

2007 SENATE BILL 548

1 **AN ACT** *to repeal* 49.45 (8) (a) 1., 49.498 (2) (e) 1., 146.40 (1) (bm), 146.40 (1) (bp),
2 146.40 (2) (am), 146.40 (2) (b), 146.40 (2) (bm), 146.40 (2) (f) and 146.40 (4r) (am)
3 **2.; to renumber and amend** 146.40 (2) (c); *to amend* 46.275 (5) (b) 4., 46.278
4 (1), 46.278 (1m) (am), 46.278 (2) (a), 46.278 (4) (a), 46.278 (5) (a), 46.278 (6) (e)
5 1. a., 46.278 (6) (e) 1. b., 46.278 (6) (e) 1. c., 46.279 (1) (b), 48.685 (8), 49.45 (6m)
6 (am) 1. bm., 49.45 (30m) (a) 2., 49.45 (42) (b), 49.498 (1) (h), 49.498 (2) (e) 2.,
7 49.498 (2) (e) 3., 50.01 (2), 50.04 (2) (c) 2. b., 50.04 (2) (d) (intro.), 50.04 (2r),
8 50.065 (8), 50.095 (3) (b), 50.097, 50.14 (1) (a), 50.14 (1) (b), 50.14 (2) (bm), 51.06
9 (8) (a) 1., 51.06 (8) (b) (intro.), 51.06 (8) (b) 4., 51.06 (8) (b) 7., 51.62 (4), 146.40
10 (title), 146.40 (1) (bo), 146.40 (1) (bt), 146.40 (1) (d), 146.40 (2) (intro.), 146.40
11 (2) (a), 146.40 (2) (d), 146.40 (2) (e), 146.40 (2) (em), 146.40 (2) (g), 146.40 (3),
12 146.40 (3m), 146.40 (4), 146.40 (4d) (a), 146.40 (4d) (c), 146.40 (4d) (d), 146.40
13 (4m), 146.40 (4r) (am) 1., 146.40 (4r) (b), 146.40 (4r) (c), 146.40 (4r) (e), 146.40
14 (4r) (em), 146.40 (5) (a), 146.40 (5) (b) (intro.), 146.40 (5) (b) 1., 146.40 (5) (b) 2.

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1 (intro.), 146.40 (5) (b) 2. a., 155.20 (2) (a) 2., 155.30 (3), 250.042 (4) (a) 3., 250.042
2 (4) (b), 250.042 (4) (c) 12., 440.03 (3q), 632.895 (1) (b) 2. and 632.895 (2) (d); **to**
3 **repeal and recreate** 49.45 (8) (a) 4. and 146.40 (4d) (am); and **to create** 49.45
4 (8) (a) 2m., 146.40 (1) (aw), 146.40 (2) (c) 1., 146.40 (2) (c) 2. and 146.40 (2m) of
5 the statutes; **relating to:** changing the terms home health aide, hospice aide,
6 and nurse's assistant to the term nurse aide; changing requirements for
7 instructional and competency evaluation programs for nurse aides; changing
8 certain requirements for review and investigation of reports of client abuse or
9 neglect; and requiring the exercise of rule-making authority (suggested as
10 remedial legislation by the Department of Health and Family Services).

Analysis by the Legislative Reference Bureau

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

11 **SECTION 1.** 46.275 (5) (b) 4. of the statutes is amended to read:

12 46.275 (5) (b) 4. Provide services, except respite care that is approved by the
13 department, within a skilled nursing facility, intermediate care facility or
14 intermediate care facility for the mentally retarded persons with mental retardation,
15 as defined in s. 46.278 (1m) (am), including a state center for the developmentally
16 disabled.

17 **SECTION 2.** 46.278 (1) of the statutes is amended to read:

18 46.278 (1) The intent of the programs under this section is to provide home or
19 community-based care to serve in a noninstitutional community setting a person
20 who meets eligibility requirements under 42 USC 1396n (c) and who is diagnosed as
21 developmentally disabled under the definition specified in s. 51.01 (5) and relocated

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1 from an institution other than a state center for the developmentally disabled or who
2 meets the intermediate care facility for ~~the mentally retarded~~ persons with mental
3 retardation or ~~a~~ brain injury rehabilitation facility level of care requirements for
4 medical assistance reimbursement in an intermediate care facility for ~~the mentally~~
5 retarded persons with mental retardation or a brain injury rehabilitation facility and
6 is ineligible for services under s. 46.275 or 46.277. The intent of the program is also
7 that counties use all existing services for providing care under this section, including
8 those services currently provided by counties.

9 **SECTION 3.** 46.278 (1m) (am) of the statutes is amended to read:

10 46.278 **(1m)** (am) “Intermediate care facility for ~~the mentally retarded persons~~
11 with mental retardation” has the meaning given for “intermediate care facility for
12 the mentally retarded” under 42 USC 1396d ~~(c)~~ and (d).

13 **SECTION 4.** 46.278 (2) (a) of the statutes is amended to read:

14 46.278 **(2)** (a) The department may request one or more waivers from the
15 secretary of the federal department of health and human services, under 42 USC
16 1396n (c), authorizing the department to serve medical assistance recipients, who
17 meet the level of care requirements for medical assistance reimbursement in an
18 intermediate care facility for ~~the mentally retarded~~ persons with mental retardation
19 or in a brain injury rehabilitation facility, in their communities by providing home
20 or community-based services as part of medical assistance. If the department
21 requests a waiver, it shall include all assurances required under 42 USC 1396n (c)
22 (2) in its request.

23 **SECTION 5.** 46.278 (4) (a) of the statutes is amended to read:

24 46.278 **(4)** (a) Sections 46.27 (3) (b) and 46.275 (3) (a) and (c) to (e) apply to
25 county participation in a program, except that services provided in the program shall

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1 substitute for care provided a person in an intermediate care facility for ~~the mentally~~
2 retarded persons with mental retardation or in a brain injury rehabilitation facility
3 who meets the intermediate care facility for ~~the mentally retarded~~ persons with
4 mental retardation or brain injury rehabilitation facility level of care requirements
5 for medical assistance reimbursement to that facility rather than for care provided
6 at a state center for the developmentally disabled.

