



1995 ASSEMBLY BILL 906

February 21, 1996 – Introduced by Representatives KRUSICK, SILBAUGH, CARPENTER and HAHN, cosponsored by Senator GROBSCHMIDT. Referred to Committee on Aging and Long-Term Care.

1 **AN ACT to renumber** 146.40 (1) (a); **to amend** 49.498 (3) (b) 1., 55.043 (1) (a) (in-
2 tro.), (4) (intro.), (e) and (f) and (5), 146.40 (title), 146.40 (4g) (a) 2. (intro.),
3 146.40 (4g) (a) 2. b., 146.40 (4g) (a) 3., 146.40 (4r) (a), 146.40 (4r) (b) and 146.40
4 (4r) (d); and **to create** 50.01 (1r), 50.065, 146.40 (1) (am), 146.40 (4r) (am) and
5 165.815 of the statutes; **relating to:** background checks of and reporting of pa-
6 tient abuse by nurse’s assistants and certain other persons employed by nurs-
7 ing homes, community-based residential facilities and home health agencies.

Analysis by the Legislative Reference Bureau

Under current law, the department of health and social services (DHSS) is required to maintain a registry that includes a listing of all nurse’s assistants and home health aides whom DHSS has found have neglected or abused or misappropriated property of a nursing home resident or a hospital patient.

This bill requires that a community-based residential facility, home health agency or nursing home report to DHSS for inclusion in the registry any instance of resident or patient neglect or abuse or misappropriation of the property of a resident or patient by any employe.

The bill prohibits a community-based residential facility, home health agency or nursing home from hiring a person who may have access to residents or patients unless it has done both of the following:

1. Requested from the department of justice a criminal history record search of the person and made a determination that the person does not have a conviction relating to patient abuse.

2. Requested from DHSS any information regarding that person that is contained in the DHSS registry and made a determination that the person has no record of patient or resident abuse.

Finally, this bill makes a change in the current law regarding the kind of abuse or neglect allegedly engaged in by a nurse's assistant that must be reported in the DHSS registry, in order to conform state law to federal law. Under current state law, an individual need only report to DHSS that he or she believes a nurse's assistant has neglected, abused or misappropriated the property of a resident or patient. The standard required under federal law includes not only the misappropriation of property, but also patient abuse or neglect. This bill incorporates this federal standard into state law.

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

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

1 **SECTION 1.** 49.498 (3) (b) 1. of the statutes is amended to read:

2 49.498 (3) (b) 1. Inform each resident, orally and in writing at the time of admis-
3 sion to the nursing facility, of the resident's legal rights during the stay at the nursing
4 facility, including a description of the protection of personal funds under sub. (8) and
5 a statement that a resident may file a complaint with the department under s. 146.40
6 (4r) (a) concerning ~~neglect, abuse or misappropriation of property, neglect or abuse~~
7 of a resident.

8 **SECTION 2.** 50.01 (1r) of the statutes is created to read:

9 50.01 (1r) "Home health agency" has the meaning given under s. 50.49 (1) (a).

10 **SECTION 3.** 50.065 of the statutes is created to read:

11 **50.065 Criminal history and patient abuse record search.** No communi-
12 ty-based residential facility, home health agency or nursing home may employ a per-
13 son who may have access to its residents or patients unless it has done all of the fol-
14 lowing:

15 (1) Requested from the department of justice a criminal history record search
16 of that person and made a determination that the person does not have a conviction
17 relating to patient abuse described in 42 USC 1320a-7 (a) (2).

1 (2) Requested from the department any information regarding that person
2 that is contained in the registry under s. 146.40 (4g) and made a determination that
3 the person has no record of patient or resident abuse.

4 **SECTION 4.** 55.043 (1) (a) (intro.), (4) (intro.), (e) and (f) and (5) of the statutes
5 are amended to read:

6 55.043 (1) (a) (intro.) If a county protective services agency has probable cause
7 to believe that there is ~~abuse, neglect or misappropriation of property, neglect or~~
8 abuse, the county protective services agency may conduct an investigation in Mil-
9 waukee county to determine if the vulnerable adult in question is in need of protec-
10 tive services. The county protective services agency shall conduct the investigation
11 in accordance with standards established by the department for conducting the in-
12 vestigations. The investigation shall include at least one of the following:

13 (4) OFFER OF SERVICES. (intro.) If upon investigation the county protective ser-
14 vices agency finds ~~abuse, neglect or misappropriation of property, neglect or abuse~~,
15 the county protective services agency may do one or more of the following:

16 (e) Refer the case to the department of regulation and licensing or the appropri-
17 ate examining board if the ~~abuse, neglect or misappropriation of property, neglect or~~
18 abuse involves an individual who is required to be licensed, permitted, certified or
19 registered under chs. 440 to 459.

20 (f) Bring a petition for a guardianship and protective service or protective place-
21 ment if necessary to prevent ~~abuse, neglect or misappropriation of property, neglect~~
22 or abuse and if the vulnerable adult would otherwise be at risk of serious harm be-
23 cause of an inability to arrange for necessary food, clothing, shelter and services.

24 (5) APPLICABILITY. This section does not apply to patients or residents of state-
25 operated or county-operated inpatient institutions or hospitals issued certificates of

1 approval under s. 50.35 unless the alleged abuse, neglect or misappropriation of
2 property, neglect or abuse of such a patient or resident is alleged to have been done
3 by a person other than an employe of the inpatient institution or hospital.

