_docadmin. Includes handwritten notes like '1/2 2/15 jlg' and '2/14'.

FE Sent For:

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				JHK <END> 2/2			

JLK: tlu;ksm

01/25/2000

1 **AN ACT** to amend 48.685 (5) (a) and 50.065 (5); and to create 48.685 (5d) (c), 48.685
2 (5d) (d), 48.685 (7) (bm), 50.065 (5d) (c), 50.065 (5d) (d) and 50.065 (7) (bm) of the
3 statutes; **relating to:** tribal administration of the rehabilitation review program for
4 caregiver background checks.

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

LEGISLATIVE COUNCIL STAFF PREFATORY NOTE: In general, current law provides that certain persons may not be licensed to operate, certified as, approved for registration as, contracted with, employed by, or permitted to reside as a nonclient at certain types of "entities" as defined in ss. 48.685 and 50.065, stats. (for example, nursing homes, community-based residential facilities, community mental health and alcoholism and other drug abuse programs, child welfare agencies, foster homes or day care centers), if they have been convicted of certain crimes or had other findings made against them, for example, if there has been a determination made under the state child abuse and neglect statutes that the person has abused or neglected a child. Except for certain crimes, current law provides an exception under certain circumstances if the person demonstrates to the appropriate regulatory agency by clear and convincing evidence that he or she has been rehabilitated.

1999 Wisconsin Act 9 (the biennial budget act) provided that an American Indian tribe or band (tribe) may administer the rehabilitation review program, under certain circumstances, with respect to an entity that is located within the boundaries of the tribe's reservation if the tribe's rehabilitation review plan is approved by the department of health and family services (DHFS).

The draft does the following:

1. Provides that a tribe may request authority to conduct rehabilitation reviews for some, but not all, entities on the tribe's reservation. The draft requires DHFS to establish, by administrative rule, criteria which DHFS will use to determine whether a tribe whose rehabilitation review plan has been approved to conduct rehabilitation reviews for entities located within the boundaries of the tribe's reservation may be authorized to conduct rehabilitation reviews for some, but not all, entities

on the reservation. The draft provides that DHFS must grant the tribe's request if the criteria established by administrative rule are satisfied.

2. Provides that a tribe may conduct rehabilitation reviews with respect to an entity that is located outside the boundaries of the tribe's reservation and owned or operated by the tribe or a tribal corporation if DHFS has authorized the tribe to conduct rehabilitation reviews with respect to that off-reservation entity. The bill provides that DHFS must evaluate the tribe's request to conduct rehabilitation reviews with respect to such off-reservation entities, including a consideration of factors such as proximity of the entity to the tribe's reservation and the population to be served by that entity.

1 **SECTION 1.** 48.685 (5) (a) of the statutes, as affected by 1999 Wisconsin Act 9, is
2 amended to read:

3 48.685 (5) (a) The department may license to operate an entity, a county department
4 may certify under s. 48.65 1, a county department or a child welfare agency may license under
5 s. 48.62 and a school board may contract with under s. 120.13 (14) a person who otherwise
6 may not be licensed, certified or contracted with for a reason specified in sub. (4m) (a) 1. to
7 5., and an entity may employ, contract with or permit to reside at the entity a person who
8 otherwise may not be employed, contracted with or permitted to reside at the entity for a reason
9 specified in sub. (4m) (b) 1. to 5., if the person demonstrates to the department, the county
10 department, the child welfare agency or the school board or, in the case of an entity that is
11 located within the boundaries of a reservation or that is located outside the boundaries of
12 reservation and owned or operated by a tribe or tribal corporation if the department has
13 authorized the tribe to conduct rehabilitation reviews with respect to that off-reservation
14 entity under sub. (5d) (d), to the person or body designated by the tribe under sub. (5d) (a) 3.,
15 by clear and convincing evidence and in accordance with procedures established by the
16 department by rule or by the tribe that he or she has been rehabilitated.

17 **SECTION 2.** 48.685 (5d) (c) of the statutes is created to read:

1 48.685 (5d) (c) A tribe may request authority to conduct rehabilitation review under
2 sub. (5) with respect to some, but not all, entities within the boundaries of the tribe's
3 reservation. The department shall grant such authority if the criteria established by rule under
4 sub. (7) (bm) are satisfied.

5 **SECTION 3.** 48.685 (5d) (d) of the statutes is created to read:

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

12 **SECTION 4.** 48.685 (7) (bm) of the statutes is created to read:

13 48.685 (7) (bm) Establish by rule criteria which the department will use to determine
14 whether a tribe whose plan is approved under sub. (5d) (b) may be authorized to conduct
15 rehabilitation reviews under sub. (5) for some, but not all, entities within the boundaries of the
16 tribe's reservation.

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

19 50.065 (5) The department may license, certify, issue a certificate of approval to or
20 register to operate an entity a person who otherwise may not be licensed, certified, issued a
21 certificate of approval or registered for a reason specified in sub. (4m) (a) 1. to 5., and an entity
22 may employ, contract with or permit to reside at the entity a person who otherwise may not
23 be employed, contracted with or permitted to reside at the entity for a reason specified in sub.
24 (4m) (b) 1. to 5., if the person demonstrates to the department, or, in the case of an entity that

1 is located within the boundaries of a reservation or that is located outside the boundaries&f
2 a reservation and owned or ouerated by a tribe or tribal cornoration if the department has
3 authorized the tribe to conduct rehabilitation reviews with respect to that off-reservation
4 entitv under sub. (5d)(d), to the person or body designated by the tribe under sub. (5d) (a) 3.,
5 by clear and convincing evidence and in accordance with procedures established by the
6 department by rule, or by the tribe, that he or she has been rehabilitated.

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

8 50.065 (5d) (c) A tribe may request authority to conduct rehabilitation review under
9 sub. (5) with respect to some, but not all, entities within the boundaries of the tribe's
10 reservation. The department shall grant such authority if the criteria established by rule under
11 sub. (7) (bm) are satisfied.

12 **SECTION 7.** 50.065 (5d) (d) of the statutes is created to read:

13 50.065 (5d) (d) A tribe may request authority to conduct rehabilitation reviews under
14 sub. (5) with respect to an entity that is located outside the boundaries of the tribe's reservation
15 and owned or operated by the tribe or a tribal corporation. The department shall evaluate, the
16 tribe's request, including a consideration of factors such as proximity of the entity to the
17 reservation and the population to be served by the entity, and may authorize the tribe to conduct
18 rehabilitation reviews with respect to that off-reservation entity.

