



WEDNESDAY

State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-1127/P2

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~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

See changes
2, 7, 8

X Regen

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.
15 (intro.), 146.40 (5) (b) 2. a., 155.20 (2) (a) 2., 155.30 (3), 250.042 (4) (a) 3., 250.042

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

Analysis by the Legislative Reference Bureau

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

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

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the Department of Health and Family Services and introduced by the Law Revision Committee under s. 13.83 (1) (c) 4., stats. After careful consideration of the various provisions of the bill, the Law Revision Committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

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

11 46.275 (5) (b) 4. Provide services, except respite care that is approved by the
 12 department, within a skilled nursing facility, intermediate care facility or
 13 intermediate care facility for the mentally retarded persons with mental retardation,
 14 as defined in s. 46.278 (1m) (am), including a state center for the developmentally
 15 disabled.

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

1 46.278 (1) The intent of the programs under this section is to provide home or
2 community-based care to serve in a noninstitutional community setting a person
3 who meets eligibility requirements under 42 USC 1396n (c) and who is diagnosed as
4 developmentally disabled under the definition specified in s. 51.01 (5) and relocated
5 from an institution other than a state center for the developmentally disabled or who
6 meets the intermediate care facility for ~~the mentally retarded persons with mental~~
7 retardation or ~~a~~ brain injury rehabilitation facility level of care requirements for
8 medical assistance reimbursement in an intermediate care facility for ~~the mentally~~
9 retarded persons with mental retardation or a brain injury rehabilitation facility and
10 is ineligible for services under s. 46.275 or 46.277. The intent of the program is also
11 that counties use all existing services for providing care under this section, including
12 those services currently provided by counties.

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

14 46.278 (1m) (am) “Intermediate care facility for ~~the mentally retarded persons~~
15 with mental retardation” has the meaning given for “intermediate care facility for
16 the mentally retarded” under 42 USC 1396d ~~(e)~~ and (d).

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

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

1 requests a waiver, it shall include all assurances required under 42 USC 1396n (c)
2 (2) in its request.

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

4 46.278 (4) (a) Sections 46.27 (3) (b) and 46.275 (3) (a) and (c) to (e) apply to
5 county participation in a program, except that services provided in the program shall
6 substitute for care provided a person in an intermediate care facility for ~~the mentally~~
7 retarded persons with mental retardation or in a brain injury rehabilitation facility
8 who meets the intermediate care facility for ~~the mentally retarded~~ persons with
9 mental retardation or brain injury rehabilitation facility level of care requirements
10 for medical assistance reimbursement to that facility rather than for care provided
11 at a state center for the developmentally disabled.

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

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

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

24 46.278 (6) (e) 1. a. An intermediate care facility for ~~the mentally retarded~~
25 persons with mental retardation that closes under s. 50.03 (14).

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

2 46.278 (6) (e) 1. b. An intermediate care facility for ~~the mentally retarded~~
3 persons with mental retardation or a distinct part thereof that has a plan of closure
4 approved by the department and that intends to close within 12 months.

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

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

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

11 46.279 (1) (b) "Intermediate facility" ~~means~~ has the meaning given for an
12 intermediate care facility for the mentally retarded, ~~as defined in~~ under 42 USC
13 1396d (d), other than a center for the developmentally disabled, as defined in s. 51.01
14 (3).

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

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

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

1 49.45 (6m) (am) 1. bm. Nonbillable services of a registered nurse, licensed
2 practical nurse, and ~~nurse's assistant~~ nurse aide.

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

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

5 49.45 (8) (a) 2m. "Nurse aide" has the meaning given in s. 146.40 (1) (d).

6 **SECTION 15.** 49.45 (8) (a) 4. [✓] of the statutes, as affected by 2007 Wisconsin Act
7 20, is repealed and recreated to read:

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

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

18 49.45 (30m) (a) 2. Services in an intermediate care facility for ~~the mentally~~
19 retarded persons with mental retardation, as defined in s. 46.278 (1m) (am), other
20 than a state center for the developmentally disabled.

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

22 49.45 (42) (b) The individual is not eligible to receive home health aide services
23 under medicare, as defined in sub. (3) (L) 1. b.