7 **SECTION 6.** 46.278 (5) (a) of the statutes is amended to read:

8 46.278 (5) (a) Any medical assistance recipient who meets the level of care
9 requirements for medical assistance reimbursement in an intermediate care facility
10 for ~~the mentally retarded~~ persons with mental retardation or in a brain injury
11 rehabilitation facility and is ineligible for service under s. 46.275 or 46.277 is eligible
12 to participate in a program, except that persons eligible for the brain injury waiver
13 program must meet the definition of brain injury under s. 51.01 (2g), and except that
14 the number of participants may not exceed the number approved under the waiver
15 received under sub. (3). Such a recipient may apply, or any person may apply on
16 behalf of such a recipient, for participation in a program. Section 46.275 (4) (b)
17 applies to participation in a program.

18 **SECTION 7.** 46.278 (6) (e) 1. a. of the statutes is amended to read:

19 46.278 (6) (e) 1. a. An intermediate care facility for ~~the mentally retarded~~
20 persons with mental retardation that closes under s. 50.03 (14).

21 **SECTION 8.** 46.278 (6) (e) 1. b. of the statutes is amended to read:

22 46.278 (6) (e) 1. b. An intermediate care facility for ~~the mentally retarded~~
23 persons with mental retardation or a distinct part thereof that has a plan of closure
24 approved by the department and that intends to close within 12 months.

25 **SECTION 9.** 46.278 (6) (e) 1. c. of the statutes is amended to read:

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1 46.278 **(6)** (e) 1. c. An intermediate care facility for the ~~mentally retarded~~
2 persons with mental retardation that has a plan of closure or significant reduction
3 in capacity approved by the department and that intends to close or significantly
4 reduce its capacity within 60 months.

5 **SECTION 10.** 46.279 (1) (b) of the statutes is amended to read:

6 46.279 **(1)** (b) “Intermediate facility” ~~means~~ has the meaning given for an
7 intermediate care facility for the mentally retarded, ~~as defined in~~ under 42 USC
8 1396d (d), other than a center for the developmentally disabled, as defined in s. 51.01
9 (3).

10 **SECTION 11.** 48.685 (8) of the statutes, as affected by 2007 Wisconsin Act 20,
11 is amended to read:

12 48.685 **(8)** The department, the department of health services, a county
13 department, a child welfare agency, or a school board may charge a fee for obtaining
14 the information required under sub. (2) (am) or (3) (a) or for providing information
15 to an entity to enable the entity to comply with sub. (2) (b) 1. or (3) (b). The fee may
16 not exceed the reasonable cost of obtaining the information. No fee may be charged
17 to a ~~nurse’s assistant~~ nurse aide, as defined in s. 146.40 (1) (d), for obtaining or
18 maintaining information if to do so would be inconsistent with federal law.

19 **SECTION 12.** 49.45 (6m) (am) 1. bm. of the statutes is amended to read:

20 49.45 **(6m)** (am) 1. bm. Nonbillable services of a registered nurse, licensed
21 practical nurse, and ~~nurse’s assistant~~ nurse aide.

22 **SECTION 13.** 49.45 (8) (a) 1. of the statutes is repealed.

23 **SECTION 14.** 49.45 (8) (a) 2m. of the statutes is created to read:

24 49.45 **(8)** (a) 2m. “Nurse aide” has the meaning given in s. 146.40 (1) (d).

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1 **SECTION 15.** 49.45 (8) (a) 4. of the statutes, as affected by 2007 Wisconsin Act
2 20, is repealed and recreated to read:

3 49.45 **(8)** (a) 4. “Patient care visit” means a personal contact with a patient in
4 a patient’s home that is made by a registered nurse, licensed practical nurse, nurse
5 aide, physical therapist, occupational therapist, or speech–language pathologist who
6 is on the staff of or under contract or arrangement with a home health agency, or by
7 a registered nurse or licensed practical nurse practicing independently, to provide a
8 service that is covered under s. 49.46, 49.47, or 49.471. “Patient care visit” does not
9 include time spent by a nurse, therapist, or nurse aide on case management, care
10 coordination, travel, record keeping, or supervision that is related to the patient care
11 visit.

12 **SECTION 16.** 49.45 (30m) (a) 2. of the statutes is amended to read:

13 49.45 **(30m)** (a) 2. Services in an intermediate care facility for ~~the mentally~~
14 retarded persons with mental retardation, as defined in s. 46.278 (1m) (am), other
15 than a state center for the developmentally disabled.

16 **SECTION 17.** 49.45 (42) (b) of the statutes is amended to read:

17 49.45 **(42)** (b) The individual is not eligible to receive home health aide services
18 under medicare, as defined in sub. (3) (L) 1. b.

19 **SECTION 18.** 49.498 (1) (h) of the statutes is amended to read:

20 49.498 **(1)** (h) “Nurse’s assistant Nurse aide” has the meaning given for “nurse
21 aide” under 42 USC 1396r (b) (5) (F).

22 **SECTION 19.** 49.498 (2) (e) 1. of the statutes is repealed.

23 **SECTION 20.** 49.498 (2) (e) 2. of the statutes is amended to read:

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1 49.498 (2) (e) 2. A nursing facility may not use the individual as a nurse's
2 assistant nurse aide unless the nursing facility has inquired of the department
3 concerning information about the individual in the registry under s. 146.40 (4g).

4 **SECTION 21.** 49.498 (2) (e) 3. of the statutes is amended to read:

5 49.498 (2) (e) 3. A nursing facility shall provide the regular performance review
6 and regular in-service education that assures that individuals used as nurse's
7 assistants nurse aides are competent to perform services as ~~nurse's assistants~~ nurse
8 aides, including training for individuals to provide nursing and nursing-related
9 services to nursing facility residents with cognitive impairments.

10 **SECTION 22.** 50.01 (2) of the statutes is amended to read:

11 50.01 (2) "~~Nurse's assistant~~ Nurse aide" means a person who performs routine
12 patient care duties delegated by a registered nurse or licensed practical nurse who
13 supervises the person, for the direct health care of a patient or resident. "~~Nurse's~~
14 assistant Nurse aide" does not mean a feeding assistant, as defined in s. 146.40 (1)
15 (aw); a person who is licensed, permitted, certified, or registered under ch. 441, 448,
16 449, 450, 451, 455, 459, or 460; or a person whose duties primarily involve skills that
17 are different than those taught in instructional programs for ~~nurse's assistants~~
18 nurse aides.