19 **SECTION 8.** 50.065 (7) (bm) of the statutes is created to read:

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

24 (END)

(INSERTA)

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 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 person who is subject to this law is defined as an "entity". Current law also prohibits an entity from employing, contracting with or permitting to reside as a nonclient resident of the entity a person who has, or is expected to have, regular, direct contact with clients of the entity if any of those factors apply to the person.

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 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 entity. The bill requires DHFS to consider factors such as the proximity of the entity to the reservation and the population to be served by the entity in evaluating a tribe's request for the authority to conduct rehabilitation reviews of an off-reservation tribal entity.

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

, and permit,



Divote

PMR
JG
LR

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

reviews for persons who otherwise may not operate,
be employed at, contract with or reside at an
entity that provides care for children or adults

Regen

1 **AN ACT** to ~~amend~~ 48.685 (5) (a) and 50.065 (5); and to create 48.685 (5d) (c),
2 48.685 (5d) (d), 48.685 (7) (bm), 50.065 (5d) (c), 50.065 (5d) (d) and 50.065 (7)
3 (bm) of the statutes; relating to: tribal administration of #j/rehabilitation
4 ~~review program for caregiver background checks.~~

Insert A ✓

Analysis by the Legislative Reference Bureau

~~This is a preliminary draft. An analysis will be provided in a later version.~~

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

~~PREFATORY NOTE: In general, current law provides that certain persons may not be licensed to operate, certified as, approved for registration as, contracted with, employed by, or permitted to reside as a nonclient at certain types of entities" as defined in ss. 48.685 and 50.065, stats. (for example, nursing homes, community-based residential facilities, community mental health and alcoholism and other drug abuse programs, child welfare agencies, foster homes or day care centers), if they have been convicted of certain crimes or had other findings made against them, for example, if there has been a determination made under the state child abuse and neglect statutes that the person has abused or neglected a child. Except for certain crimes, current law provides an exception under certain circumstances if the person demonstrates to the appropriate regulatory agency by clear and convincing evidence that he or she has been rehabilitated.~~

~~1999 Wisconsin Act 9 (the biennial budget act) provided that an American Indian tribe or band (tribe) may administer the rehabilitation review program, under certain~~

(waiver) the department to grant the tribe the

1 procedures established by the department by rule or by the tribe that he or she has
2 been rehabilitated.

3 SECTION 2. 48.685 (5d) (c) of the statutes is created to read:

4 48.685 (5d) (c) A tribe may request authority to conduct rehabilitation review
5 under sub. (5) with respect to some, but not all, entities within the boundaries of the
6 tribe's reservation. The department shall grant such authority if the criteria
7 established by rule under sub. (7) (bm) are satisfied.

8 SECTION 3. 48.685 (5d) (d) of the statutes is created to read:

9 48.685 (5d) (d) A tribe may request authority to conduct rehabilitation reviews
10 under sub. (5) with respect to an entity that is located outside the boundaries of the
11 tribe's reservation and owned or operated by the tribe or a tribal corporation. The
12 department shall evaluate the tribe's request, including a consideration of factors
13 such as the proximity of the entity to the reservation and the population to be served

14 by the entity, and may authorize the tribe to conduct rehabilitation reviews with
15 respect to that off-reservation entity.

16 SECTION 4. 48.685 (7) (bm) of the statutes is created to read:

17 48.685 (7) (bm) Establish by rule criteria which the department will use to
18 determine whether a tribe whose plan is approved under sub. (5d) (b) may be
19 authorized to conduct rehabilitation reviews under sub. (5) for some, but not all,
20 entities within the boundaries of the tribe's reservation.

21 SECTION 5. 50.065 (5) of the statutes, as affected by 1999 Wisconsin Act 9, is
22 amended to read:

23 50.065 (5) The department may license, certify, issue a certificate of approval
24 to or register to operate an entity a person who otherwise may not be licensed,
25 certified, issued a certificate of approval or registered for a reason specified in sub.

the conduct of
if the department determines that rehabilitation reviews
conducted by the tribe with respect to the off-reservation
tribal entity which is rationally related to the protection of clients
the department
tribal entity

off-reservation tribal

to use in determining ✓

reviews

considering

for

that is

off-reservation tribal

the

tribal

that ✓

the

1 (4m) (a) 1. to 5., and an entity may employ, contract with or permit to reside at the
 2 entity a person who otherwise may not be employed, contracted with or permitted
 3 to reside at the entity for a reason specified in sub. (4m) (b) 1. to 5., if the person
 4 demonstrates to the department, or, in the case of an entity that is located within the
 5 boundaries of a reservation or that is located outside the boundaries of a reservation
 6 and owned or operated by a tribe or tribal corporation ~~if the department has~~
 7 ~~authorized the tribe to conduct rehabilitation reviews with respect to that~~
 8 ~~off-reservation entity~~ under sub. (5d) (d), to the person or body designated by the
 9 tribe under sub. (5d) (a) 3., by clear and convincing evidence and in accordance with
 10 procedures established by the department by rule, or by the tribe, that he or she has
 11 been rehabilitated. (*the department to grant the tribe the*) (*that*) (*that*)

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

13 50.065 (5d) (c) A tribe may request authority to conduct rehabilitation *reviews*
 14 under sub. (5) with respect to some, but not all, entities within the boundaries of the
 15 tribe's reservation. The department shall grant ~~such~~ authority if the criteria
 16 established by rule under sub. (7) (bm) are satisfied.

17 SECTION 7. 50.065 (5d) (d) of the statutes is created to read:

18 50.065 (5d) (d) A tribe may request authority to conduct rehabilitation reviews
 19 under sub. (5) with respect to an entity that is located outside the boundaries of the
 20 tribe's reservation and owned or operated by the tribe or a tribal corporation. The
 21 department shall evaluate the tribe's request, including a consideration of factors
 22 such as proximity of the off-reservation tribal entity to the reservation and the population to be served by
 23 the entity, and may authorize the tribe to conduct rehabilitation reviews with respect
 24 to ~~that~~ the off-reservation tribal entity. (*the*) (*tribal*) (*the conduct of*)

25 SECTION 8. 50.065 (7) (bm) of the statutes is created to read:

, if the department determines that rehabilitation reviews conducted by the tribe with respect to the off-reservation tribal entity is rationally related to the protection of clients, the department

4
6
7
8

off-reservation tribal

the *tribal* *the conduct of*

to use in determining

for

1 50.065 (7) (bm) Establish by rule criteria ~~which~~ the department ~~will use to~~
2 ~~determine~~ 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

(END)

D-note
↓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4398/1dn

GMM.....