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

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

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

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

5 49.498 (2) (e) 2. A nursing facility may not use the individual as a ~~nurse’s~~
6 assistant nurse aide unless the nursing facility has inquired of the department
7 concerning information about the individual in the registry under s. 146.40 (4g).

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

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

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

15 50.01 (2) “~~Nurse’s assistant~~ Nurse aide” means a person who performs routine
16 patient care duties delegated by a registered nurse or licensed practical nurse who
17 supervises the person, for the direct health care of a patient or resident. “~~Nurse’s~~
18 assistant Nurse aide” does not mean a feeding assistant, as defined in s. 146.40 (1)
19 (aw); a person who is licensed, permitted, certified, or registered under ch. 441, 448,
20 449, 450, 451, 455, 459, or 460; or a person whose duties primarily involve skills that
21 are different than those taught in instructional programs for ~~nurse’s assistants~~
22 nurse aides.

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

24 50.04 (2) (c) 2. b. A shortage of nurses or ~~nurse’s assistants~~ nurse aides
25 available for employment by the nursing home exists.

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

2 50.04 (2) (d) (intro.) Each nursing home, other than nursing homes that
3 primarily serve the developmentally disabled, shall provide at least the following
4 hours of service by registered nurses, licensed practical nurses, or ~~nurse's assistants~~
5 nurse aides and may not use hours of service by a feeding assistant, as defined in s.
6 146.40 (1) (aw), in fulfilling these requirements:

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

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

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

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

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

24 50.095 (3) (b) The staff replacement rates for full-time and part-time nursing
25 staff, ~~nurse's assistants~~ nurse aides, and administrators for the previous year for the

1 nursing home and for all similar nursing homes in the same geographical area, as
2 determined by the department.

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

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

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

9 50.14 (1) (a) Notwithstanding s. 50.01 (1m), "facility" means a nursing home
10 or an intermediate care facility for the mentally retarded persons with mental
11 retardation that is not located outside the state.

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

13 50.14 (1) (b) "Intermediate care facility for the mentally retarded persons with
14 mental retardation" has the meaning given for "intermediate care facility for the
15 mentally retarded" under 42 USC 1396d (e) and (d).

16 **SECTION 31.** 50.14 (2) (bm) of the statutes, as created by 2007 Wisconsin Act
17 20, is amended to read:

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

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

*For persons with mental
retardation*

1 51.06 (8) (a) 1. “Intermediate care facility for ~~the mentally retarded persons~~
2 with mental retardation” has the meaning given in for “intermediate care facility for
3 the mentally retarded” under 42 USC 1396d (d).

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

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

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

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

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

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

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

2 51.62 (4) **DEPARTMENTAL DUTIES.** The department shall provide the protection
3 and advocacy agency with copies of annual surveys and plans of correction for
4 intermediate care facilities for the mentally retarded persons with mental
5 retardation on or before the first day of the 2nd month commencing after completion
6 of the survey or plan.

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

8 **146.40 (title) Instructional programs for nurse's nurse aides; reporting**
9 **client abuse.**

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

11 146.40 (1) (aw) "Feeding assistant" means an individual who has completed a
12 state-approved training and testing program, as specified by the department by
13 rule, to perform one nursing-related duty, as defined by the department by rule.

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

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

16 146.40 (1) (bo) "Hospice" means a hospice that is licensed under subch. IV of
17 ch. 50 and that is certified as a provider of services under 42 USC 1395 to 1395ccc.

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

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

20 146.40 (1) (bt) "Intermediate care facility for the mentally retarded persons
21 with mental retardation" has the meaning given for "intermediate care facility for
22 the mentally retarded" under 42 USC 1396d (e) and (d).

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

24 146.40 (1) (d) "Nurse's assistant Nurse aide" means an individual who
25 performs routine patient care duties delegated by a registered nurse or licensed

1 practical nurse who supervises the individual, for the direct health care of a patient
2 or resident. "~~Nurse's assistant~~ Nurse aide" does not mean a feeding assistant, an
3 individual who is licensed, permitted, certified, or registered under ch. 441, 448, 449,
4 450, 451, 455, 459, or 460, or an individual whose duties primarily involve skills that
5 are different than those taught in instructional ~~and competency evaluation~~
6 programs for ~~nurse's assistants certified~~ nurse aides approved under sub. (3) or
7 evaluated by competency evaluation programs for ~~nurse's assistants~~ nurse aides
8 approved under sub. (3m).