19 **SECTION 23.** 50.04 (2) (c) 2. b. of the statutes is amended to read:

20 50.04 (2) (c) 2. b. A shortage of nurses or ~~nurse's assistants~~ nurse aides
21 available for employment by the nursing home exists.

22 **SECTION 24.** 50.04 (2) (d) (intro.) of the statutes is amended to read:

23 50.04 (2) (d) (intro.) Each nursing home, other than nursing homes that
24 primarily serve the developmentally disabled, shall provide at least the following
25 hours of service by registered nurses, licensed practical nurses, or ~~nurse's assistants~~

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1 nurse aides and may not use hours of service by a feeding assistant, as defined in s.
2 146.40 (1) (aw), in fulfilling these requirements:

3 **SECTION 25.** 50.04 (2r) of the statutes is amended to read:

4 50.04 **(2r)** ADMISSIONS REQUIRING APPROVAL. Except in an emergency, a nursing
5 home that is not certified as a provider of medical assistance or that is an
6 intermediate care facility for ~~the mentally retarded~~ persons with mental retardation,
7 as defined in s. 46.278 (1m) (am), or an institution for mental diseases, as defined
8 under 42 CFR 435.1009, may not admit as a resident an individual who has a
9 developmental disability, as defined in s. 51.01 (5), or who is both under age 65 and
10 has mental illness, as defined in s. 51.01 (13), unless the county department under
11 s. 46.23, 51.42 or 51.437 of the individual's county of residence has recommended the
12 admission.

13 **SECTION 26.** 50.065 (8) of the statutes is amended to read:

14 50.065 **(8)** The department may charge a fee for obtaining the information
15 required under sub. (2) (am) or (3) (a) or for providing information to an entity to
16 enable the entity to comply with sub. (2) (b) or (3) (b). No fee may be charged to a
17 ~~nurse's assistant~~ nurse aide, as defined in s. 146.40 (1) (d), for obtaining or
18 maintaining the information if to do so would be inconsistent with federal law.

19 **SECTION 27.** 50.095 (3) (b) of the statutes is amended to read:

20 50.095 **(3)** (b) The staff replacement rates for full-time and part-time nursing
21 staff, ~~nurse's assistants~~ nurse aides, and administrators for the previous year for the
22 nursing home and for all similar nursing homes in the same geographical area, as
23 determined by the department.

24 **SECTION 28.** 50.097 of the statutes is amended to read:

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1 **50.097 Registry.** Any person may receive, upon specific written request to the
2 department, requested information that is contained in the registry of nurse's
3 assistants and home health aides individuals under s. 146.40 (4g) (a) ~~or that is~~
4 ~~contained in the registry of hospice aides under s. 146.40 (4g) (a) 1.~~

5 **SECTION 29.** 50.14 (1) (a) of the statutes is amended to read:

6 50.14 (1) (a) Notwithstanding s. 50.01 (1m), "facility" means a nursing home
7 or an intermediate care facility for ~~the mentally retarded~~ persons with mental
8 retardation that is not located outside the state.

9 **SECTION 30.** 50.14 (1) (b) of the statutes is amended to read:

10 50.14 (1) (b) "Intermediate care facility for ~~the mentally retarded~~ persons with
11 mental retardation" has the meaning given for "intermediate care facility for the
12 mentally retarded" under 42 USC 1396d (c) ~~and~~ (d).

13 **SECTION 31.** 50.14 (2) (bm) of the statutes, as created by 2007 Wisconsin Act
14 20, is amended to read:

15 50.14 (2) (bm) For intermediate care facilities for ~~the mentally retarded~~
16 persons with mental retardation, an amount calculated by multiplying the projected
17 annual gross revenues of all intermediate care facilities for ~~the mentally retarded~~
18 persons with mental retardation in this state by 0.055, dividing the product by the
19 number of licensed beds of intermediate care facilities for persons with mental
20 retardation in this state and dividing the quotient by 12.

21 **SECTION 32.** 51.06 (8) (a) 1. of the statutes is amended to read:

22 51.06 (8) (a) 1. "Intermediate care facility for ~~the mentally retarded~~ persons
23 with mental retardation" has the meaning given ~~in~~ for "intermediate care facility for
24 the mentally retarded" under 42 USC 1396d (d).

25 **SECTION 33.** 51.06 (8) (b) (intro.) of the statutes is amended to read:

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1 51.06 **(8)** (b) (intro.) Annually by October 1, the department shall submit to the
2 joint committee on finance and to the appropriate standing committees of the
3 legislature under s. 13.172 (3) a report that includes information collected from the
4 previous fiscal year on the relocation or diversion of individuals who are Medical
5 Assistance eligibles or recipients from nursing homes, intermediate care facilities for
6 ~~the mentally retarded~~ persons with mental retardation, and centers for the
7 developmentally disabled. The report shall include all of the following information:

8 **SECTION 34.** 51.06 (8) (b) 4. of the statutes is amended to read:

9 51.06 **(8)** (b) 4. An accounting of the costs and savings under the Medical
10 Assistance program of relocations and diversions and the resulting reduction in
11 capacity for services of nursing homes, intermediate care facilities for ~~the mentally~~
12 ~~retarded~~ persons with mental retardation, and centers for the developmentally
13 disabled. The accounting shall include the per individual savings as well as the
14 collective savings of relocations and diversions.

15 **SECTION 35.** 51.06 (8) (b) 7. of the statutes is amended to read:

16 51.06 **(8)** (b) 7. Staff turnover rates for nursing homes, intermediate care
17 facilities for ~~the mentally retarded~~ persons with mental retardation, and centers for
18 the developmentally disabled in communities in which an individual relocated or
19 diverted from a nursing home, intermediate care facility for ~~the mentally retarded~~
20 persons with mental retardation, or center for the developmentally disabled
21 currently resides.

