

SENATE BILL 377 (LRB -3649)

An Act to amend 46.22 (1) (c) 8. (intro.), 46.275 (5) (b) 4., 46.278 (1), 46.278 (1m) (am), 46.278 (2) (a), 46.278 (4) (a), 46.278 (5) (a), 46.278 (6) (e) 1. a., 46.278 (6) (e) 1. b., 46.278 (6) (e) 1. c., 46.284 (2) (c), 49.43 (7) (b) 1., 49.45 (6m) (ar) 1. c., 49.45 (6m) (bg), 49.45 (30m) (a) 2., 50.04 (2r), 50.04 (4) (dm), 50.14 (1) (a), 50.14 (1) (b), 50.14 (2) (bm), 50.14 (2m), 51.01 (5) (a), 51.06 (8) (a) 1., 51.06 (8) (b) (intro.), 51.06 (8) (b) 4., 51.06 (8) (b) 7., 51.42 (6m) (intro.), 51.437 (4g) (c), 51.62 (4), 54.01 (8), 55.01 (2), 58.05 (title), 58.05 (1), 146.40 (1) (bt), 146.40 (2) (intro.), 146.40 (2) (c) (intro.), 146.40 (2) (c) 2., 146.40 (2) (d), 146.40 (2) (e), 146.40 (2) (g), 146.40 (2m), subchapter VIII (title) of chapter 150 [precedes 150.96], 150.96 (2), 150.96 (4), 150.963 (title), 150.963 (2) (a), 150.963 (2) (b), 150.965, 150.97, 150.975, 150.983, 155.20 (2) (a) 2., 155.30 (3) and 632.88 (1) (a) of the statutes; relating to: changing terminology for those with an intellectual disability.

2012

- 01-12. S. Introduced by Senators **Galloway, Harsdorf, Erpenbach, Hansen, Holperin, King, C. Larson, Lassa, Moulton, Olsen, Risser, Taylor and Vinehout**; cosponsored by Representatives **Severson, Bernier, Berceau, Bies, E. Coggs, Endsley, Hintz, Jacque, Kaufert, Kerkman, Knodl, Kooyenga, Litjens, Mason, Nygren, Pasch, Petryk, Radcliffe, Rivard, Sinicki, Spanbauer, Strachota, C. Taylor, Thiesfeldt, Tranel, Zepnick and Toles.**
- 01-12. S. Read first time and referred to committee on Public Health, Human Services, and Revenue ..... 648
- 01-19. S. Public hearing held.
- 01-25. S. Executive action taken.
- 01-25. S. Report passage recommended by committee on Public Health, Human Services, and Revenue, Ayes 5, Noes 0 ..... 671
- 01-25. S. Available for scheduling.
- 02-13. S. Placed on calendar 2-14-2012 pursuant to Senate Rule 18(1) ..... 698
- 02-14. S. Senator Carpenter added as a coauthor ..... 701
- 02-14. S. Read a second time ..... 706
- 02-14. S. Ordered to a third reading ..... 706
- 02-14. S. Rules suspended ..... 706
- 02-14. S. Read a third time and **passed** ..... 706
- 02-14. S. Ordered immediately messaged ..... 708
- 02-16. A. Received from Senate ..... 802
- 02-20. A. Read first time and referred to committee on Rules ..... 819
- 03-02. A. Placed on calendar 3-6-2012 by committee on Rules.
- 03-06. A. Made a special order of business at 11:12 A.M. on 3-13-2012 pursuant to Assembly Resolution 22 ..... 894
- 03-13. A. Read a second time.
- 03-13. A. Ordered to a third reading.
- 03-13. A. Rules suspended.
- 03-13. A. Read a third time and **concurred in.**
- 03-13. A. Ordered immediately messaged.
- 03-13. S. Received from Assembly concurred in.

MB

**2011**  
**ENROLLED BILL**

11en SB-377

**ADOPTED DOCUMENTS:**

Orig     Engr           SubAmdt       

11-3649/1

Amendments to above (if none, write "NONE"): None

Corrections - show date (if none, write "NONE"): None

Topic Rel

3-14-12  
Date

JR Miller  
Enrolling Drafter



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-3649/1

TJD:med:jf

## 2011 SENATE BILL 377

January 12, 2012 - Introduced by Senators GALLOWAY, HARSDORF, ERPENBACH, HANSEN, HOLPERIN, KING, C. LARSON, LASSA, MOULTON, OLSEN, RISSER, TAYLOR and VINEHOUT, cosponsored by Representatives SEVERSON, BERNIER, BERCEAU, BIES, E. COGGS, ENDSLEY, HINTZ, JACQUE, KAUFERT, KERKMAN, KNODL, KOOYENGA, LITJENS, MASON, NYGREN, PASCH, PETRYK, RADCLIFFE, RIVARD, SINICKI, SPANBAUER, STRACHOTA, C. TAYLOR, THIESFELDT, TRANEL, ZEPNICK and TOLES. Referred to Committee on Public Health, Human Services, and Revenue.