↑
JLG

Joyce:

In addition to various minor language changes made in ss. 48.685 (5) (a), (5d) (c) and (7) (bm) and 50.065 (5), (5d) (c) and (7) (bm) for the sake of verbal economy and clarity, this draft provides a *standard* for DHFS to follow in determining whether to grant a tribe the authority to conduct rehabilitation reviews of off-reservation tribal entities. This draft adds such a standard to preserve the constitutionality of the draft. Specifically, in *J. I? Ahern Co. v. Building Commission*, 114 Wis. 2d 69, 88-91 (Ct. App. 1983), the court held that a delegation of legislative powers to an administrative agency is valid only if the delegation is accompanied by an adequate standard to control the exercise of the delegated power. The standard may be broad so long as it is ascertainable and sufficient to protect against "arbitrary, unreasonable or oppressive conduct by the agency". *Id.*, at 90. WLCS-0238/l requires DHFS to evaluate the application and consider certain factors, but then permits DHFS to authorize the tribe to conduct the review without supplying any standard for granting that authority. Accordingly, this draft supplies such a standard, *i.e.*, DHFS may grant that authority if DHFS determines that the conduct of the review by the tribe is rationally related to the protection of clients. See, 48.685 (5d) (b) and 50.065 (5d) (b), as created by 1999 Wisconsin Act 9, for a similar standard.

ss.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: Gordon.Malaise@legis.state.wi.us

(INSERTA)

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 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 person who is subject to this law is defined as an "entity" Current law also prohibits an entity from employing, contracting with or permitting to reside as a nonclient resident of the entity a person who has, or is expected to have, regular, direct contact with clients of the entity if any of those factors apply to the person.

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 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.

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4398/1dn
GMM:jlj:jf

February 2, 2000

Joyce:

In addition to various minor language changes made in ss. 48.685 (5) (a), (5d) (c) and (7) (bm) and 50.065 (5), (5d) (c) and (7) (bm) for the sake of verbal economy and clarity, this draft provides a *standard* for DHFS to follow in determining whether to grant a tribe the authority to conduct rehabilitation reviews of off-reservation tribal entities. This draft adds such a standard to preserve the constitutionality of the draft. Specifically, in *J. F. Ahern Co. v. Building Commission*, 114 Wis. 2d 69, 88-91 (Ct. App. 1983), the court held that a delegation of legislative powers to an administrative agency is valid only if the delegation is accompanied by an adequate standard to control the exercise of the delegated power. The standard may be broad so long as it is ascertainable and sufficient to protect against "arbitrary, unreasonable or oppressive conduct by the agency.". *Id.*, at 90. WLCS-0238/l requires DHFS to evaluate the application and consider certain factors, but then permits DHFS to authorize the tribe to conduct the review without supplying any standard for granting that authority. Accordingly, this draft supplies such a standard, i.e., DHFS may grant that authority if DHFS determines that the conduct of the review by the tribe is rationally related to the protection of clients. See ss. 48.685 (5d) (b) and 50.065 (5d) (b), as created by 1999 Wisconsin Act 9, for a similar standard.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: Gordon.Malaise@legis.state.wi.us

Malaise, Gordon

From: Lonergan, Sandra
Sent: Friday, February 04, 2000 12:12 PM
To: Malaise, Gordon
cc: Dow, Susan; Sweet, Richard; Kiel, Joyce; Kolka, Kathie; 'Kiesow, John (E)'
Subject: LRB draft 4398

Gordon,

The following are technical corrections that need to be drafted. Would you please incorporate them into Rep. Musser's LRB draft 43981 I believe Kathie was going to let you know that it's okay. Please let me know if you have any questions. Thanks a lot. I appreciate your help.

Sandy
(Underheim's office)

January 6, 2000 -- Technical Corrections needed to the Background Check Legislation

GMM 1. In s. 48.685 (5c) (c), "Secretary" of Public Instruction should be changed to "Superintendent" of Public Instruction.

GMM 2. In s. 48.685 (3) (a), the statutory reference should be to s. 120.13 (14), not (4). *act 9*

ESR 3. S. 146.40, relative to reporting of complaints of abuse, neglect, and misappropriation: the department's investigation of those complaints; and findings going on the Registry when a complaint is substantiated was intended to apply to all non-DRL licensed caregivers and non-client residents, not just to nurse aides. To that end the following corrections are needed:

a. s. 146.40 (4g) (a) 4. should be corrected to read: "A brief statement, if any, of an individual about whom the department is notified under this subsection and who disputes the department's findings under sub. (4r) (b) or the hearing officer's findings under sub. (4r) (d)."

b. s. 146.40 (4r) (a) should be corrected to read: "Any individual may report to the department that he or she believes that any person who is employed by or under contract with an entity, or who is a nonclient resident at the entity has neglected or abused a client or misappropriated the client's property."

c. s. 146.40 (4r) (am) 1. Should be corrected to read: "Except as provided in subd. 2., an entity shall report to the department any allegation of misappropriation of a client's property or of neglect or abuse of a client by any person who is employed by or under contract with the entity, or who is a nonclient resident at the entity if the person is under the control of the entity."

d. s. 146.40 (4r) (c) should be corrected to read: "If the person under par. (b) notifies the department... individual under sub. (4g) (a) 3."

s. 146.40 (4r) (e) should be corrected to read: "The person may provide the department with a brief statement disputing the department's findings.. ."

ESR 4. Punctuation correction: Omit the commas on either side of "or contract with" in the fourth line of s. 146.40 (4r) (em) so that it reads: "If the department... receives a report... and determines that a person... holds a credential that is related to the person's employment at or contract with the entity, the department... shall refer the report to the department of regulation and licensing.*"

TWO ADDITIONAL TECHNICAL CHANGES:

GMM X. S. 48.685 (5) (a) needs to start with something like, "Except as in (5) Act 9 (bm),".

Explanation: s. 48.685 (1) © now **defines** the "serious crimes" that are a bar to licensing, employment as a caregiver, nonclient residency, or contracting with an entity. S. 48.685 (5) (a) then goes on to allow persons to demonstrate rehabilitation relative to any of those convictions and where rehab. is shown, the bar is lifted. But s. (5) **(bm)** then lists a set of convictions that do not allow themselves of rehabilitation, and some of those convictions are also on the list of "serious crimes." The qualifier needs to be added to (5) (a) to undo the conflict. No corresponding change is needed to chapter 50 because that chapter doesn't have the second set of convictions that cause bars.

