

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1127/P1dn  
DAK:jld:rs

December 11, 2007

To Don Dyke:

1. This bill changes the definition of "home health aide" to "nurse aide." However, it is unclear whether the term "home health aide services" when referring to Medicare or insurance should correspondingly be changed. I have changed the term to be "home health services," but am unsure if this is correct. See ss. 49.45 (42) (b) and 632.895 (1) (b) 2. and (2) (d), stats. Please advise.
2. The instructions concerning s. 146.40 (4g) (a) (intro.), (b), and (c), stats., were very unclear; was it intended that s. 146.40 (4g) (b) and (c), stats., be repealed? (I have not done so.) If that was intended, ss. 49.498 (2) (e) 2., 50.097, and 250.042 (4) (c) 12., stats. (which are amended in this bill) should also be repealed. If these statutes are repealed, how does the public (and how do facilities) access this information?
3. I did not draft the definition of "caregiver" proposed for s. 146.40 (1) (a). The instructions provided by e-mail of August 31, 2007, do not include this term.
4. I did not draft the amendment to s. 146.40 (4), stats., as proposed; the proposed language required the competency evaluation program to list an individual on the registry under s. 146.40 (4g) (a), stats. Since DHFS maintains the registry, that requirement could not work.
5. It is unclear what is a "nursing-related duty," as specified in the definition of "feeding assistant" under s. 146.40 (1) (aw); the term is vague. Should DHFS be required to promulgate rules to define it?
6. I did not draft the proposed change to s. 146.40 (4g) (a) 1., stats. I did not understand it.
7. This bill repeals all references to "hospice aide." Presumably, under the bill, nurse aides will perform the same tasks formerly performed by hospice aides. Changes have been made in the bill, particularly in s. 146.40 (4r), stats., to remove provisions that formerly excluded hospice aides. I am not sure if some of these provisions can be used for nurse aides who are employed by or contract for work with hospices, because the definition of "entity" under s. 50.065 (1) (c), stats. (which is cross-referenced in s. 146.40 (1) (as), stats.), may be read not to include hospices (hospices don't necessarily provide direct care or treatment to patients); I don't know how DHFS has treated s. 50.065, stats., with respect to hospices. Please advise.

8. The instructions propose a substantive limitation in the definition of “feeding assistant” (that a feeding assistant not be counted toward meeting or complying with any requirements for nursing care staff and functions of a facility, including minimum nursing staffing requirements). This provision is inappropriate as part of a definition; see my amendment to s. 50.04 (2) (d) (intro.), stats. Please review and advise if any other provisions should be so amended.

9. This bill creates numerous requirements for rules promulgation, which must be accomplished before certain provisions can be implemented. Therefore, it needs a delayed effective date to allow the rules promulgation to take place; I suggest giving DHFS at least one year to do so (so, a general effective date of January 1, 2009). Please advise. Also, should there be a provision requiring DHFS to submit proposed rules to the Legislative Council rules clearinghouse by a certain date to ensure that the process goes forward?

10. Please see my amendment to s. 250.042 (4) (c) 12., stats.; without the amendment, previously listed nurse’s assistants could be state agents under s. 250.042 (4) (b), stats. Also, is it appropriate that the term “nurse aide,” as it has been expanded under this bill, be included under s. 250.042 (4) (b), stats.?

Debora A. Kennedy  
Managing Attorney  
Phone: (608) 266-0137  
E-mail: [debora.kennedy@legis.wisconsin.gov](mailto:debora.kennedy@legis.wisconsin.gov)