1     **AN ACT** *to amend* 46.22 (1) (c) 8. (intro.), 46.275 (5) (b) 4., 46.278 (1), 46.278 (1m)  
2             (am), 46.278 (2) (a), 46.278 (4) (a), 46.278 (5) (a), 46.278 (6) (e) 1. a., 46.278 (6)  
3             (e) 1. b., 46.278 (6) (e) 1. c., 46.284 (2) (c), 49.43 (7) (b) 1., 49.45 (6m) (ar) 1. c.,  
4             49.45 (6m) (bg), 49.45 (30m) (a) 2., 50.04 (2r), 50.04 (4) (dm), 50.14 (1) (a), 50.14  
5             (1) (b), 50.14 (2) (bm), 50.14 (2m), 51.01 (5) (a), 51.06 (8) (a) 1., 51.06 (8) (b)  
6             (intro.), 51.06 (8) (b) 4., 51.06 (8) (b) 7., 51.42 (6m) (intro.), 51.437 (4g) (c), 51.62  
7             (4), 54.01 (8), 55.01 (2), 58.05 (title), 58.05 (1), 146.40 (1) (bt), 146.40 (2) (intro.),  
8             146.40 (2) (c) (intro.), 146.40 (2) (c) 2., 146.40 (2) (d), 146.40 (2) (e), 146.40 (2)  
9             (g), 146.40 (2m), subchapter VIII (title) of chapter 150 [precedes 150.96], 150.96  
10            (2), 150.96 (4), 150.963 (title), 150.963 (2) (a), 150.963 (2) (b), 150.965, 150.97,

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1           150.975, 150.983, 155.20 (2) (a) 2., 155.30 (3) and 632.88 (1) (a) of the statutes;  
2           **relating to:** changing terminology for those with an intellectual disability.

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***Analysis by the Legislative Reference Bureau***

This bill substitutes the phrase “intellectual disability” for “mental retardation” and “mentally retarded” in the statutes.

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

3           **SECTION 1.** 46.22 (1) (c) 8. (intro.) of the statutes is amended to read:

4           46.22 (1) (c) 8. (intro.) To administer child welfare services including services  
5 to juveniles who are delinquent and to children who ~~are mentally retarded,~~ have an  
6 intellectual disability or are dependent, neglected or nonmarital, and to other  
7 children who are in need of such services. In administering child welfare services the  
8 county department of social services shall be governed by the following:

9           **SECTION 2.** 46.275 (5) (b) 4. of the statutes is amended to read:

10          46.275 (5) (b) 4. Provide services, except respite care that is approved by the  
11 department, within a skilled nursing facility, intermediate care facility or  
12 intermediate care facility for persons with ~~mental retardation~~ an intellectual  
13 disability, as defined in s. 46.278 (1m) (am), including a state center for the  
14 developmentally disabled.

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

16          46.278 (1) **LEGISLATIVE INTENT.** The intent of the programs under this section  
17 is to provide home or community-based care to serve in a noninstitutional  
18 community setting a person who meets eligibility requirements under 42 USC 1396n  
19 (c) and who is diagnosed as developmentally disabled under the definition specified  
20 in s. 51.01 (5) and relocated from an institution other than a state center for the

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

9               **SECTION 4.** 46.278 (1m) (am) of the statutes is amended to read:

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

13              **SECTION 5.** 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 persons with ~~mental retardation~~ an intellectual  
19       disability or in a brain injury rehabilitation facility, in their communities by  
20       providing home or community-based services as part of medical assistance. If the  
21       department requests a waiver, it shall include all assurances required under 42 USC  
22       1396n (c) (2) in its request.

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

7 **SECTION 7.** 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 persons with ~~mental retardation~~ an intellectual disability 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 8.** 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 persons with ~~mental~~  
20 ~~retardation~~ an intellectual disability that closes under s. 50.03 (14).