✓
GMM/2. In the s. 50.065 (1) (cn) and s. 48.685 (1) (bm) definitions of "non-client resident," the phrase ^{CR Act 9} "who is 10 years of age or older, and" needs to be inserted between "a person" and "who resides" in the first line of the definitions. It would therefore read, "Non-client resident" means a person who is 10 years of age or older, and who resides, or is expected to reside at an entity. . . ."
CSR

Explanation: The prior statute just referred to "nonclient residents" and HFS 12 defined them as persons 12 years of age or older who reside at an entity and have access to clients. When the definition moved to the statute, the age limit disappeared. This means that now, for example, if someone applies to be a CBRF operator, they have to submit a BID form to the dept. for their newborn baby, or their two year old toddler. We suggest adding the age limit back in; the reason for the change from 12 years to 10 is that persons can now develop adult criminal backgrounds at age 10 instead of 12, and since the goal of the background checks is to **find** those convictions, that's where the age limit should be.

✓ 48.685 (2)(b) 4, Act 9

Gordon, if any of this information needs clarification, please let me know or call Sue Dow, DHFS (4-9893) or Dick Sweet (6-2982). Thanks very much. Sandy



Dr-st

WFO-
Inserts
out of
order

1999 BILL

✓
facility, organization or service
that provides care for
adults or children and
that

Regenerate

Regen

1 **AN ACT to amend** 48.685 (5) (a) and 50.065 (5); and **to create** 48.685 (5d) (c),
2 **48.685** (5d) (d), 48.685 (7) (bm), 50.065 (5d) (c), 50.065 (5d) (d) and 50.065 (7)
3 (bm) of the **statutes; relating to:** tribal administration of rehabilitation
4 reviews for persons who otherwise may not operate, be employed at, contract

5 with or reside at an entity that provides care for children or adults.
reporting certain individuals to the department of health and family services
who are alleged to have neglected or abused a client or misappropriated
the property of a client 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 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 person who is subject to this law is defined as an "entity". Current law also prohibits an entity from employing, contracting with or permitting to reside as a nonclient resident of

at the entity ✓

BILL

~~the entity a person who has, or is expected to have, regular, direct contact with clients of the entity if any of those factors apply to the person.~~

NO \$ A "non-client 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 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.

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

who has been convicted of certain serious crimes or has abused or neglected a client of micropayment of property of a client, has abused or neglected a child or has creditors that are not clients

Insert A's A-I

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

Insert 2-1

- 1 SECTION 1. 48.685 (5) (a) of the statutes, as affected by 1999 Wisconsin Act 9,
- 2 is amended to read:
- 3 48.685 (5) (a) ~~The~~ department may license to operate an entity, a county
- 4 department may certify under s. 48.651, a county department or a child welfare
- 5 agency may license under s. 48.62 and a school board may contract with under s.
- 6 120.13 (14) a person who otherwise may not be licensed, certified or contracted with
- 7 for a reason specified in sub. (4m) (a) 1. to 5., and an entity may employ, contract with
- 8 or permit to reside at the entity a person who otherwise may not be employed,

Except as provided in par. (b)m, the

BILL

1 contracted with or permitted to reside at the entity for a reason specified in sub. (4m)

2 (b) 1. to 5., if the person demonstrates to the department, the county department, the

3 child welfare agency or the school board or, in the case of ^{move} an entity that is located

4 within the boundaries of a reservation ~~or an entity located outside the boundaries~~

5 of a reservation that is owned or operated by a tribe or tribal corporation and that

6 is subject to rehabilitation reviews by the tribe under sub. (5d) (d), ^{or} to the person or

7 body designated by the tribe under sub. (5d) (a) 3., by clear and convincing evidence

8 and in accordance with procedures established by the department by rule or by the

9 tribe that he or she has been rehabilitated.

Insert
3-9

10 **SECTION 2.** 48.685 (5d) (c) of the statutes is created to read:

11 48.685 (5d) (c) A tribe may request the department to grant the tribe the
12 authority to conduct rehabilitation reviews under sub. (5) with respect to some, but
13 not all, entities within the boundaries of the tribe's reservation. The department
14 shall grant that authority if the criteria established by rule under sub. (7) (bm) are
15 satisfied.

16 **SECTION 3.** 48.685 (5d) (d) of the statutes is created to read:

17 48.685 (5d) (d) A tribe may request the department to grant the tribe the
18 authority to conduct rehabilitation reviews under sub. (5) with respect to an entity
19 located outside the boundaries of the tribe's reservation that is owned or operated by
20 the tribe or a tribal corporation. The department shall evaluate the tribe's request,
21 considering factors such as the proximity of the off-reservation tribal entity to the
22 reservation and the population to be served by the off-reservation tribal entity, and,
23 if the department determines that the conduct of rehabilitation reviews by the tribe
24 with respect to the off-reservation tribal entity is rationally related to the protection

BILL

of clients, the department may authorize the tribe to conduct rehabilitation reviews with respect to the off-reservation tribal entity.

SECTION 4. 48.685 (7) (bm) of the statutes is created to read:

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

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

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

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

50.065 (5d) (c) A tribe may request the department to grant the tribe the authority to conduct rehabilitation reviews under sub. (5) with respect to some, but

1 ✓
Insert
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→ INS 4-7

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BILL

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 7.** 50.065 (5d) (d) of the statutes is created to read:

5 50.065 (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 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 8.** 50.065 (7) (bm) of the statutes is created to read:

16 50.065 (7) (bm) Establish by rule criteria for the department to use in
17 determining whether a tribe whose plan is approved under sub. (5d) (b) may be
18 authorized to conduct rehabilitation reviews, under sub. (5) for some, but not all,
19 entities within the boundaries of the tribe's reservation.

Insert
20
§19 →

(END)

D-note

Note that this draft also corrects the cross reference
to s. 120.13(14) in s. 48.685 (6)(b)1. and strikes "nontribal
resident" from s. 48.685 (2)(b)4. to correct that provision as well
D-note
GMM

Insert A-1

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 a facility, organization or service that is licensed by, certified by or registered with DHFS to provide direct care or treatment services to clients (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 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. ^(ten)

This bill expands the reporting and registry listing requirements to include nonclient residents ~~10~~ years of age or older. This bill also makes various technical changes to the reporting and registry listing provisions.

Insert 4-~~22~~⁺

SECTION 1. 50.065 (1) (cn) of the statutes, as ~~affected~~ ^{created} by 1999 Wisconsin Act 9, is amended to read:

50.065 (1) (cn) "Nonclient resident" means a person 10 years of age or older 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 clients of the entity.

History: 1997 a. 27, 105, 237; 1999 a. 9.

Insert ⁵4-19

SECTION 2. 146.40 (1) (cn) ^X of the statutes is created to read:

146.40 (1) (cn) "Nonclient resident" has the meaning given in s. [✓]50.065 (1) (cn).

SECTION 3. 146.40 (4g) (a) 4. ^X of the statutes is amended to read:

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

History: 1987 a. 128; 1989 a. 31, 84, 336; 1991 a. 39; 1993 a. 27, 399; 1995 a. 21; 1997 a. 27, 35, 156, 237, 252; 1999 a. 9, 22.