22 **SECTION 36.** 51.62 (4) of the statutes is amended to read:

23 51.62 **(4)** DEPARTMENTAL DUTIES. The department shall provide the protection
24 and advocacy agency with copies of annual surveys and plans of correction for
25 intermediate care facilities for ~~the mentally retarded~~ persons with mental

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1 retardation on or before the first day of the 2nd month commencing after completion
2 of the survey or plan.

3 **SECTION 37.** 146.40 (title) of the statutes is amended to read:

4 **146.40 (title) Instructional programs for ~~nurse's~~ nurse aides; reporting**
5 **client abuse.**

6 **SECTION 38.** 146.40 (1) (aw) of the statutes is created to read:

7 146.40 (1) (aw) “Feeding assistant” means an individual who has completed a
8 state–approved training and testing program, as specified by the department by
9 rule, to perform one nursing–related duty, as defined by the department by rule.

10 **SECTION 39.** 146.40 (1) (bm) of the statutes is repealed.

11 **SECTION 40.** 146.40 (1) (bo) of the statutes is amended to read:

12 146.40 (1) (bo) “Hospice” means a hospice that is licensed under subch. IV of
13 ch. 50 ~~and that is certified as a provider of services under 42 USC 1395 to 1395ccc.~~

14 **SECTION 41.** 146.40 (1) (bp) of the statutes is repealed.

15 **SECTION 42.** 146.40 (1) (bt) of the statutes is amended to read:

16 146.40 (1) (bt) “Intermediate care facility for ~~the mentally retarded persons~~
17 with mental retardation” has the meaning given for “intermediate care facility for
18 the mentally retarded” under 42 USC 1396d (c) and (d).

19 **SECTION 43.** 146.40 (1) (d) of the statutes is amended to read:

20 146.40 (1) (d) “~~Nurse’s assistant~~ Nurse aide” means an individual who
21 performs routine patient care duties delegated by a registered nurse or licensed
22 practical nurse who supervises the individual, for the direct health care of a patient
23 or resident. “~~Nurse’s assistant~~ Nurse aide” does not mean a feeding assistant, an
24 individual who is licensed, permitted, certified, or registered under ch. 441, 448, 449,
25 450, 451, 455, 459, or 460, or an individual whose duties primarily involve skills that

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1 are different than those taught in instructional and competency evaluation
2 programs for nurse's assistants certified nurse aides approved under sub. (3) or
3 evaluated by competency evaluation programs for nurse's assistants nurse aides
4 approved under sub. (3m).

5 **SECTION 44.** 146.40 (2) (intro.) of the statutes is amended to read:

6 146.40 (2) (intro.) A hospital, nursing home or, intermediate care facility for the
7 mentally retarded persons with mental retardation, home health agency, or hospice
8 may not employ or contract for the services of an individual as a nurse's assistant,
9 a home health agency may not employ or contract for the services of an individual
10 as a home health aide and a hospice may not employ or contract for the services of
11 an individual as a hospice nurse aide, regardless of the title under which the
12 individual is employed or contracted for, unless one of the following is true:

13 **SECTION 45.** 146.40 (2) (a) of the statutes is amended to read:

14 146.40 (2) (a) ~~For hospitals, nursing homes, home health agencies or hospices,~~
15 ~~whether or not certified providers of medical assistance, except as provided in par.~~
16 ~~(g), and intermediate care facilities for the mentally retarded that are certified~~
17 ~~providers of medical assistance, the~~ The individual has successfully completed
18 instruction in an instructional and competency evaluation program for nurse's
19 assistants, home health aides or hospice nurse aides that is certified by the
20 department approved under sub. (3) and has successfully completed a competency
21 evaluation program that is approved under sub. (3m).

22 **SECTION 46.** 146.40 (2) (am) of the statutes is repealed.

23 **SECTION 47.** 146.40 (2) (b) of the statutes is repealed.

24 **SECTION 48.** 146.40 (2) (bm) of the statutes is repealed.

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1 **SECTION 49.** 146.40 (2) (c) of the statutes is renumbered 146.40 (2) (c) (intro.)
2 and amended to read:

3 146.40 **(2)** (c) (intro.) For hospitals, nursing homes, home health agencies or
4 hospices, whether or not certified providers of medical assistance, and intermediate
5 care facilities for the mentally retarded persons with mental retardation that are
6 certified providers of medical assistance, the individual is enrolled in an
7 instructional program for nurse aides that is approved under sub. (3) and is
8 employed or under contract as a nurse's assistant, home health aide or hospice aide
9 fewer than 120 calendar days by the hospital, nursing home, home health agency,
10 hospice or intermediate care facility for the mentally retarded. All of the following
11 applies to an individual specified under this paragraph:

12 **SECTION 50.** 146.40 (2) (c) 1. of the statutes is created to read:

13 146.40 **(2)** (c) 1. He or she may perform only services for which he or she has
14 received training and has been found proficient by an instructor under the
15 instructional program.

16 **SECTION 51.** 146.40 (2) (c) 2. of the statutes is created to read:

17 146.40 **(2)** (c) 2. The hospital, nursing home, home health agency, hospice, or
18 intermediate care facility for persons with mental retardation may not include the
19 individual in meeting or complying with a requirement for nursing care staff and
20 functions, including a minimum nursing staff requirement.

21 **SECTION 52.** 146.40 (2) (d) of the statutes is amended to read:

22 146.40 **(2)** (d) For hospitals, nursing homes, home health agencies, or hospices,
23 whether or not certified providers of medical assistance, and intermediate care
24 facilities for the mentally retarded persons with mental retardation that are certified
25 providers of medical assistance, the individual has successfully completed

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1 ~~instruction in an instructional and competency evaluation program or has~~
2 ~~successfully completed and~~ and a competency evaluation program for nurse's assistants,
3 ~~for home health aides or for hospice~~ nurse aides that is certified in another state that
4 meets criteria for acceptance in this state as specified by the department by rule, ~~or~~
5 ~~the individual is certified as a nurse's assistant, home health aide or hospice aide in~~
6 ~~another state that meets criteria for acceptance in this state as specified by the~~
7 ~~department by rule, except that after December 31, 1991, par. (a) applies.~~

8 **SECTION 53.** 146.40 (2) (e) of the statutes is amended to read:

9 146.40 (2) (e) For hospitals, home health agencies, or hospices, whether or not
10 certified providers of medical assistance, nursing homes that are not certified
11 providers of medical assistance and intermediate care facilities for ~~the mentally~~
12 ~~retarded~~ persons with mental retardation that are certified providers of medical
13 assistance, the individual is a student nurse who has successfully completed a basic
14 nursing course from a school that is on the accredited list of schools specified under
15 s. 441.01 (4) or who successfully completes a competency evaluation program for
16 ~~nurse's assistants, home health aides or hospice~~ nurse aides that is approved by the
17 department under sub. (3m).