21 **SECTION 9.** 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 persons with ~~mental~~  
23 ~~retardation~~ an intellectual disability or a distinct part thereof that has a plan of  
24 closure approved by the department and that intends to close within 12 months.

25 **SECTION 10.** 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 persons with ~~mental~~  
2     ~~retardation~~ an intellectual disability that has a plan of closure or significant  
3     reduction in capacity approved by the department and that intends to close or  
4     significantly reduce its capacity within 60 months.

5           **SECTION 11.** 46.284 (2) (c) of the statutes is amended to read:

6           46.284 (2) (c) The department shall require, as a term of any contract with a  
7     care management organization under this section, that the care management  
8     organization contract for the provision of services that are covered under the family  
9     care benefit with any community-based residential facility under s. 50.01 (1g),  
10    residential care apartment complex under s. 50.01 (1d), nursing home under s. 50.01  
11    (3), intermediate care facility for ~~the mentally retarded~~ persons with an intellectual  
12    disability under s. 50.14 (1) (b), community rehabilitation program, home health  
13    agency under s. 50.49 (1) (a), provider of day services, or provider of personal care,  
14    as defined in s. 50.01 (4o), that agrees to accept the reimbursement rate that the care  
15    management organization pays under contract to similar providers for the same  
16    service and that satisfies any applicable quality of care, utilization, or other criteria  
17    that the care management organization requires of other providers with which it  
18    contracts to provide the same service.

19          **SECTION 12.** 49.43 (7) (b) 1. of the statutes is amended to read:

20          49.43 (7) (b) 1. Licensed or approved under state law for ~~the mentally retarded~~  
21    individuals with an intellectual disability or persons with related conditions, the  
22    primary purpose of which is to provide health or rehabilitative services for ~~mentally~~  
23    ~~retarded~~ individuals with an intellectual disability according to rules promulgated  
24    by the department; and

25          **SECTION 13.** 49.45 (6m) (ar) 1. c. of the statutes is amended to read:

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1           49.45 **(6m)** (ar) 1. c. If a facility has an approved program for provision of service  
2 to ~~mentally-retarded~~ residents who have an intellectual disability, residents  
3 dependent upon ventilators, or residents requiring supplemental skilled care due to  
4 complex medical conditions, a supplement to the direct care component of the facility  
5 rate under subd. 1. b. may be made to that facility according to a method developed  
6 by the department.

7           **SECTION 14.** 49.45 (6m) (bg) of the statutes is amended to read:

8           49.45 **(6m)** (bg) The department shall determine payment levels for the  
9 provision of skilled, intermediate, limited, personal or residential care or care for ~~the~~  
10 ~~mentally-retarded~~ individuals with an intellectual disability in the state centers for  
11 the developmentally disabled and in a Wisconsin veterans home operated by the  
12 department of veterans affairs under s. 45.50 separately from the payment  
13 principles, applicable costs and methods established under this subsection.

14           **SECTION 15.** 49.45 (30m) (a) 2. of the statutes is amended to read:

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

18           **SECTION 16.** 50.04 (2r) of the statutes is amended to read:

19           50.04 **(2r)** ADMISSIONS REQUIRING APPROVAL. Except in an emergency, a nursing  
20 home that is not certified as a provider of medical assistance or that is an  
21 intermediate care facility for persons with ~~mental retardation~~ an intellectual  
22 disability, as defined in s. 46.278 (1m) (am), or an institution for mental diseases, as  
23 defined under 42 CFR 435.1009, may not admit as a resident an individual who has  
24 a developmental disability, as defined in s. 51.01 (5), or who is both under age 65 and  
25 has mental illness, as defined in s. 51.01 (13), unless the county department under



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1 s. 46.23, 51.42 or 51.437 of the individual's county of residence has recommended the  
2 admission.

3 **SECTION 17.** 50.04 (4) (dm) of the statutes is amended to read:

4 50.04 (4) (dm) *Inspection fee.* If the department takes enforcement action  
5 against a nursing home, including an intermediate care facility for ~~the mentally~~  
6 ~~retarded persons with an intellectual disability~~, as defined in ~~42 USC 1396d (d) s.~~  
7 50.14 (1) (b), for a violation of this subchapter or rules promulgated under it or for  
8 a violation of a requirement under 42 USC 1396r, and the department subsequently  
9 conducts an on-site inspection of the nursing home to review the nursing home's  
10 action to correct the violation, the department may, unless the nursing home is  
11 operated by the state, impose a \$200 inspection fee on the nursing home.