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

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

History: 1987 a. 128; 1989 a. 31, 84, 336; 1991 a. 39; 1993 a. 27, 399; 1995 a. 21; 1997 a. 27, 35, 156, 237, 252; 1999 a. 9, 22.

SECTION 5. 146.40 (4r) (am) 1. of the statutes is amended to read:

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

History: 1987 a. 128; 1989 a. 31, 84, 336; 1991 a. 39; 1993 a. 27, 399; 1995 a. 21; 1997 a. 27, 35, 156, 237, 252; 1999 a. 9, 22.

SECTION 6. 146.40 (4r) (c) of the statutes is amended to read:

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

History: 1987 a. 128; 1989 a. 31, 84, 336; 1991 a. 39; 1993 a. 21, 399; 1995 a. 21; 1997 a. 27, 35, 156, 237, 252; 1999 a. 9, 22.

^X
SECTION 7. 146.40 (4r) (d) of the statutes is amended to read:

146.40 (4r) (d) If the a person specified in the report received under par. (a) or (am) whom the denartment nronoses under nar. (b)[✓] to list on the registry timely notifies the division of hearings and appeals created under s. 15.103 (1) that he or she contests the listings in the registry under par. (b)[✓], the division of hearings and appeals shall hold a hearing under the requirements of ch. 227. If after presentation of evidence a hearing officer finds that there is no reasonable cause to believe that the person ~~specified in the report received under par. (a) or (am)~~ performed an action alleged under par. (a) or (am), the hearing officer shall dismiss the proceeding. If after presentation of evidence a hearing officer finds that there is reasonable cause to believe that the person ~~specified in the report received under par. (a) or (am)~~ performed an action alleged under par. (a) or (am), the hearing officer shall so find and shall cause the name of the person ~~specified in the report received under par. (a) or (am)~~ to be entered under sub. (4g) (a) 2. and the hearing officer's findings about the person ~~specified in the report received under par. (a) or (am)~~ to be entered under sub. (4g) (a) 3.

Hi story: 1987 a. 128; 1989 a.31, 84, 336; 1991 a. 39; 1993 a. 27, 39^X; 1995 a.27; 1997 a. 27, 35, 156, 237, 252; 1999 a. 9, 22.

SECTION 8. 146.40 (4r) (e)^X of the statutes is amended to read:

146.40 (4r) (e) ~~The nurse's assistant or home health aide~~ A person whom the department lists on the registry under sub. (4g)[✓] may provide the department with a brief statement disputing the department's findings under par. (b) or the hearing officer's findings under par. (d) and, if so provided, the department shall enter the statement under sub. (4g) (a) 4.

Hi story: 1987 a. 128; 1989 a. 31, 84, 336; 1991 a. 39; 1993 a. 27, 39; 1995 a.27; 1997 a. 27, 35, 156, 237, 252; 1999 a. 9, 22.

(INSERT A)

The bill also makes various technical changes to the law governing who may operate, be employed at, contract with or reside at an entity, including a change specifying that the law does not apply to nonclient residents under ~~10~~ years of age.

(END OF INSERT)

ten

(INSERT 2-1)

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

48.685 (1) (bm) "Nonclient resident" means a person 10 years of age or over 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 clients of the entity

History: 1997 a. 27, 237, 281; 1999 a. 9; s. 13.93 (2) (c).

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

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

History: 1997 ~~s. 27, 237, 281~~; 1999 ~~a. 9; s. 13.93 (2) (c)~~ ^X 48.685 (3) (a) of the statutes, as affected by 1999 Wisconsin Act 9,

is amended to read:

48.685 (3) (a) Every 4 years or at any time within that period that the department, a county department, a child welfare agency or a school board considers appropriate, the department, county department, child welfare agency or school board shall request the information specified in sub. (2) (am) 1. to 5. for all persons

who are licensed, certified or contracted to operate an entity, for all persons who are nonclient residents of an entity and for all persons under 18 years of age, but not under 12 years of age, who are caregivers of a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13 ~~(4)~~ (14)[✓] or of a day care provider that is certified under s. 48.651.

History: 1997 a. 27, 237, 281; 1999 a. 9; s. 13.93 (2) (c).

(END OF INSERT)

(INSERT 3-9)

SECTION 4. 48.685 (5c) (c) [✓] of the statutes is amended to read:

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

History: 1997 a. 27, 237, 281; 1999 a. 9; s. 13.93 (2) (c).

(END OF INSERT)

(INSERT 4-2)

SECTION 5. 48.685 (6) (b) 1. [✓] of the statutes, as affected by 1999 Wisconsin Act 9, is amended to read:

48.685 (6) (b) 1. For caregivers who are licensed by the department, for persons under 18 years of age, but not under 12 years of age, who are caregivers of a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13 [✓] ~~(4)~~ ~~(14)~~ or of a day care provider that is certified under s. 48.651, for persons who are nonclient residents of an entity that is licensed by the department, and for other



persons specified by the department by rule, the entity shall send the background information form to the department.

~~NOTE: NOTE: The bracketed language indicates the correct cross-reference. Corrective legislation is pending. NOTE:
History: 1997 a. 27, 237, 281; 1998 a. 9; s. 13.93 (2)(c).~~

(END OF INSERT)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4398/2
GMM&ISR: A:...

JG

February 8, 2000 } new date

Note that this draft also corrects the cross^oreference to s. 120.13 (14) in s. 48.685 (6) (b) 1. and strikes "nonclient resident" from s. 48.685 (2) (b) 4. to correct that provision as well. ✓

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E-mail: Gordon.Malaise@legis.state.wi.us

Please note that I added a ^odefinition of "nonclient resident" to ~~section~~ ^osection 146.40. I also made a technical change to ~~section~~ ^osection 146.40 (4r) (d) so that the language conforms with the other technical changes made in the bill.

If you have any questions, please do not hesitate to contact me.

Ivy G. Sager-Rosenthal
Legislative Attorney
Phone: (608) 261-4455
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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-439812
GMM&ISR:jlg:km

February 16, 2000

Note that this draft also corrects the cross-reference to s. 120.13 (14) in s. 48.685 (6) (b) 1. and strikes "nonclient resident" from s. 48.685 (2)(b) 4. to correct that provision as well.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: Gordon.Malaise@legis.state.wi.us

Please note that I added a definition of "nonclient resident" to s. 146.40. I also made a technical change to s. 146.40 (4r) (d) so that the language conforms with the other technical changes made in the bill.

If you have any questions, please do not hesitate to contact me.