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

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

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

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

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

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

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

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

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

✓ persons with mental retardation

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

16 146.40 (2) (c) 1. He or she may perform only services for which he or she has
17 received training and has been found proficient by an instructor under the
18 instructional program.

✓ persons with mental retardation

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

20 146.40 (2) (c) 2. The hospital, nursing home, home health agency, hospice, or
21 intermediate care facility for ~~the mentally retarded~~ may not include the individual
22 in meeting or complying with a requirement for nursing care staff and functions,
23 including a minimum nursing staff requirement.

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

1 146.40 (2) (d) For hospitals, nursing homes, home health agencies, or hospices,
2 whether or not certified providers of medical assistance, and intermediate care
3 facilities for ~~the mentally retarded persons with mental retardation~~ that are certified
4 providers of medical assistance, the individual has successfully completed
5 ~~instruction in an instructional and competency evaluation program or has~~
6 ~~successfully completed and~~ a competency evaluation program for nurse's assistants,
7 ~~for home health aides or for hospice nurse aides~~ nurse aides that is certified in another state that
8 meets criteria for acceptance in this state as specified by the department by rule, ~~or~~
9 ~~the individual is certified as a nurse's assistant, home health aide or hospice aide in~~
10 ~~another state that meets criteria for acceptance in this state as specified by the~~
11 ~~department by rule, except that after December 31, 1991, par. (a) applies.~~

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

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

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

23 146.40 (2) (em) For nursing homes that are certified providers of medical
24 assistance, the individual is a student nurse who successfully completes a

1 competency evaluation program for ~~nurse's assistants~~ nurse aides that is approved
2 by the department under sub. (3m).

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

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

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

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

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

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

24 146.40 (3) Except as provided in sub. (4d), the department shall ~~certify~~ approve
25 ~~instructional and competency evaluation programs for nurse's assistants, for home~~

1 ~~health aides and for hospice nurse~~ nurse aides that apply for certification, and satisfy
2 standards for ~~certification, approval that are~~ promulgated by rule by the
3 department. The department shall review the curriculum of each ~~certified~~ approved
4 instructional and competency evaluation program at least once every ~~36~~ 24 months
5 following the date of ~~certification~~ approval to determine whether the program
6 satisfies ~~continues to satisfy~~ the standards for ~~certification~~ approval. Under this
7 subsection, the department may, after providing notice, suspend or revoke the
8 ~~certification~~ approval of an instructional and ~~competency evaluation~~ program or
9 impose a plan of correction on the program if the program ~~does not~~ fails to satisfy the
10 standards for ~~certification~~ approval or operates under conditions that are other than
11 those contained in the application approved by the department.

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

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

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

23 146.40 (4) ~~An instructional and A~~ A competency evaluation program ~~certified~~
24 ~~under sub. (3) or a competency evaluation program~~ approved under sub. (3m) shall
25 notify the department, ~~on a form provided by the department, within 30 days to~~

1 include an individual on the registry under sub. (4g) (a) 1. after ~~an~~ the individual has
2 successfully completed the ~~program~~ competency examination.

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

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

9 **SECTION 62.** ✓ 146.40 (4d) (am) of the statutes, as affected by 2007 Wisconsin Act
10 20, is repealed and recreated to read:

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

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

18 146.40 (4d) (c) Except as provided in par. (am), the department shall deny an
19 application for the issuance of ~~a certification or~~ an approval specified in par. (a) if
20 the applicant does not provide the information specified in par. (a).