12 **SECTION 18.** 50.14 (1) (a) of the statutes is amended to read:

13 50.14 (1) (a) Notwithstanding s. 50.01 (1m), "facility" means a nursing home  
14 or an intermediate care facility for persons with ~~mental retardation~~ an intellectual  
15 disability that is not located outside the state.

16 **SECTION 19.** 50.14 (1) (b) of the statutes is amended to read:

17 50.14 (1) (b) "Intermediate care facility for persons with ~~mental retardation~~ an  
18 intellectual disability" has the meaning given for "intermediate care facility for the  
19 mentally retarded" under 42 USC 1396d (d).

20 **SECTION 20.** 50.14 (2) (bm) of the statutes is amended to read:

21 50.14 (2) (bm) For intermediate care facilities for persons with ~~mental~~  
22 ~~retardation~~ an intellectual disability, an amount calculated by multiplying the  
23 projected annual gross revenues of all intermediate care facilities for persons with  
24 ~~mental retardation~~ an intellectual disability in this state by 0.055, dividing the  
25 product by the number of licensed beds of intermediate care facilities for persons

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1 with ~~mental retardation~~ an intellectual disability in this state and dividing the  
2 quotient by 12.

3 **SECTION 21.** 50.14 (2m) of the statutes is amended to read:

4 50.14 **(2m)** Prior to each state fiscal year, the department shall calculate the  
5 amount of the assessment under sub. (2) (bm) that shall apply during the fiscal year.  
6 The department may reduce the assessment amount during a state fiscal year to  
7 avoid collecting for the fiscal year an amount in bed assessment receipts under sub.  
8 (2) (bm) that exceeds 5.5 percent of the aggregate gross revenues for intermediate  
9 care facilities for ~~the mentally retarded~~ persons with an intellectual disability for the  
10 fiscal year.

11 **SECTION 22.** 51.01 (5) (a) of the statutes is amended to read:

12 51.01 **(5)** (a) “Developmental disability” means a disability attributable to  
13 brain injury, cerebral palsy, epilepsy, autism, Prader–Willi syndrome, ~~mental~~  
14 ~~retardation~~ intellectual disability, or another neurological condition closely related  
15 to ~~mental retardation~~ an intellectual disability or requiring treatment similar to that  
16 required for individuals with ~~mental retardation~~ an intellectual disability, which has  
17 continued or can be expected to continue indefinitely and constitutes a substantial  
18 handicap to the afflicted individual. “Developmental disability” does not include  
19 dementia that is primarily caused by degenerative brain disorder.

20 **SECTION 23.** 51.06 (8) (a) 1. of the statutes is amended to read:

21 51.06 **(8)** (a) 1. “Intermediate care facility for persons with ~~mental retardation~~  
22 an intellectual disability” has the meaning given for “intermediate care facility for  
23 the mentally retarded” under 42 USC 1396d (d).

24 **SECTION 24.** 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 persons with ~~mental retardation~~ an intellectual disability, and centers for the  
7 developmentally disabled. The report shall include all of the following information:

8           **SECTION 25.** 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 persons with  
12 ~~mental retardation~~ an intellectual disability, 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 26.** 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 persons with ~~mental retardation~~ an intellectual disability, and centers  
18 for the developmentally disabled in communities in which an individual relocated or  
19 diverted from a nursing home, intermediate care facility for persons with ~~mental~~  
20 ~~retardation~~ an intellectual disability, or center for the developmentally disabled  
21 currently resides.

22           **SECTION 27.** 51.42 (6m) (intro.) of the statutes is amended to read:

23           51.42 (6m) COUNTY COMMUNITY PROGRAMS DIRECTOR IN CERTAIN COUNTIES WITH A  
24 COUNTY EXECUTIVE OR COUNTY ADMINISTRATOR. (intro.) In any county with a county  
25 executive or county administrator in which the county board of supervisors has

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1 established a single-county department of community programs, the county  
2 executive or county administrator shall appoint and supervise the county  
3 community programs director. In any county with a population of 500,000 or more,  
4 the county executive or county administrator shall appoint the director of the county  
5 department of human services under s. 46.21 as the county community programs  
6 director. The appointment of a county community programs director under this  
7 subsection shall be on the basis of recognized and demonstrated interest in and  
8 knowledge of the problems of mental health, ~~mental retardation~~ intellectual  
9 disability, alcoholism and drug addiction, with due regard to training, experience,  
10 executive and administrative ability, and general qualification and fitness for the  
11 performance of the duties of the director. The appointment of a county community  
12 programs director under this subsection is subject to confirmation by the county  
13 board of supervisors unless the county board of supervisors, by ordinance, elects to  
14 waive confirmation or unless the appointment is made under a civil service system  
15 competitive examination procedure established under s. 59.52 (8) or ch. 63. The  
16 county community programs director, subject only to the supervision of the county  
17 executive or county administrator, shall:

18 **SECTION 28.** 51.437 (4g) (c) of the statutes is amended to read:

19 51.437 **(4g)** (c) In a county with a population of 500,000 or more, the county  
20 board of supervisors shall integrate day care programs for ~~mentally retarded~~ persons  
21 with an intellectual disability and those programs for persons with other  
22 developmental disabilities into the county developmental disabilities program.

23 **SECTION 29.** 51.62 (4) of the statutes is amended to read:

24 51.62 **(4)** DEPARTMENTAL DUTIES. The department shall provide the protection  
25 and advocacy agency with copies of annual surveys and plans of correction for

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1 intermediate care facilities for persons with ~~mental retardation~~ an intellectual  
2 disability on or before the first day of the 2nd month commencing after completion  
3 of the survey or plan.

4 **SECTION 30.** 54.01 (8) of the statutes is amended to read:

5 54.01 (8) "Developmental disability" means a disability attributable to ~~mental~~  
6 ~~retardation~~ intellectual disability, cerebral palsy, epilepsy, autism, or another  
7 neurological condition closely related to ~~mental retardation~~ an intellectual disability  
8 or requiring treatment similar to that required for individuals with ~~mental~~  
9 ~~retardation~~ an intellectual disability, which has continued or can be expected to  
10 continue indefinitely, substantially impairs an individual from adequately providing  
11 for his or her own care or custody, and constitutes a substantial handicap to the  
12 afflicted individual. The term does not include dementia that is primarily caused by  
13 degenerative brain disorder.

14 **SECTION 31.** 55.01 (2) of the statutes is amended to read:

15 55.01 (2) "Developmental disability" means a disability attributable to ~~mental~~  
16 ~~retardation~~ intellectual disability, cerebral palsy, epilepsy, autism or another  
17 neurological condition closely related to ~~mental retardation~~ an intellectual disability  
18 or requiring treatment similar to that required for individuals with ~~mental~~  
19 ~~retardation~~ an intellectual disability, which has continued or can be expected to  
20 continue indefinitely, substantially impairs an individual from adequately providing  
21 for his or her own care or custody, and constitutes a substantial handicap to the  
22 afflicted individual. The term does not include dementia that is primarily caused by  
23 degenerative brain disorder.

24 **SECTION 32.** 58.05 (title) of the statutes is amended to read:

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## SECTION 32

1           **58.05** (title) **Private institutions for persons who are mentally ill or**  
2 **retarded have an intellectual disability.**

3           **SECTION 33.** 58.05 (1) of the statutes is amended to read:

4           **58.05 (1)** The articles of organization of any corporation organized under the  
5 laws of this state for the establishment and maintenance of any hospital or other  
6 institution for the care, treatment or relief of persons who are mentally ill or ~~retarded~~  
7 **have an intellectual disability** may contain provisions authorizing it to receive  
8 general, special, permanent or temporary endowments and to secure the repayment  
9 of the same in accordance with the terms and conditions upon which they may be  
10 made by a mortgage upon its real or personal property, or both, or otherwise, in the  
11 manner in such articles provided.

12           **SECTION 34.** 146.40 (1) (bt) of the statutes is amended to read:

13           146.40 (1) (bt) “Intermediate care facility for persons with ~~mental retardation~~  
14 **an intellectual disability**” has the meaning given for “intermediate care facility for  
15 the mentally retarded” under 42 USC 1396d (d).