Ivy G. Sager-Rosenthal
Legislative Attorney
Phone: (608) 261-4455
E-mail: Ivy.Sager-Rosenthal@legis.state.wi.us

Malaise. Gordon

From: Dow, Susan
Sent: Friday, February 18, 2000 2:26 PM
To: Malaise, Gordon; Kolka, Kathie; Lonergan, Sandra
Subject: Caregiver technical change

Hi, Gordon, Kathie, and Sandy,

I hate to have to ask, but I just spoke with Sandy Lonergan about one further technical correction we've found needed in the caregiver background check language. It's only needed in Chapter 48, and it's needed to make the language parallel about what the department, counties, child welfare agencies, and school boards are prohibited from doing (namely licensing, continuing, or renewing licenses) when a person's been convicted of a "serious crime" or develops any of the other versions of a bad background. Without the change, if someone is convicted of a serious crime, for example, there will be a window of time created where the person could stay licensed, certified, etc., when the intent was that as of February 1, 2000, when a person develops an unsatisfactory background, they must be removed from caregiver duties until they receive rehabilitation approval.

Sandy said I should ask if you could do "a real quick slash 3" to add the needed words, so here's the paragraph with the needed words in boldface.

(Intro.)
(4m) (a) ~~Notwithstanding~~ s. 111.335, and except as provided in par. (ad) and sub. (5), ~~the department~~ may not license, or continue or renew the license of, a person to operate an entity, a county department may not **certify, or continue or renew the certification of** a day care provider under s. 48.651, a county department or a child welfare agency may not **license, or continue or renew the license of,** a foster home or treatment foster home under s. 48.62 and a school board may not contract with or **continue or renew a contract with** a person under 2. 120.13 (14), if the department, county department, child welfare agency, or school board knows or should have known any of the following:"

If any of this needs clarification, please let me know. Thanks very much in advance.

Sue Dow
DHFS



State of Wisconsin
1999 - 2000 LEGISLATURE

12/2/99

LRB-4398/8
GMM&ISR:jlg:km
③
RMR

1999 BILL

Regen

Regenerate

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

BILL

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.

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

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 a facility,



letter ✓

reporting and registry listing law and to the

BILL

~~organization or service that is licensed by, certified by or registered with DHFS to provide direct care or treatment services to clients; 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 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. ^{no R}

~~This bill expands the reporting and registry listing requirements to include nonclient residents ten years of age or older. This bill also makes various technical changes to the reporting and registry listing provisions.~~

Insert
A
(from previous pages)

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.

BILL

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
s. 48.65 or established or contracted for under s. 120.13 ~~(4)~~ (14) or of a day care
provider that is certified under s. 48.651.

10
11
12 **SECTION 4.** 48.685 (5) (a) of the statutes, as affected by 1999 Wisconsin Act 9,
13 is amended to read:

14 48.685 (5) (a) ~~The~~ Except as provided in par. (bm), the department may license
15 to operate an entity, a county department may certify under s. 48.651, a county
16 department or a child welfare agency may license under s. 48.62 and a school board
17 may contract with under s. 120.13 (14) a person who otherwise may not be licensed,
18 certified or contracted with for a reason specified in sub. (4m) (a) 1. to 5., and an entity
19 may employ, contract with or permit to reside at the entity a person who otherwise
20 may not be employed, contracted with or permitted to reside at the entity for a reason
21 specified in sub. (4m) (b) 1. to 5., if the person demonstrates to the department, the
22 county department, the child welfare agency or the school board or, in the case of an
23 entity located outside the boundaries of a reservation that is owned or operated by
24 a tribe or tribal corporation and that is subject to rehabilitation reviews by the tribe
25 under sub. (5d) (d) or an entity that is located within the boundaries of a reservation,

BILL

1 to the person or body designated by the tribe under sub. (5d) (a) 3., by clear and
2 convincing evidence and in accordance with procedures established by the
3 department by rule or by the tribe that he or she has been rehabilitated.

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

5 48.685 **(5c)** (c) Any person who is permitted but fails under sub. (5) (a) to
6 demonstrate to the school board that he or she has been rehabilitated may appeal to
7 the ~~secretary~~ sunerintendent of public instruction or his or her designee. Any person
8 who is adversely affected by a decision of the ~~secretary~~ sunerintendent of public
9 instruction or his or her designee under this paragraph has a right to a contested case
10 hearing under ch. 227.

11 **SECTION 6.** 48.685 (5d) (c) of the statutes is created to read:

12 48.685 **(5d)** (c) A tribe may request the department to grant the tribe the
13 authority to conduct rehabilitation reviews under sub. (5) with respect to some, but
14 not all, entities within the boundaries of the tribe's reservation. The department
15 shall grant that authority if the criteria established by rule under sub. (7) (bm) are
16 satisfied.

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

18 , 48.685 **(5d)** (d) A tribe may request the department to grant the tribe the
19 authority to conduct rehabilitation reviews under sub. (5) with respect to an entity
20 located outside the boundaries of the tribe's reservation that is owned or operated by
21 the tribe or a tribal corporation. The department shall evaluate the tribe's request,
22 considering factors such as the proximity of the off-reservation tribal entity to the
23 reservation and the population to be served by the off-reservation tribal entity, and,
24 if the department determines that the conduct of rehabilitation reviews by the tribe
25 with respect to the off-reservation tribal entity is rationally related to the protection

BILL

1 of clients, the department may authorize the tribe to conduct rehabilitation reviews
2 with respect to the off-reservation tribal entity.

3 **SECTION 8.** 48.685 (6) (b) 1. of the statutes, as affected by 1999 Wisconsin Act
4 9, is amended to read:

5 48.685 (6) (b) 1. For caregivers who are licensed by the department, for persons
6 under 18 years of age, but not under 12 years of age, who are caregivers of a day care
7 center that is licensed under s. 48.65 or established or contracted for under s. 120.13
8 ~~(4)~~ (14) or of a day care provider that is certified under s. 48.651, for persons who are
9 nonclient residents of an entity that is licensed by the department, and for other
10 persons specified by the department by rule, the entity shall send the background
11 information form to the department.

12 **SECTION 9.** 48.685 (7) (bm) of the statutes is created to read:

13 48.685 (7) (bm) Establish by rule criteria for the department to use in
14 determining whether a tribe whose plan is approved under sub. (5d) (b) may be
15 authorized to conduct rehabilitation reviews under sub. (5) for some, but not all,
16 entities within the boundaries of the tribe's reservation.

17 **SECTION 10.** 50.065 (1) (cn) of the statutes, as created by 1999 Wisconsin Act
18 9, is amended to read:

19 50.065 (1) (cn) "Nonclient resident" means a person 10 years of age or older who
20 resides, or is expected to reside, at an entity, who is not a client of the entity and who
21 has, or is expected to have, regular, direct contact with clients of the entity.