18 **SECTION 54.** 146.40 (2) (em) of the statutes is amended to read:

19 146.40 (2) (em) For nursing homes that are certified providers of medical
20 assistance, the individual is a student nurse who successfully completes a
21 competency evaluation program for ~~nurse's assistants~~ nurse aides that is approved
22 by the department under sub. (3m).

23 **SECTION 55.** 146.40 (2) (f) of the statutes is repealed.

24 **SECTION 56.** 146.40 (2) (g) of the statutes is amended to read:

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1 146.40 (2) (g) For hospitals, nursing homes, home health agencies, or hospices,
2 whether or not certified providers of medical assistance, and intermediate care
3 facilities for persons with mental retardation that are certified providers of medical
4 assistance, the individual, if he or she has performed no nursing-related service for
5 monetary compensation for 24 consecutive months after having satisfied the
6 requirement under par. (a), again successfully completes ~~instruction in an~~
7 ~~instructional and a~~ competency evaluation program for ~~nurse's assistants~~ nurse
8 aides that is certified approved by the department under sub. (3) or a competency
9 evaluation program for ~~nurse's assistants~~ that is approved by the department under
10 sub. (3m).

11 **SECTION 57.** 146.40 (2m) of the statutes is created to read:

12 146.40 (2m) A nursing home or intermediate care facility for persons with
13 mental retardation, whether or not the nursing home or intermediate care facility
14 is a certified provider of medical assistance, may not employ or contract for the
15 services of an individual as a feeding assistant, regardless of the title under which
16 the individual is employed or contracted for, unless the individual has successfully
17 completed a state-approved training and testing program, as specified by the
18 department by rule.

19 **SECTION 58.** 146.40 (3) of the statutes is amended to read:

20 146.40 (3) Except as provided in sub. (4d), the department shall ~~certify~~ approve
21 ~~instructional and competency evaluation programs for nurse's assistants, for home~~
22 ~~health aides and for hospice~~ nurse aides that apply for certification, and satisfy
23 standards for ~~certification,~~ approval that are promulgated by rule by the
24 department. The department shall review the curriculum of each ~~certified~~ approved
25 ~~instructional and competency evaluation~~ program at least once every ~~36~~ 24 months

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1 following the date of certification approval to determine whether the program
2 satisfies continues to satisfy the standards for certification approval. Under this
3 subsection, the department may, after providing notice, suspend or revoke the
4 certification approval of an instructional and ~~competency evaluation~~ program or
5 impose a plan of correction on the program if the program ~~does not~~ fails to satisfy the
6 standards for certification approval or operates under conditions that are other than
7 those contained in the application approved by the department.

8 **SECTION 59.** 146.40 (3m) of the statutes is amended to read:

9 146.40 (3m) The department shall review competency evaluation programs for
10 ~~nurse's assistants, for home health aides and for hospice~~ nurse aides and, except as
11 provided in sub. (4d), may approve those competency evaluation programs that
12 satisfy standards for approval that are specified in rules of promulgated by the
13 department. Under this subsection, the department may, after providing notice,
14 suspend or revoke approval of a competency evaluation program or impose a plan of
15 correction on the program if the competency evaluation program fails to satisfy the
16 standards for approval or operates under conditions that are other than those
17 contained in the application approved by the department.

18 **SECTION 60.** 146.40 (4) of the statutes is amended to read:

19 146.40 (4) ~~An instructional and A~~ competency evaluation program certified
20 ~~under sub. (3) or a competency evaluation program~~ approved under sub. (3m) shall
21 notify the department, ~~on a form provided by the department, within 30 days to~~
22 include an individual on the registry under sub. (4g) (a) 1. after ~~an~~ the individual has
23 successfully completed the ~~program~~ competency examination.

24 **SECTION 61.** 146.40 (4d) (a) of the statutes is amended to read:

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1 146.40 **(4d)** (a) Except as provided in par. (am), the department shall require
2 each applicant to provide the department with his or her social security number, if
3 the applicant is an individual, or the applicant's federal employer identification
4 number, if the applicant is not an individual, as a condition of issuing ~~a certification~~
5 an approval under sub. (3) or ~~an approval under sub. (3m)~~.

6 **SECTION 62.** 146.40 (4d) (am) of the statutes, as affected by 2007 Wisconsin Act
7 20, is repealed and recreated to read:

8 146.40 **(4d)** (am) If an individual specified under par. (a) does not have a social
9 security number, the individual, as a condition of obtaining approval, shall submit
10 a statement made or subscribed under oath or affirmation to the department that the
11 applicant does not have a social security number. The form of the statement shall
12 be prescribed by the department of children and families. An approval issued in
13 reliance upon a false statement submitted under this paragraph is invalid.

14 **SECTION 63.** 146.40 (4d) (c) of the statutes is amended to read:

15 146.40 **(4d)** (c) Except as provided in par. (am), the department shall deny an
16 application for the issuance of ~~a certification or~~ an approval specified in par. (a) if
17 the applicant does not provide the information specified in par. (a).

18 **SECTION 64.** 146.40 (4d) (d) of the statutes is amended to read:

19 146.40 **(4d)** (d) The department shall deny an application for the issuance of
20 ~~a certification or~~ an approval specified in par. (a) or shall revoke ~~a certification or~~
21 an approval if the department of revenue certifies under s. 73.0301 that the applicant
22 for or holder of ~~a certification or~~ an approval is liable for delinquent taxes.