16           **SECTION 35.** 146.40 (2) (intro.) of the statutes is amended to read:

17           146.40 (2) (intro.) A hospital, nursing home, intermediate care facility for  
18 persons with ~~mental retardation~~ **an intellectual disability**, home health agency, or  
19 hospice may not employ or contract for the services of an individual as a nurse aide,  
20 regardless of the title under which the individual is employed or contracted for,  
21 unless one of the following is true:

22           **SECTION 36.** 146.40 (2) (c) (intro.) of the statutes is amended to read:

23           146.40 (2) (c) (intro.) For hospitals, nursing homes, home health agencies or  
24 hospices, whether or not certified providers of medical assistance, and intermediate  
25 care facilities persons with ~~mental retardation~~ **an intellectual disability** that are

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1 certified providers of medical assistance, the individual is enrolled in an  
2 instructional program for nurse aides that is approved under sub. (3) and is  
3 employed or under contract as a nurse's assistant, home health aide or hospice aide  
4 fewer than 120 calendar days by the hospital, nursing home, home health agency,  
5 hospice or intermediate care facility for ~~the mentally retarded~~ persons with an  
6 intellectual disability. All of the following applies to an individual specified under  
7 this paragraph:

8 **SECTION 37.** 146.40 (2) (c) 2. of the statutes is amended to read:

9 146.40 (2) (c) 2. The hospital, nursing home, home health agency, hospice, or  
10 intermediate care facility for persons with ~~mental retardation~~ an intellectual  
11 disability may not include the individual in meeting or complying with a  
12 requirement for nursing care staff and functions, including a minimum nursing staff  
13 requirement.

14 **SECTION 38.** 146.40 (2) (d) of the statutes is amended to read:

15 146.40 (2) (d) For hospitals, nursing homes, home health agencies, or hospices,  
16 whether or not certified providers of medical assistance, and intermediate care  
17 facilities for persons with ~~mental retardation~~ an intellectual disability that are  
18 certified providers of medical assistance, the individual has successfully completed  
19 an instructional program and a competency evaluation program for nurse aides that  
20 is certified in another state that meets criteria for acceptance in this state as  
21 specified by the department by rule.

22 **SECTION 39.** 146.40 (2) (e) of the statutes is amended to read:

23 146.40 (2) (e) For hospitals, home health agencies, or hospices, whether or not  
24 certified providers of medical assistance, nursing homes that are not certified  
25 providers of medical assistance and intermediate care facilities for persons with

**SENATE BILL 377****SECTION 39**

1 ~~mental retardation~~ an intellectual disability that are certified providers of medical  
2 assistance, the individual is a student nurse who has successfully completed a basic  
3 nursing course from a school that is on the accredited list of schools specified under  
4 s. 441.01 (4) or who successfully completes a competency evaluation program for  
5 nurse aides that is approved by the department under sub. (3m).

6 **SECTION 40.** 146.40 (2) (g) of the statutes is amended to read:

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

15 **SECTION 41.** 146.40 (2m) of the statutes is amended to read:

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

23 **SECTION 42.** Subchapter VIII (title) of chapter 150 [precedes 150.96] of the  
24 statutes is amended to read:

25 **CHAPTER 150**



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SUBCHAPTER VIII

MENTAL RETARDATION FACILITIES FOR THE INTELLECTUALLY  
DISABLED AND COMMUNITY MENTAL HEALTH  
CENTERS CONSTRUCTION

SECTION 43. 150.96 (2) of the statutes is amended to read:

150.96 (2) “Facility for ~~the mentally retarded~~ individuals with an intellectual disability” means a facility specially designed for the diagnosis, treatment, education, training or custodial care of ~~the mentally retarded~~ individuals with an intellectual disability; including facilities for training specialists and sheltered workshops for ~~the mentally retarded~~ individuals with an intellectual disability, but only if such workshops are part of facilities which provide or will provide comprehensive services for ~~the mentally retarded~~ individuals with an intellectual disability.

SECTION 44. 150.96 (4) of the statutes is amended to read:

150.96 (4) “Nonprofit facility for ~~the mentally retarded~~ individuals with an intellectual disability”, and “nonprofit community mental health center” mean, respectively, a facility for ~~the mentally retarded~~ individuals with an intellectual disability, and a community mental health center which is owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

SECTION 45. 150.963 (title) of the statutes is amended to read:

**150.963 (title) Construction of ~~mental retardation~~ facilities for the intellectually disabled and community mental health centers.**

SECTION 46. 150.963 (2) (a) of the statutes is amended to read:

**SENATE BILL 377****SECTION 46**

1           150.963 (2) (a) Making inventories of existing facilities, surveying the need for  
2 construction for facilities for ~~the mentally retarded~~ individuals with an intellectual  
3 disability and community mental health centers, and developing programs of  
4 construction.

5           **SECTION 47.** 150.963 (2) (b) of the statutes is amended to read:

6           150.963 (2) (b) Developing and administering a state plan for the construction  
7 of public and other nonprofit facilities for ~~the mentally retarded~~ individuals with an  
8 intellectual disability, and a state plan for the construction of public and other  
9 nonprofit community mental health centers.