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

24 50.065 (5) The department may license, certify, issue a certificate of approval
25 to or register to operate an entity a person who otherwise may not be licensed,

BILL

1 certified, issued a certificate of approval or registered for a reason specified in sub.
2 (4m) (a) 1. to 5., and an entity may employ, contract with or permit to reside at the
3 entity a person who otherwise may not be employed, contracted with or permitted
4 to reside at the entity for a reason specified in sub. (4m) (b) 1. to 5., if the person
5 demonstrates to the department, or, in the case of an entity located outside the
6 boundaries of a reservation that is owned or operated by a tribe or tribal corporation
7 and that is subject to rehabilitation reviews by the tribe under sub. (5d) (d) or an
8 entity ~~that is~~ located within the boundaries of a reservation, to the person or body
9 designated by the tribe under sub. (5d) (a) 3., by clear and convincing evidence and
10 in accordance with procedures established by the department by rule, or by the tribe,
11 that he or she has been rehabilitated.

12 **SECTION 12.** 50.065 (5d) (c) of the statutes is created to read:

13 50.065 (5d) (c) A tribe may request the department to grant the tribe the
14 authority to conduct rehabilitation reviews under sub. (5) with respect to some, but
15 not all, entities within the boundaries of the tribe's reservation. The department
16 shall grant that authority if the criteria established by rule under sub. (7) (bm) are
17 satisfied.

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

19 50.065 (5d) (d) A tribe may request the department to grant the tribe the
20 authority to conduct rehabilitation reviews under sub. (5) with respect to an entity
21 located outside the boundaries of the tribe's reservation that is owned or operated by
22 the tribe or a tribal corporation. The department shall evaluate the tribe's request,
23 considering factors such as proximity of the off-reservation tribal entity to the
24 reservation and the population to be served by the off-reservation tribal entity, and,
25 if the department determines that the conduct of rehabilitation reviews by the tribe

BILL

1 with respect to the off-reservation tribal entity is rationally related to the protection
2 of clients, the department may authorize the tribe to conduct rehabilitation reviews
3 with respect to the off-reservation tribal entity.

4 **SECTION 14.** 50.065 (7) (bm) of the statutes is created to read:

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

9 **SECTION 15.** 146.40 (1) (cn) of the statutes is created to read:

10 146.40 (1) (cn) "Nonclient resident" has the meaning given in s. 50.065 (1) (cn).

11 **SECTION 16.** 146.40 (4g) (a) 4. of the statutes is amended to read:

12 146.40 (4g) (a) 4. A brief statement, if any, of an individual ~~about~~ whom the
13 department ~~is notified~~ lists on the registry under sub. (4) subd. 2. and who disputes
14 the department's findings under sub. (4r) (b) or the hearing officer's findings under
15 sub. (4r) (d).

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

17 146.40 (4r) (a) Any individual may report to the department that he or she
18 believes that any person who is employed by or under contract with an entity or who
19 is a nonclient resident at an entity has neglected or abused a client or
20 misappropriated the client's property.

21 **SECTION 18.** 146.40 (4r) (am) 1. of the statutes is amended to read:

22 146.40 (4r) (am) 1. Except as provided in subd. 2., an entity shall report to the
23 department any allegation of misappropriation of the property of a client or of neglect
24 or abuse of a client by any person who is employed by or under contract with the

BILL

1 entity or who is a nonclient resident at the entity if the person is under the control
2 of the entity.

3 **SECTION 19.** 146.40 (4r) (c) of the statutes is amended to read:

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

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

12 146.40 (4r) (d) If ~~the a person specified in the report received under par. (a) or~~
13 ~~(am)~~ whom the department nroposes under par. (b) to list on the registry timely
14 notifies the division of hearings and appeals created under s. 15.103 (1) that he or
15 she contests the listings in the registry ~~under par. (b)~~, the division of hearings and
16 appeals shall hold a hearing under the requirements of ch. 227. If after presentation
17 of evidence a hearing officer finds that there is no reasonable cause to believe that
18 the person ~~specified in the report re~~ ~~under par. (a) or (am)~~ performed an action
19 alleged under par. (a) or (am), the hearing officer shall dismiss the proceeding. If
20 after presentation of evidence a hearing officer finds that there is reasonable cause
21 to believe that the person ~~specified in the report received under par. (a) or (am)~~
22 performed an action alleged under par. (a) or (am), the hearing officer shall so find
23 and shall cause the name of the person ~~specified in the report received unde~~ ~~par. (a)~~
24 ~~or (am)~~ to be entered under sub. (4g) (a) 2. and the hearing officer's findings about

BILL

SECTION 20

1 the person specified in the report received under par. (a) or (am) to be entered under
2 sub. (4g) (a) 3.

3 SECTION 21. 146.40 (4r) (e) of the statutes is amended to read:

4 146.40 (4r) (e) ~~The nurse's assistant or home health aide~~ A person whom the
5 department lists on the registry under sub. (4g) may provide the department with
6 a brief statement disputing the department's findings under par. (b) or the hearing
7 officer's findings under par. (d) and, if so provided, the department shall enter the
8 statement under sub. (4g) (a) 4.

9 (END)

DM:ste
↓

Insert 4-11

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

, or continue or renew the certification of, ✓

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

History: **1997 a. 27, 237, 281; 1999 a. 9; s. 13.93 (2) (c).**

, or extend or renew a contract with, ✓

(end of insert)

D-Note

#A note on the terminology used in s. 48.685 (4)(a) (intro.):

#1. The license of a child welfare agency, group home day care center or shelter care facility is continued, not renewed.

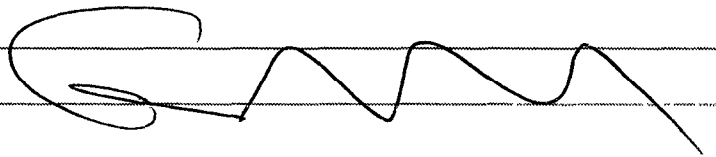
See s. 48.66 (5).

#2. The license of a foster home or treatment foster home is renewed, not continued. See s. 48.75 (1r).

#3. Because "continued" is a term of art created by DHS

to describe the extension of a license described in item 1, above, it is not a proper term to describe the ~~extension~~ ^{plain} extension of a contract between a day care provider and a school board.

Accordingly, this draft uses "extend" to describe that situation.



DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4398/3dn
GMM:jlg:km

February 23, 2000

A note on the terminology used in s. 48.685 (4m) (a) (intro.):

1. The license of a child welfare agency, group home, day care center or shelter care facility is *continued*, not *renewed*. See s. 48.66 (5).