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

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

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

2 146.40 (4m) An instructional and competency evaluation program under sub.
3 (3) for which the department has suspended or revoked certification approval or
4 imposed a plan of correction or a competency evaluation program under sub. (3m) for
5 which the department has suspended or revoked approval or imposed a plan of
6 correction may contest the department's action by sending, within 10 days after
7 receipt of notice of the contested action, a written request for hearing under s. 227.44
8 to the division of hearings and appeals created under s. 15.103 (1). The
9 administrator of the division may designate a hearing examiner to preside over the
10 case and recommend a decision to the administrator under s. 227.46. The decision
11 of the administrator of the division shall be the final administrative decision. The
12 division shall commence the hearing within 30 days after receipt of the request for
13 hearing and shall issue a final decision within 15 days after the close of the hearing.
14 Proceedings before the division are governed by ch. 227. In any petition for judicial
15 review of a decision by the division, the party, other than the petitioner, who was in
16 the proceeding before the division shall be the named respondent. This subsection
17 does not apply to a revocation of certification approval under sub. (4d) (d).

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

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

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

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

1 146.40 (4r) (b) Except as provided in pars. (em) and (er), the department shall
2 review and investigate any report received under par. (a) or (am) and, if the
3 allegation is substantiated, make specific, documented findings concerning the
4 misappropriation of property or the neglect or abuse. The department shall, in
5 writing ~~by certified mail~~, notify the ~~person~~ individual specified in the report that the
6 ~~person's~~ individual's name and the department's findings about the ~~person~~
7 individual shall be listed in the registry under sub. (4g) (a) 2. and 3. unless the ~~person~~
8 individual contests the listings in a hearing before the division of hearings and
9 appeals created under s. 15.103 (1). The written notification shall describe the
10 investigation conducted by the department, enumerate the findings alleging
11 misappropriation of property or neglect or abuse of a client and explain the
12 consequence to the ~~person~~ individual specified in the report of waiving a hearing to
13 contest the findings. The ~~person~~ individual specified in the report shall have 30
14 calendar days after receipt of the notification to indicate to the department in writing
15 whether he or she intends to contest the listing or to waive the hearing.

16 **SECTION 69.** 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~~ an individual under
18 par. (b) notifies the department that he or she waives a hearing to contest the listings
19 in the registry under par. (b), or fails to notify the department within 30 calendar
20 days after receipt of a notice under par. (b), the department shall enter the name of
21 the individual under sub. (4g) (a) 2. and the department's findings about the
22 individual under sub. (4g) (a) 3.

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

24 146.40 (4r) (e) The ~~nurse's assistant or home health aide~~ individual may
25 provide the department with a brief statement disputing the department's findings

1 under par. (b) or the hearing officer's findings under par. (d) and, if so provided, the
2 department shall enter the statement under sub. (4g) (a) 4.

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

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

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

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

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

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

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

24 146.40 (5) (b) 1. If the other state certifies instructional programs and
25 competency evaluation programs for ~~nurse's assistants, home health aides or hospice~~

1 nurse aides, the state's requirements are substantially similar, as determined by the
2 department, to certification requirements in this state.

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

4 146.40 (5) (b) 2. (intro.) If the other state certifies ~~nurse's assistants, home~~
5 ~~health aides or hospice~~ nurse aides, that state's requirements are such that one of
6 the following applies:

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

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

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

13 155.20 (2) (a) 2. An intermediate care facility for ~~the mentally retarded persons~~
14 with mental retardation, as defined in s. 46.278 (1m) (am).

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

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

1 department may charge a reasonable fee for the cost of preparation and distribution.
2 The power of attorney for health care instrument distributed by the department
3 shall include the notice specified in sub. (1) and shall be in the following form:

4 POWER OF ATTORNEY

5 FOR HEALTH CARE

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

7 CREATION OF POWER OF

8 ATTORNEY FOR HEALTH CARE

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

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

19 DESIGNATION OF HEALTH CARE AGENT

20 If I am no longer able to make health care decisions for myself, due to my
21 incapacity, I hereby designate.... (print name, address and telephone number) to be
22 my health care agent for the purpose of making health care decisions on my behalf.
23 If he or she is ever unable or unwilling to do so, I hereby designate.... (print name,
24 address and telephone number) to be my alternate health care agent for the purpose
25 of making health care decisions on my behalf. Neither my health care agent nor my

1 alternate health care agent whom I have designated is my health care provider, an
2 employee of my health care provider, an employee of a health care facility in which
3 I am a patient or a spouse of any of those persons, unless he or she is also my relative.
4 For purposes of this document, "incapacity" exists if 2 physicians or a physician and
5 a psychologist who have personally examined me sign a statement that specifically
6 expresses their opinion that I have a condition that means that I am unable to receive
7 and evaluate information effectively or to communicate decisions to such an extent
8 that I lack the capacity to manage my health care decisions. A copy of that statement
9 must be attached to this document.

10 GENERAL STATEMENT OF
11 AUTHORITY GRANTED

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

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

1 If I have checked "No" to the following, my health care agent may not have a feeding
2 tube withheld or withdrawn from me.

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

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

7 If I have not checked either "Yes" or "No" immediately above, my health care
8 agent may not have a feeding tube withdrawn from me.

9 HEALTH CARE DECISIONS

10 FOR PREGNANT WOMEN

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

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

16 If I have not checked either "Yes" or "No" immediately above, my health care
17 agent may not make health care decisions for me if my health care agent knows I am
18 pregnant.

19 STATEMENT OF DESIRES, SPECIAL

20 PROVISIONS OR LIMITATIONS

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

25 1) -

1 inpatient health care facility in which the declarant is a patient. I am not the
2 principal's health care agent. To the best of my knowledge, I am not entitled to and
3 do not have a claim on the principal's estate.

4 Witness No. 1:

5 (print) Name....

Date....

6 Address....

7 Signature....

8 Witness No. 2:

9 (print) Name....

Date....

10 Address....

11 Signature....

12 STATEMENT OF HEALTH CARE AGENT

13 AND ALTERNATE HEALTH CARE AGENT

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

18 Agent's signature....

19 Address....

20 Alternate's signature....

21 Address....

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

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

3 ANATOMICAL GIFTS (optional)

4 Upon my death:

5 I wish to donate only the following organs or parts: (specify the organs or
6 parts).

7 I wish to donate any needed organ or part.

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

9 I refuse to make an anatomical gift. (If this revokes a prior commitment that
10 I have made to make an anatomical gift to a designated donee, I will attempt to notify
11 the donee to which or to whom I agreed to donate.)

12 Failing to check any of the lines immediately above creates no presumption
13 about my desire to make or refuse to make an anatomical gift.

14 Signature....

Date....

15 **SECTION 79.** 250.042 (4) (a) 3. of the statutes is amended to read:

16 250.042 (4) (a) 3. "Health care provider" means an individual who, at any time
17 within 10 years before a state of emergency is declared under s. 166.03 (1) (b) 1. or
18 166.23, has met requirements for a ~~nurse's assistant~~ nurse aide under s. 146.40 (2)
19 (a), ~~(b)~~, ~~(bm)~~, (c), (e), (em), ~~(f)~~, or (g), has been licensed as a physician, a physician
20 assistant, or a podiatrist under ch. 448, licensed as a registered nurse, licensed
21 practical nurse, or nurse-midwife under ch. 441, licensed as a dentist under ch. 447,
22 licensed as a pharmacist under ch. 450, licensed as a veterinarian under ch. 453, or
23 has been certified as a respiratory care practitioner under ch. 448.

24 **SECTION 80.** 250.042 (4) (b) of the statutes is amended to read:

1 250.042 (4) (b) A behavioral health provider, health care provider, pupil
2 services provider, or substance abuse prevention provider who, during a state of
3 emergency declared under s. 166.03 (1) (b) 1. or 166.23, provides behavioral health
4 services, health care services, pupil services, or substance abuse prevention services
5 for which the behavioral health provider, health care provider, pupil services
6 provider, or substance abuse prevention provider has been licensed or certified or, as
7 a ~~nurse's assistant~~ nurse aide, has met requirements under s. 146.40, is, for the
8 provision of these services a state agent of the department for purposes of ss. 165.25
9 (6), 893.82, and 895.46 and is an employee of the state for purposes of worker's
10 compensation benefits. The behavioral health services, health care services, pupil
11 services, or substance abuse prevention services shall be provided on behalf of a
12 health care facility on a voluntary, unpaid basis, except that the behavioral health
13 provider, health care provider, pupil services provider, or substance abuse
14 prevention provider may accept reimbursement for travel, lodging, and meals.