23 **SECTION 65.** 146.40 (4m) of the statutes is amended to read:

24 146.40 **(4m)** An instructional ~~and competency evaluation~~ program under sub.
25 (3) for which the department has suspended or revoked ~~certification~~ approval or

SENATE BILL 548**SECTION 65**

1 imposed a plan of correction or a competency evaluation program under sub. (3m) for
2 which the department has suspended or revoked approval or imposed a plan of
3 correction may contest the department's action by sending, within 10 days after
4 receipt of notice of the contested action, a written request for hearing under s. 227.44
5 to the division of hearings and appeals created under s. 15.103 (1). The
6 administrator of the division may designate a hearing examiner to preside over the
7 case and recommend a decision to the administrator under s. 227.46. The decision
8 of the administrator of the division shall be the final administrative decision. The
9 division shall commence the hearing within 30 days after receipt of the request for
10 hearing and shall issue a final decision within 15 days after the close of the hearing.
11 Proceedings before the division are governed by ch. 227. In any petition for judicial
12 review of a decision by the division, the party, other than the petitioner, who was in
13 the proceeding before the division shall be the named respondent. This subsection
14 does not apply to a revocation of ~~certification~~ approval under sub. (4d) (d).

15 **SECTION 66.** 146.40 (4r) (am) 1. of the statutes is amended to read:

16 146.40 (4r) (am) 1. ~~Except as provided in subd. 2., an~~ An entity shall report to
17 the department any allegation of misappropriation of the property of a client or of
18 neglect or abuse of a client by any person individual employed by or under contract
19 with the entity if the ~~person~~ individual is under the control of the entity.

20 **SECTION 67.** 146.40 (4r) (am) 2. of the statutes is repealed.

21 **SECTION 68.** 146.40 (4r) (b) of the statutes is amended to read:

22 146.40 (4r) (b) Except as provided in pars. (em) and (er), the department shall
23 review and investigate any report received under par. (a) or (am) and, if the
24 allegation is substantiated, make specific, documented findings concerning the
25 misappropriation of property or the neglect or abuse. The department shall, in

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1 writing ~~by certified mail,~~ notify the person individual specified in the report that the
2 person's individual's name and the department's findings about the person
3 individual shall be listed in the registry under sub. (4g) (a) 2. and 3. unless the person
4 individual contests the listings in a hearing before the division of hearings and
5 appeals created under s. 15.103 (1). The written notification shall describe the
6 investigation conducted by the department, enumerate the findings alleging
7 misappropriation of property or neglect or abuse of a client and explain the
8 consequence to the person individual specified in the report of waiving a hearing to
9 contest the findings. The person individual specified in the report shall have 30
10 calendar days after receipt of the notification to indicate to the department in writing
11 whether he or she intends to contest the listing or to waive the hearing.

12 **SECTION 69.** 146.40 (4r) (c) of the statutes is amended to read:

13 146.40 (4r) (c) If ~~the nurse's assistant or home health aide~~ an individual under
14 par. (b) notifies the department that he or she waives a hearing to contest the listings
15 in the registry under par. (b), or fails to notify the department within 30 calendar
16 days after receipt of a notice under par. (b), the department shall enter the name of
17 the individual under sub. (4g) (a) 2. and the department's findings about the
18 individual under sub. (4g) (a) 3.

19 **SECTION 70.** 146.40 (4r) (e) of the statutes is amended to read:

20 146.40 (4r) (e) The ~~nurse's assistant or home health aide~~ individual may
21 provide the department with a brief statement disputing the department's findings
22 under par. (b) or the hearing officer's findings under par. (d) and, if so provided, the
23 department shall enter the statement under sub. (4g) (a) 4.

24 **SECTION 71.** 146.40 (4r) (em) of the statutes is amended to read:

SENATE BILL 548**SECTION 71**

1 146.40 ~~(4r)~~ (em) If the department of health and family services receives a
2 report under par. (a) or (am) and determines that ~~a person~~ an individual who is the
3 subject of the report holds a credential that is related to the person's individual's
4 employment at, or contract with, the entity, the department of health and family
5 services shall refer the report to the department of regulation and licensing.

6 **SECTION 72.** 146.40 (5) (a) of the statutes is amended to read:

7 146.40 (5) (a) The department, ~~in consultation with the technical college~~
8 ~~system board,~~ shall promulgate rules specifying standards for certification approval
9 in this state of instructional programs and competency evaluation programs for
10 ~~nurse's assistants, home health aides and hospice~~ nurse aides. The standards shall
11 include specialized training in providing care to individuals with special needs.

12 **SECTION 73.** 146.40 (5) (b) (intro.) of the statutes is amended to read:

13 146.40 (5) (b) (intro.) The department shall promulgate rules specifying
14 criteria for acceptance by this state of an instructional program and a competency
15 evaluation program ~~or a competency evaluation program~~ that is certified in another
16 state, including whether the other state grants ~~nurse's assistant privileges, home~~
17 ~~health aide privileges or hospice~~ nurse aide privileges to persons who have completed
18 instruction in an instructional and competency evaluation program that is certified
19 approved under sub. (3) and whether one of the following is true:

20 **SECTION 74.** 146.40 (5) (b) 1. of the statutes is amended to read:

21 146.40 (5) (b) 1. If the other state certifies instructional programs and
22 competency evaluation programs for ~~nurse's assistants, home health aides or hospice~~
23 nurse aides, the state's requirements are substantially similar, as determined by the
24 department, to certification requirements in this state.

25 **SECTION 75.** 146.40 (5) (b) 2. (intro.) of the statutes is amended to read:

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1 146.40 (5) (b) 2. (intro.) If the other state certifies ~~nurse's assistants, home~~
2 ~~health aides or hospice~~ nurse aides, that state's requirements are such that one of
3 the following applies:

4 **SECTION 76.** 146.40 (5) (b) 2. a. of the statutes is amended to read:

5 146.40 (5) (b) 2. a. The instructional ~~and competency evaluation~~ programs
6 required for attendance by persons receiving certificates are substantially similar,
7 as determined by the department, to instructional ~~and competency evaluation~~
8 programs ~~certified~~ approved under sub. (3).

9 **SECTION 77.** 155.20 (2) (a) 2. of the statutes is amended to read:

10 155.20 (2) (a) 2. An intermediate care facility for ~~the mentally retarded persons~~
11 with mental retardation, as defined in s. 46.278 (1m) (am).