2. The license of a foster home or treatment foster home is *renewed*, not *continued*. See s. 48.75 (1r).

3. Because "continued" is a term of art created by DHFS to describe the extension of a license described in item 1, above, it is not a proper term to describe the extension of a contract between a day care provider and a school board. Accordingly, this draft uses "extend" to describe that situation.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: Gordon.Malaise@legis.state.wi.us

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection, Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 02/23/2000

To: Representative Musser

Relating to LRB drafting number: LRB-4398

Topic

Tribal administration of rehabilitation reviews of child or adult caregivers

Subject(s)

Health - facility licensure, Children - day care, Children - out-of-home placement

1. **JACKET** the draft for introduction Terry M Musser
in the **Senate** or **the Assembly** (check only one). Only the requester under whose name the drafting request is entered in the **LRB's** drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____
A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW, prior to introduction** _____.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Gordon M. Malaise, Senior Legislative Attorney
Telephone: (608) 266-9738

Malaise, Gordon

From: Lonergan, Sandra
Sent: Monday, February 28, 2000 11:07 AM
To: Malaise, Gordon
Subject: LRB 4398

Gordon,

Please go ahead and incorporate into the draft Dick's suggestions. Thanks. Please call if you have questions.

Sandy

-----Original Message-----

From: Sweet, Richard
Sent: Friday, February 25, 2000 4:40 PM
To: Lonergan, Sandra
cc: Kolka, Kathie; Kiel, Joyce; Malaise, Gordon
Subject:

Sandy,

Joyce and I talked about the issue you raised on the caregiver draft. We think that it's easily handled by inserting "or continue." before "renew" on page 4, line 18 of LRB-4398/3; and inserting "continue." before "extend" on page 4, line 20. This will cover the situation where someone is convicted of a serious crime after certification, but long before renewal time. The certification couldn't be continued from that point on. Section 50.065(4m)(a)(intro.), Stats., which is the parallel provision in Ch. 50, Stats., already uses the term "continue".

Dick Sweet

Richard Sweet, Senior Staff Attorney
Wisconsin Legislative Council Staff
P.O. Box 2536
(1 East Main Street, Room 401)
Madison, WI 53701-2536
Phone (608)266-2982
Fax (608)266-3830
E-mail richard.sweet@legis.state.wi.us

Malaise, Gordon

From: Malaise, Gordon
Sent: Monday, February 28, 2000 3:42 PM
To: Lonergan, Sandra
cc: Sweet, Richard; Kolka, Kathie; Dow, Susan
Subject: RE: LRB 4398

Sandy:

I will redraft LRB-4398/3 to incorporate Dick's suggestion. You will have to send back the stripes.

Now that I've read Dick's explanation I understand what is going on. I had been reading "continue" and "renew" as being synonymous, when in fact "renew" refers to extending a license that is about to expire while "continue" refers to permitting a license to go on until the next review. Obviously, you do not want someone who has been convicted to remain licensed until his or her current license expires; you want to yank his or her license immediately.

Gordon M. Malaise
Legislative Reference Bureau

-----Original Message-----

From: Lonergan, Sandra
Sent: Monday, February 28, 2000 11:07 AM
To: Malaise, Gordon
Subject: LRB 4398

Gordon,
Please go ahead and incorporate into the draft Dick's suggestions. Thanks. Please call if you have questions.
Sandy

---Original Message---

From: Sweet, Richard
Sent: Friday, February 25, 2000 4:40 PM
To: Lonergan, Sandra
cc: Kolka, Kathie; Kiel, Joyce; Malaise, Gordon
Subject:

Sandy,

Joyce and I talked about the issue you raised on the caregiver draft. We think that it's easily handled by inserting "or continue," before "renew" on page 4, line 18 of LRB-4398/3; and inserting "continue," before "extend" on page 4, line 20. This will cover the situation where someone is convicted of a serious crime after certification, but long before renewal time. The certification couldn't be continued from that point on. Section 50.065(4m)(a)(intro.), Stats., which is the parallel provision in Ch. 50, Stats., already uses the term "continue".

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2/29 AM

1999 - 2000 LEGISLATURE

LRB-4398/4
GMM&ISR:jlq:km *MMR*

(p 4, lines 18+20)

1999 ASSEMBLY BILL

Reger

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) l., 50.065 (1) (cn), 50.065 (5),
3 146.40 (4g) (a) 4., 146.40 (4r) (a), 146.40 (4r) (am) l., 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: Continue, Continue or ✓

14 48.685 (4m) (a) (intro.) Notwithstanding s. 111.33, 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 renew the license of, a foster
19 home or treatment foster home under s. 48.62 and a school board may not contract
20 with, or extend or renew a contract with, a person under s. 120.13 (14), if the
21 department, county department, child welfare agency or school board knows or
22 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 entiv located outside the boundaries of a reservation that is owned or operated by
11 a tribe or tribal cornoration 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~~ sunerintendent 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

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 nronoses under nar. (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:

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1 146.40 (4r) (d) If the ~~a person specified in the report received under par. (a) or~~
2 ~~(am) whom the department notifies under par. (b) to list on the registry~~ timely
3 notifies the division of hearings and appeals created under s. 15.103 (1) that he or
4 she contests the listings in the registry ~~under par. (b)~~, the division of hearings and
5 appeals shall hold a hearing under the requirements of ch. 227. If after presentation
6 of evidence a hearing officer finds that there is no reasonable cause to believe that
7 the person ~~specified in the report received under par. (a) or (am)~~ performed an action
8 alleged under par. (a) or (am), the hearing officer shall dismiss the proceeding. If
9 after presentation of evidence a hearing officer finds that there is reasonable cause
10 to believe that the person ~~specified in the report received under par. (a) or (am)~~
11 performed an action alleged under par. (a) or (am), the hearing officer shall so find
12 and shall cause the name of the person ~~specified in the report received under par. (a)~~
13 ~~or (am)~~ to be entered under sub. (4g) (a) 2. and the hearing officer's findings about
14 the person ~~specified in the report received under par. (a) or (am)~~ to be entered under
15 sub. (4g) (a) 3.

16 **SECTION 22.** 146.40 (4r) (e) of the statutes is amended to read:

17 146.40 (4r) (e) ~~The nurse's assistant or home health aide~~ A person whom the
18 department lists on the registry under sub. (4g) may provide the department with
19 a brief statement disputing the department's findings under par. (b) or the hearing
20 officer's findings under par. (d) and, if so provided, the department shall enter the
21 statement under sub. (4g) (a) 4.

22 (END)