4 **SECTION 5.** 146.40 (title) of the statutes is amended to read:

5 **146.40 (title) Instructional programs for nurse's assistants and home**
6 **health and hospice aides; hiring, reporting patient and resident abuse.**

7 **SECTION 6.** 146.40 (1) (a) of the statutes is renumbered 146.40 (1) (as).

8 **SECTION 7.** 146.40 (1) (am) of the statutes is created to read:

9 146.40 (1) (am) "Community-based residential facility" has the meaning given
10 under s. 50.01 (1g).

11 **SECTION 8.** 146.40 (4g) (a) 2. (intro.) of the statutes is amended to read:

12 146.40 (4g) (a) 2. (intro.) A listing of all individuals about whom the depart-
13 ment is notified under sub. (4r) (a) and (am), for whom the department makes find-
14 ings under sub. (4r) (b) and to whom any of the following applies:

15 **SECTION 9.** 146.40 (4g) (a) 2. b. of the statutes is amended to read:

16 146.40 (4g) (a) 2. b. A hearing officer finds reasonable cause to believe that the
17 individual performed an action alleged under sub. (4r) (a) or (am).

18 **SECTION 10.** 146.40 (4g) (a) 3. of the statutes is amended to read:

19 146.40 (4g) (a) 3. Findings of the department under sub. (4r) (b) or of the hear-
20 ing officer under sub. (4r) (d) concerning the ~~neglect, abuse or misappropriation of~~
21 property, neglect or abuse of a resident or patient by an individual listed under subd.
22 2.

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

24 146.40 (4r) (a) Any individual may report to the department that he or she be-
25 lieves that a nurse's assistant or other person has neglected, or abused a nursing-

1 home resident or a hospital patient or misappropriated the resident's or patient's
2 property of a nursing home resident or a hospital patient or that a home health aide
3 or other person has neglected, or abused a home health agency patient or misappro-
4 priated the patient's property of a home health agency patient.

5 **SECTION 12.** 146.40 (4r) (am) of the statutes is created to read:

6 146.40 (4r) (am) A community-based residential facility, home health agency
7 or nursing home shall report any misappropriation of property, neglect or abuse of
8 a resident or patient by a nurse's assistant, home health aide or other person to the
9 department.

10 **SECTION 13.** 146.40 (4r) (b) of the statutes is amended to read:

11 146.40 (4r) (b) The department shall review and investigate any report re-
12 ceived under par. (a) or (am) and, if the allegation is substantiated, make specific,
13 documented findings concerning the ~~neglect, abuse or~~ misappropriation of property,
14 neglect or abuse. The department shall in writing by certified mail notify the nurse's
15 assistant ~~or~~, home health aide or other person specified in the report that his or her
16 name and the department's findings about him or her shall be listed in the registry
17 under sub. (4g) (a) 2. and 3. unless he or she contests the listings in a hearing before
18 the department. The written notification shall describe the investigation conducted
19 by the department, enumerate the findings alleging ~~neglect, abuse or~~ misappropri-
20 ation of property, neglect or abuse of a nursing home resident or home health agency
21 patient and explain the consequence to the nurse's assistant ~~or~~, home health aide or
22 other person of waiving a hearing to contest the findings. The nurse's assistant ~~or~~,
23 home health aide or other person named in the report shall have 30 days after receipt
24 of the notification to indicate to the department in writing whether he or she intends
25 to contest the listing or to waive the hearing.

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

2 146.40 (4r) (d) If the nurse's assistant ~~or~~, home health aide or other person un-
3 der par. (b) timely notifies the department that he or she contests the listings in the
4 registry under par. (b), the department shall hold a hearing under the requirements
5 of ch. 227. If after presentation of evidence a hearing officer finds that there is no
6 reasonable cause to believe that the nurse's assistant ~~or~~, home health aide or other
7 person performed an action alleged under par. (a) or (am), the hearing officer shall
8 dismiss the proceeding. If after presentation of evidence a hearing officer finds that
9 there is reasonable cause to believe that the nurse's assistant ~~or~~, home health aide
10 or other person performed an action alleged under par. (a) or (am), the hearing officer
11 shall so find and shall cause the name of the nurse's assistant ~~or~~, home health aide
12 or other person to be entered under sub. (4g) (a) 2. and the hearing officer's findings
13 about the nurse's assistant ~~or~~, home health aide or other person to be entered under
14 sub. (4g) (a) 3.

15 **SECTION 15.** 165.815 of the statutes is created to read:

16 **165.815 Criminal history search of nurse's assistants and nursing**
17 **home employes. (1)** In this section:

18 (a) "Community-based residential facility" has the meaning given under s.
19 50.01 (1g).

20 (b) "Home health agency" has the meaning given under s. 50.49 (1) (a).

21 (c) "Nursing home" has the meaning given under s. 50.01 (3).

22 **(2)** At the request of a community-based residential facility, home health
23 agency or nursing home, the department of justice shall conduct a criminal history
24 record search of any person who has applied for an employe position in which he or
25 she may have access to facility residents or to patients.

1 **(3)** The department of justice shall convey any information gathered from a
2 criminal history record search under sub. (2) to the requester.

3 **(4)** The department of justice shall provide a toll-free telephone number for
4 criminal history record searches requested under sub. (2).

5 **(5)** The requester of a criminal history record search under sub. (2) shall pay
6 a fee as provided under s. 165.82.

7

(END)