12 **SECTION 78.** 155.30 (3) of the statutes is amended to read:

13 155.30 (3) The department shall prepare and provide copies of a power of
14 attorney for health care instrument and accompanying information for distribution
15 in quantities to health care professionals, hospitals, nursing homes, multipurpose
16 senior centers, county clerks, and local bar associations and individually to private
17 persons. The department shall include, in information accompanying the copy of the
18 instrument, at least the statutory definitions of terms used in the instrument,
19 statutory restrictions on who may be witnesses to a valid instrument, a statement
20 explaining that valid witnesses acting in good faith are statutorily immune from civil
21 or criminal liability and a statement explaining that an instrument may, but need
22 not, be filed with the register in probate of the principal's county of residence. The
23 department may charge a reasonable fee for the cost of preparation and distribution.
24 The power of attorney for health care instrument distributed by the department
25 shall include the notice specified in sub. (1) and shall be in the following form:

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1 POWER OF ATTORNEY

2 FOR HEALTH CARE

3 Document made this.... day of.... (month),.... (year).

4 CREATION OF POWER OF

5 ATTORNEY FOR HEALTH CARE

6 I,.... (print name, address and date of birth), being of sound mind, intend by this
7 document to create a power of attorney for health care. My executing this power of
8 attorney for health care is voluntary. Despite the creation of this power of attorney
9 for health care, I expect to be fully informed about and allowed to participate in any
10 health care decision for me, to the extent that I am able. For the purposes of this
11 document, “health care decision” means an informed decision to accept, maintain,
12 discontinue or refuse any care, treatment, service or procedure to maintain, diagnose
13 or treat my physical or mental condition.

14 In addition, I may, by this document, specify my wishes with respect to making
15 an anatomical gift upon my death.

16 DESIGNATION OF HEALTH CARE AGENT

17 If I am no longer able to make health care decisions for myself, due to my
18 incapacity, I hereby designate.... (print name, address and telephone number) to be
19 my health care agent for the purpose of making health care decisions on my behalf.
20 If he or she is ever unable or unwilling to do so, I hereby designate.... (print name,
21 address and telephone number) to be my alternate health care agent for the purpose
22 of making health care decisions on my behalf. Neither my health care agent nor my
23 alternate health care agent whom I have designated is my health care provider, an
24 employee of my health care provider, an employee of a health care facility in which
25 I am a patient or a spouse of any of those persons, unless he or she is also my relative.

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1 For purposes of this document, “incapacity” exists if 2 physicians or a physician and
2 a psychologist who have personally examined me sign a statement that specifically
3 expresses their opinion that I have a condition that means that I am unable to receive
4 and evaluate information effectively or to communicate decisions to such an extent
5 that I lack the capacity to manage my health care decisions. A copy of that statement
6 must be attached to this document.

7 GENERAL STATEMENT OF
8 AUTHORITY GRANTED

9 Unless I have specified otherwise in this document, if I ever have incapacity I
10 instruct my health care provider to obtain the health care decision of my health care
11 agent, if I need treatment, for all of my health care and treatment. I have discussed
12 my desires thoroughly with my health care agent and believe that he or she
13 understands my philosophy regarding the health care decisions I would make if I
14 were able. I desire that my wishes be carried out through the authority given to my
15 health care agent under this document.

16 If I am unable, due to my incapacity, to make a health care decision, my health
17 care agent is instructed to make the health care decision for me, but my health care
18 agent should try to discuss with me any specific proposed health care if I am able to
19 communicate in any manner, including by blinking my eyes. If this communication
20 cannot be made, my health care agent shall base his or her decision on any health
21 care choices that I have expressed prior to the time of the decision. If I have not
22 expressed a health care choice about the health care in question and communication
23 cannot be made, my health care agent shall base his or her health care decision on
24 what he or she believes to be in my best interest.

25 LIMITATIONS ON

SENATE BILL 548**SECTION 78**

1 MENTAL HEALTH TREATMENT

2 My health care agent may not admit or commit me on an inpatient basis to an
3 institution for mental diseases, an intermediate care facility for ~~the mentally~~
4 retarded persons with mental retardation, a state treatment facility or a treatment
5 facility. My health care agent may not consent to experimental mental health
6 research or psychosurgery, electroconvulsive treatment or drastic mental health
7 treatment procedures for me.

8 ADMISSION TO NURSING HOMES

9 OR COMMUNITY-BASED RESIDENTIAL FACILITIES

10 My health care agent may admit me to a nursing home or community-based
11 residential facility for short-term stays for recuperative care or respite care.

12 If I have checked “Yes” to the following, my health care agent may admit me for
13 a purpose other than recuperative care or respite care, but if I have checked “No” to
14 the following, my health care agent may not so admit me:

- 15 1. A nursing home — Yes.... No....
- 16 2. A community-based residential facility — Yes.... No....

17 If I have not checked either “Yes” or “No” immediately above, my health care
18 agent may admit me only for short-term stays for recuperative care or respite care.

19 PROVISION OF A FEEDING TUBE

20 If I have checked “Yes” to the following, my health care agent may have a
21 feeding tube withheld or withdrawn from me, unless my physician has advised that,
22 in his or her professional judgment, this will cause me pain or will reduce my comfort.
23 If I have checked “No” to the following, my health care agent may not have a feeding
24 tube withheld or withdrawn from me.

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1 My health care agent may not have orally ingested nutrition or hydration
2 withheld or withdrawn from me unless provision of the nutrition or hydration is
3 medically contraindicated.

4 Withhold or withdraw a feeding tube — Yes.... No....

5 If I have not checked either “Yes” or “No” immediately above, my health care
6 agent may not have a feeding tube withdrawn from me.

7 HEALTH CARE DECISIONS

8 FOR PREGNANT WOMEN

9 If I have checked “Yes” to the following, my health care agent may make health
10 care decisions for me even if my agent knows I am pregnant. If I have checked “No”
11 to the following, my health care agent may not make health care decisions for me if
12 my health care agent knows I am pregnant.

13 Health care decision if I am pregnant — Yes.... No....

14 If I have not checked either “Yes” or “No” immediately above, my health care
15 agent may not make health care decisions for me if my health care agent knows I am
16 pregnant.