10          **SECTION 48.** 150.965 of the statutes is amended to read:

11          **150.965 Construction programs.** The department is directed to develop  
12 construction programs for facilities for ~~the mentally retarded~~ individuals with an  
13 intellectual disability and community mental health centers for the mentally ill,  
14 which shall be based respectively on statewide inventories of existing facilities for  
15 ~~the mentally retarded~~ individuals with an intellectual disability and the mentally  
16 ill and surveys of need, and which shall provide in accordance with regulations  
17 prescribed under the federal act, for facilities which will provide adequate services  
18 for ~~the mentally retarded~~ individuals with an intellectual disability and adequate  
19 community mental health services for the people residing in this state and for  
20 furnishing needed services to persons unable to pay therefor.

21          **SECTION 49.** 150.97 of the statutes is amended to read:

22          **150.97 Standards for maintenance and operation.** The department shall  
23 by regulation prescribe, and shall be authorized to enforce, standards for the  
24 maintenance and operation of facilities for ~~the mentally retarded~~ individuals with

## SENATE BILL 377

1 an intellectual disability, and community mental health centers which receive  
2 federal aid for construction under the state plans.

3 SECTION 50. 150.975 of the statutes is amended to read:

4 **150.975 Applications.** Applications for ~~mental retardation~~ facility for  
5 individuals with an intellectual disability or community mental health center  
6 construction projects for which federal funds are requested shall be submitted to the  
7 department by the state, a political subdivision thereof or by a public or other  
8 nonprofit agency. Each application for a construction project shall conform to federal  
9 and state requirements.

10 SECTION 51. 150.983 of the statutes is amended to read:

11 **150.983 ~~Mental retardation facilities~~ Facilities for individuals with an**  
12 **intellectual disability and community mental health centers construction**  
13 **funds.** The department may receive federal funds in behalf of, and transmit them  
14 to, applicants. In the general fund there is hereby established, separate and apart  
15 from all public moneys of this state, ~~a mental retardation~~ an intellectual disability  
16 facilities construction fund and a community mental health centers construction  
17 fund. Money received from the federal government for a construction project under  
18 this subchapter approved by the secretary shall be deposited to the credit of the  
19 appropriate fund and shall be used solely for payments to applicants for work  
20 performed, or purchases made, in carrying out the approved project.

21 SECTION 52. 155.20 (2) (a) 2. of the statutes is amended to read:

22 155.20 (2) (a) 2. An intermediate care facility for persons with ~~mental~~  
23 ~~retardation~~ an intellectual disability, as defined in s. 46.278 (1m) (am).

24 SECTION 53. 155.30 (3) of the statutes is amended to read:

**SENATE BILL 377****SECTION 53**

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

14           POWER OF ATTORNEY FOR HEALTH CARE

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

16           CREATION OF POWER OF ATTORNEY

17           FOR HEALTH CARE

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

**SENATE BILL 377**

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

**DESIGNATION OF HEALTH CARE AGENT**

4           If I am no longer able to make health care decisions for myself, due to my  
5           incapacity, I hereby designate.... (print name, address and telephone number) to be  
6           my health care agent for the purpose of making health care decisions on my behalf.  
7           If he or she is ever unable or unwilling to do so, I hereby designate.... (print name,  
8           address and telephone number) to be my alternate health care agent for the purpose  
9           of making health care decisions on my behalf. Neither my health care agent nor my  
10          alternate health care agent whom I have designated is my health care provider, an  
11          employee of my health care provider, an employee of a health care facility in which  
12          I am a patient or a spouse of any of those persons, unless he or she is also my relative.  
13          For purposes of this document, “incapacity” exists if 2 physicians or a physician and  
14          a psychologist who have personally examined me sign a statement that specifically  
15          expresses their opinion that I have a condition that means that I am unable to receive  
16          and evaluate information effectively or to communicate decisions to such an extent  
17          that I lack the capacity to manage my health care decisions. A copy of that statement  
18          must be attached to this document.

**GENERAL STATEMENT OF AUTHORITY GRANTED**

19          Unless I have specified otherwise in this document, if I ever have incapacity I  
20          instruct my health care provider to obtain the health care decision of my health care  
21          agent, if I need treatment, for all of my health care and treatment. I have discussed  
22          my desires thoroughly with my health care agent and believe that he or she  
23          understands my philosophy regarding the health care decisions I would make if I  
24

**SENATE BILL 377****SECTION 53**

1 were able. I desire that my wishes be carried out through the authority given to my  
2 health care agent under this document.

