



**SENATE SUBSTITUTE AMENDMENT 1,
TO 2007 SENATE BILL 393**

February 12, 2008 – Offered by COMMITTEE ON PUBLIC HEALTH, SENIOR ISSUES, LONG
TERM CARE AND PRIVACY.

1 **AN ACT to repeal** 50.065 (1) (d) and 50.065 (1) (f); **to amend** 50.065 (1) (c) (intro.)
2 and 50.065 (5); and **to create** 50.065 (1) (cr) and 50.065 (2m) of the statutes;
3 **relating to:** personal care services and requiring the exercise of rule-making
4 authority.

Analysis by the Legislative Reference Bureau

Under current law, an entity that provides direct care or treatment services must conduct a background check on prospective caregivers. The background check must include a search of information regarding criminal history, substantiated reports of child abuse or neglect, abuse or neglect of a client, misappropriation from a client, and denial of licensing or certification to serve as a caregiver entity. Every four years the entity must conduct an updated background check on its caregivers.

This substitute amendment specifies that any entity that employs or contracts with an individual to provide personal care services must conduct a background check on the individual. The substitute amendment further requires that an entity that places an individual in a client's residence to provide personal care services must disclose to the client or the client's guardian information obtained from the background check on the individual regarding any convictions for certain crimes, substantiated reports of child abuse or neglect, abuse or neglect of a client, misappropriation from a client, or denial of licensing of certification to serve as a

caregiver entity. The substitute amendment requires the Department of Health and Family Services (DHFS) to specify for which crimes an entity must disclose convictions to a client or the client’s guardian. Further, if an entity must disclose a conviction and the individual who provides personal care services has demonstrated to DHFS that he or she has been rehabilitated, the entity must also disclose that the individual has demonstrated rehabilitation. The substitute amendment exempts an entity from the requirement to disclose background information regarding an individual who provides personal care services if the individual is serving as a substitute, as specified by DHFS by rule, for a client’s regularly assigned caregiver. Under the substitute amendment, an entity that places an individual in a client’s residence to provide personal care services must make the disclosures required under this substitute amendment each time the entity conducts a background check on the individual.

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

1 **SECTION 1.** 50.065 (1) (c) (intro.) of the statutes is amended to read:

2 50.065 (1) (c) (intro.) “Entity” means a facility, organization or service that is
3 licensed or certified by or registered with the department to provide direct care or
4 treatment services to clients. “Entity” includes a hospital, ~~a personal care worker~~
5 ~~agency, a supportive home care service agency~~ a home health agency licensed under
6 s. 50.49, a temporary employment agency that provides caregivers to another entity,
7 a person that employs or contracts with an individual to provide personal care
8 services, and the board on aging and long-term care. “Entity” does not include any
9 of the following:

10 **SECTION 2.** 50.065 (1) (cr) of the statutes is created to read:

11 50.065 (1) (cr) “Personal care services” means any of the following:

12 1. Assistance with any of the following activities of daily living:

13 a. Eating.

14 b. Bathing.

15 c. Grooming.

1 d. Dressing.

2 e. Transferring.

3 f. Toileting.

4 2. Assistance with the following activities incidental to activities of daily living
5 under subd. 1.:

6 a. Meal preparation.

7 b. Food purchasing.

8 c. Changing or laundering of a client's linens or clothing.

9 d. Routine care of vision or hearing aids.

10 e. Light cleaning in areas of the residence that are used during provision of
11 services under subd. 1. or under this subd. 2. a. to d.

12 **SECTION 3.** 50.065 (1) (d) of the statutes is repealed.

13 **SECTION 4.** 50.065 (1) (f) of the statutes is repealed.

14 **SECTION 5.** 50.065 (2m) of the statutes is created to read:

15 50.065 **(2m)** (a) Any entity that places a caregiver in a client's residence to
16 provide personal care services shall, before the caregiver provides services to the
17 client, do all of the following:

18 1. Except as provided in par. (b), disclose to the client or the clients' guardian
19 in writing all information obtained under sub. (2) (b) 1. or (bb) regarding any
20 conviction of the caregiver for a crime that is specified by rule under par. (d), and, if
21 the caregiver has demonstrated that he or she has been rehabilitated under sub. (5),
22 notice of that fact.

23 2. Except as provided in par. (b), disclose to the client or the client's guardian
24 in writing all information obtained under sub. (2) (b) 2., 4., or 5. regarding the
25 caregiver.

1 3. Notify the client or the client’s guardian that, for a fee, the department of
2 justice performs for any person a criminal history record search on an individual.

3 4. Notify the client or the client’s guardian in writing that if the regularly
4 assigned caregiver is unavailable and the entity assigns a substitute caregiver to
5 provide personal care services to the client, the entity is not required to provide the
6 disclosures under subd. 1. or 2. for the substitute caregiver.

7 (b) If a caregiver whom an entity has placed in a client’s residence to provide
8 personal care services is not available to provide the services and the entity assigns
9 a substitute caregiver to provide personal care services to the client, the entity is not
10 required to make the disclosures under par. (a) 1. and 2. for the substitute caregiver.

11 (c) Each time that an entity requests information under sub. (3) (b) regarding
12 a caregiver who provides personal care services, the entity shall provide the
13 disclosures required under par. (a) 1. and 2. to each client for whom the caregiver
14 provides personal care services or to the client’s guardian.

15 (d) The department shall promulgate rules to specify crimes for which an entity
16 must disclose a conviction to a client or the client’s guardian under par. (a) 1., and
17 to specify who is a substitute caregiver for purposes of pars. (a) 4. and (b).

18 **SECTION 6.** 50.065 (5) of the statutes is amended to read:

19 50.065 (5) The department may license, certify, issue a certificate of approval
20 to or register to operate an entity a person who otherwise may not be licensed,
21 certified, issued a certificate of approval or registered for a reason specified in sub.
22 (4m) (a) 1. to 5., and an entity may employ, contract with or permit to reside at the
23 entity a person who otherwise may not be employed, contracted with or permitted
24 to reside at the entity for a reason specified in sub. (4m) (b) 1. to 5., if the person
25 demonstrates to the department, or, in the case of an entity that is located within the

1 boundaries of a reservation, to the person or body designated by the tribe under sub.
2 (5d) (a) 3., by clear and convincing evidence and in accordance with procedures
3 established by the department by rule, or by the tribe, that he or she has been
4 rehabilitated. The department shall permit any person who has been convicted of
5 a crime specified by rule under sub. (2m) (d) and who wishes to provide personal care
6 services to demonstrate to the department or, if the person wishes to provide personal
7 care services only within the boundaries of a reservation and the department has
8 approved a plan for the tribe to conduct rehabilitation reviews under sub. (5d), to the
9 tribe that he or she has been rehabilitated.

10 **SECTION 7. Initial applicability.**

11 (1) The treatment of section 50.065 (2m) (a) and (b) of the statutes first applies
12 to placements of caregivers that are made on the effective date of this subsection.

13 **SECTION 8. Effective dates.** This act takes effect on the first day of the 7th
14 month beginning after publication, except as follows:

15 (1) The treatment of section 50.065 (2m) (d) takes effect on the day after
16 publication.

17 (END)