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

16 250.042 (4) (c) 12. A ~~nurse's assistant~~ nurse aide whose name is listed under
17 s. 146.40 (4g) (a) 2., 2005 stats., or a nurse aide whose name is listed under s. 146.40
18 (4g) (a) 2.

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

20 440.03 **(3q)** Notwithstanding sub. (3m), the department of regulation and
21 licensing shall investigate any report that it receives under s. 146.40 (4r) ~~(am) 2. or~~
22 (em).

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

24 632.895 **(1)** (b) 2. Part-time or intermittent home health aide services which
25 that are medically necessary as part of the home care plan, under the supervision of

1 a registered nurse or medical social worker, which consist solely of caring for the
2 patient.

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

4 632.895 (2) (d) Each visit by a person providing services under a home care plan
5 or evaluating the need for or developing a plan shall be considered as one home care
6 visit. The policy may contain a limit on the number of home care visits, but not less
7 than 40 visits in any 12-month period, for each person covered under the policy. Up
8 to 4 consecutive hours in a 24-hour period of home health aide service shall be
9 considered as one home care visit.

10 **SECTION 85. Effective date.**

11 (1) This act takes effect on January 1, 2009.

12 (END)

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INSERT A

Under current law, numerous requirements apply to the employment or contracting for services of home health aides, hospice aides, and nurse's assistants by hospitals, nursing homes, intermediate care facilities for the mentally retarded, home health agencies, and hospices. Generally, before being employed or contracting for services, a home health aide, hospice aide, or nurse's assistant must have successfully completed instruction in an instructional and competency evaluation program certified by the Department of Health and Family Services (DHFS) or a competency evaluation program approved by DHFS or a program that meets the DHFS standards, although this requirement does not apply to certain individuals providing services under one of these classifications who have been employed or under contract for numerous years. DHFS must review the curriculum of an instructional and competency evaluation program every 36 months and may suspend or revoke certification for the program or impose a plan of correction on it; DHFS may also suspend or revoke approval for a competency evaluation program or impose a plan of correction on it. DHFS maintains a registry of individuals who have successfully completed an instructional and competency evaluation program or a competency evaluation program. DHFS maintains another registry of persons, employed by or under contract with a facility, organization, or service that is licensed or certified by or registered with DHFS to provide direct care and treatment to clients, who are reported to have, allegedly, misappropriated the property of a client or neglected or abused a client. Such a facility, organization, or service must report to the Department of Regulation and Licensing (DRL) any such allegation for a person who is licensed, permitted, certified, or registered by DRL, an examining board, or an affiliated credentialing board (credentialed). DHFS must review and investigate any such report, and, if the person is credentialed, refer the report to DRL.

Effective January 1, 2009, this bill changes the terms "nurse's assistant," "hospice aide," and "home health aide" to "nurse aide" and changes the term "intermediate care facility for the mentally retarded" to "intermediate care facility for persons with mental retardation." The bill changes the term "instructional and competency evaluation program" to "instructional program" and requires that DHFS approve, rather than certify, such programs that meet standards specified by DHFS by rule. Further, DHFS must review the curriculum of each approved instructional program every 24 months, rather than 36 months, after the date of approval.

The bill creates a new classification of caregiver, termed a "feeding assistant." A feeding assistant must successfully complete a state-approved training and testing program to perform one nursing-related duty before being employed by or contracting with a nursing home or intermediate care facility for persons with mental retardation. A nursing home may not use hours of service provided by a feeding assistant in fulfilling certain staffing requirements.

The bill eliminates the requirement that a facility, organization, or service that is licensed or certified by or registered with DHFS report to DRL any allegation, for



a person who is credentialed[✓], concerning the misappropriation of property of a client or the neglect or abuse of a client.

The bill eliminates certain exceptions, by persons who have worked for numerous years as[✓] home health aides, hospice aides, or nurse's assistants, to the requirement for successful completion of instructional programs or competency evaluation programs.[✓]

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

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For further information, see the NOTES^g provided by the Law Revision *
Committee of the Joint Legislative Council.

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