3 If I am unable, due to my incapacity, to make a health care decision, my health  
4 care agent is instructed to make the health care decision for me, but my health care  
5 agent should try to discuss with me any specific proposed health care if I am able to  
6 communicate in any manner, including by blinking my eyes. If this communication  
7 cannot be made, my health care agent shall base his or her decision on any health  
8 care choices that I have expressed prior to the time of the decision. If I have not  
9 expressed a health care choice about the health care in question and communication  
10 cannot be made, my health care agent shall base his or her health care decision on  
11 what he or she believes to be in my best interest.

**LIMITATIONS ON MENTAL HEALTH TREATMENT**

12 My health care agent may not admit or commit me on an inpatient basis to an  
13 institution for mental diseases, an intermediate care facility for persons with ~~mental~~  
14 ~~retardation~~ an intellectual disability, a state treatment facility or a treatment  
15 facility. My health care agent may not consent to experimental mental health  
16 research or psychosurgery, electroconvulsive treatment or drastic mental health  
17 treatment procedures for me.  
18

**ADMISSION TO NURSING HOMES OR  
19 COMMUNITY-BASED RESIDENTIAL FACILITIES**

20 My health care agent may admit me to a nursing home or community-based  
21 residential facility for short-term stays for recuperative care or respite care.  
22

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

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1           1. A nursing home — Yes.... No....

2           2. A community-based residential facility — Yes.... No....

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

5           PROVISION OF A FEEDING TUBE

6           If I have checked “Yes” to the following, my health care agent may have a  
7 feeding tube withheld or withdrawn from me, unless my physician has advised that,  
8 in his or her professional judgment, this will cause me pain or will reduce my comfort.

9           If I have checked “No” to the following, my health care agent may not have a feeding  
10 tube withheld or withdrawn from me.

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

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

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

17           HEALTH CARE DECISIONS FOR

18           PREGNANT WOMEN

19           If I have checked “Yes” to the following, my health care agent may make health  
20 care decisions for me even if my agent knows I am pregnant. If I have checked “No”  
21 to the following, my health care agent may not make health care decisions for me if  
22 my health care agent knows I am pregnant.

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

**SENATE BILL 377****SECTION 53**

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

4           **STATEMENT OF DESIRES,**5           **SPECIAL PROVISIONS OR LIMITATIONS**

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

10           1) –

11           2) –

12           3) –

13           **INSPECTION AND DISCLOSURE OF**14           **INFORMATION RELATING TO MY PHYSICAL**15           **OR MENTAL HEALTH**

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

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

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

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

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

24           **SIGNATURE OF PRINCIPAL**

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



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1           Signature....           Date....

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

4           **STATEMENT OF WITNESSES**

5           I know the principal personally and I believe him or her to be of sound mind and  
6 at least 18 years of age. I believe that his or her execution of this power of attorney  
7 for health care is voluntary. I am at least 18 years of age, am not related to the  
8 principal by blood, marriage, or adoption, am not the domestic partner under ch. 770  
9 of the principal, and am not directly financially responsible for the principal's health  
10 care. I am not a health care provider who is serving the principal at this time, an  
11 employee of the health care provider, other than a chaplain or a social worker, or an  
12 employee, other than a chaplain or a social worker, of an inpatient health care facility  
13 in which the declarant is a patient. I am not the principal's health care agent. To  
14 the best of my knowledge, I am not entitled to and do not have a claim on the  
15 principal's estate.

16           Witness No. 1:

17           (print) Name....           Date....

18           Address....

19           Signature....

20           Witness No. 2:

21           (print) Name....           Date....

22           Address....

23           Signature....

24           **STATEMENT OF HEALTH CARE AGENT AND**

25           **ALTERNATE HEALTH CARE AGENT**

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**SECTION 53**

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

5 Agent's signature....

6 Address....

7 Alternate's signature....

8 Address....

9 Failure to execute a power of attorney for health care document under chapter  
 10 155 of the Wisconsin Statutes creates no presumption about the intent of any  
 11 individual with regard to his or her health care decisions.

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

14 ANATOMICAL GIFTS (optional)

15 Upon my death:

16 .... I wish to donate only the following organs or parts: .... (specify the organs or  
 17 parts).

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

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

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

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

25 Signature....

Date....