17 STATEMENT OF DESIRES, SPECIAL

18 PROVISIONS OR LIMITATIONS

19 In exercising authority under this document, my health care agent shall act
20 consistently with my following stated desires, if any, and is subject to any special
21 provisions or limitations that I specify. The following are specific desires, provisions
22 or limitations that I wish to state (add more items if needed):

23 1) –

24 2) –

25 3) –

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SECTION 78

1 INSPECTION AND DISCLOSURE OF INFORMATION

2 RELATING TO MY PHYSICAL OR MENTAL HEALTH

3 Subject to any limitations in this document, my health care agent has the
4 authority to do all of the following:

5 (a) Request, review and receive any information, oral or written, regarding my
6 physical or mental health, including medical and hospital records.

7 (b) Execute on my behalf any documents that may be required in order to obtain
8 this information.

9 (c) Consent to the disclosure of this information.

10 (The principal and the witnesses all must sign the document at the same time.)

11 SIGNATURE OF PRINCIPAL

12 (person creating the power of attorney for health care)

13 Signature.... Date....

14 (The signing of this document by the principal revokes all previous powers of
15 attorney for health care documents.)

16 STATEMENT OF WITNESSES

17 I know the principal personally and I believe him or her to be of sound mind and
18 at least 18 years of age. I believe that his or her execution of this power of attorney
19 for health care is voluntary. I am at least 18 years of age, am not related to the
20 principal by blood, marriage or adoption and am not directly financially responsible
21 for the principal's health care. I am not a health care provider who is serving the
22 principal at this time, an employee of the health care provider, other than a chaplain
23 or a social worker, or an employee, other than a chaplain or a social worker, of an
24 inpatient health care facility in which the declarant is a patient. I am not the

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1 principal’s health care agent. To the best of my knowledge, I am not entitled to and
2 do not have a claim on the principal’s estate.

3 Witness No. 1:
4 (print) Name.... Date....
5 Address....
6 Signature....

7 Witness No. 2:
8 (print) Name.... Date....
9 Address....
10 Signature....

11 STATEMENT OF HEALTH CARE AGENT
12 AND ALTERNATE HEALTH CARE AGENT

13 I understand that.... (name of principal) has designated me to be his or her
14 health care agent or alternate health care agent if he or she is ever found to have
15 incapacity and unable to make health care decisions himself or herself. (name of
16 principal) has discussed his or her desires regarding health care decisions with me.

17 Agent’s signature....
18 Address....
19 Alternate’s signature....
20 Address....

21 Failure to execute a power of attorney for health care document under chapter
22 155 of the Wisconsin Statutes creates no presumption about the intent of any
23 individual with regard to his or her health care decisions.

24 This power of attorney for health care is executed as provided in chapter 155
25 of the Wisconsin Statutes.

SENATE BILL 548**SECTION 78**

1 ANATOMICAL GIFTS (optional)

2 Upon my death:

3 ... I wish to donate only the following organs or parts: (specify the organs or
4 parts).

5 ... I wish to donate any needed organ or part.

6 ... I wish to donate my body for anatomical study if needed.

7 ... I refuse to make an anatomical gift. (If this revokes a prior commitment that
8 I have made to make an anatomical gift to a designated donee, I will attempt to notify
9 the donee to which or to whom I agreed to donate.)10 Failing to check any of the lines immediately above creates no presumption
11 about my desire to make or refuse to make an anatomical gift.

12 Signature....

Date....

13 **SECTION 79.** 250.042 (4) (a) 3. of the statutes is amended to read:14 250.042 (4) (a) 3. "Health care provider" means an individual who, at any time
15 within 10 years before a state of emergency is declared under s. 166.03 (1) (b) 1. or
16 166.23, has met requirements for a ~~nurse's assistant~~ nurse aide under s. 146.40 (2)
17 (a), ~~(b)~~, ~~(bm)~~, (c), (e), (em), ~~(f)~~, or (g), has been licensed as a physician, a physician
18 assistant, or a podiatrist under ch. 448, licensed as a registered nurse, licensed
19 practical nurse, or nurse-midwife under ch. 441, licensed as a dentist under ch. 447,
20 licensed as a pharmacist under ch. 450, licensed as a veterinarian under ch. 453, or
21 has been certified as a respiratory care practitioner under ch. 448.22 **SECTION 80.** 250.042 (4) (b) of the statutes is amended to read:23 250.042 (4) (b) A behavioral health provider, health care provider, pupil
24 services provider, or substance abuse prevention provider who, during a state of
25 emergency declared under s. 166.03 (1) (b) 1. or 166.23, provides behavioral health

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1 services, health care services, pupil services, or substance abuse prevention services
2 for which the behavioral health provider, health care provider, pupil services
3 provider, or substance abuse prevention provider has been licensed or certified or, as
4 a ~~nurse's assistant~~ nurse aide, has met requirements under s. 146.40, is, for the
5 provision of these services a state agent of the department for purposes of ss. 165.25
6 (6), 893.82, and 895.46 and is an employee of the state for purposes of worker's
7 compensation benefits. The behavioral health services, health care services, pupil
8 services, or substance abuse prevention services shall be provided on behalf of a
9 health care facility on a voluntary, unpaid basis, except that the behavioral health
10 provider, health care provider, pupil services provider, or substance abuse
11 prevention provider may accept reimbursement for travel, lodging, and meals.

12 **SECTION 81.** 250.042 (4) (c) 12. of the statutes is amended to read:

13 250.042 (4) (c) 12. A ~~nurse's assistant~~ nurse aide whose name is listed under
14 s. 146.40 (4g) (a) 2., 2005 stats., or a nurse aide whose name is listed under s. 146.40
15 (4g) (a) 2.

16 **SECTION 82.** 440.03 (3q) of the statutes is amended to read:

17 440.03 (3q) Notwithstanding sub. (3m), the department of regulation and
18 licensing shall investigate any report that it receives under s. 146.40 (4r) ~~(am) 2. or~~
19 (em).

20 **SECTION 83.** 632.895 (1) (b) 2. of the statutes is amended to read:

21 632.895 (1) (b) 2. Part-time or intermittent home health aide services which
22 that are medically necessary as part of the home care plan, under the supervision of
23 a registered nurse or medical social worker, which consist solely of caring for the
24 patient.

25 **SECTION 84.** 632.895 (2) (d) of the statutes is amended to read:

