



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-4322/1
SWB:skw

2023 ASSEMBLY BILL 467

October 5, 2023 - Introduced by Representatives MOSES, SUMMERFIELD, CALLAHAN, C. ANDERSON, BROOKS, DITTRICH, DONOVAN, EDMING, GREEN, GUNDRUM, JACOBSON, KITCHENS, KRUG, MAXEY, MURPHY, MURSAU, NOVAK, O'CONNOR, PETRYK, ROZAR, SHANKLAND, SPIROS, TRANEL, ZIMMERMAN and SAPIK, cosponsored by Senators MARKLEIN, JAMES, BALLWEG, CABRAL-GUEVARA, FELZKOWSKI, SPREITZER, TESTIN, TOMCZYK and QUINN. Referred to Committee on Mental Health and Substance Abuse Prevention.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT** *to renumber and amend* 49.45 (41) (a); *to amend* 49.45 (41) (b), 49.45
2 (41) (c) (intro.) and 51.15 (2) (d); and *to create* 49.45 (41) (a) 1., 49.45 (41) (d)
3 and 51.036 of the statutes; **relating to:** crisis urgent care and observation
4 facilities and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill requires the Department of Health Services to establish a certification process for crisis urgent care and observation facilities and a grant program to award grants to develop and support these facilities. Under the bill, a crisis urgent care and observation facility is a treatment facility that admits an individual to prevent, de-escalate, or treat the individual's mental health or substance use disorder and includes the necessary structure and staff to support the individual's needs relating to the mental health or substance use disorder. The bill provides that no person may operate a crisis urgent care and observation facility without a certification from DHS. Under the bill, a certified crisis urgent care and observation facility is not regulated as a hospital, except to the extent the facility is otherwise required due to the facility's licensure or certification for other services or purposes. The bill provides that the provisions of the bill may not be construed to prohibit, limit, or otherwise interfere with services provided by a county or a hospital or other facility that are provided consistent with the facility's existing licensure or certification, whether the facility is publicly or privately funded.

The bill provides that DHS may certify crisis urgent care and observation facilities that demonstrate the ability to do certain things, including 1) accept

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referrals for crisis services for adults, and, if applicable, for youth, including involuntary patients under emergency detention, walk-ins, and individuals brought by law enforcement, emergency medical responders or emergency medical services practitioners, or county crisis personnel; 2) abstain from having a requirement for medical clearance before admission assessment; 3) provide assessments for physical health, substance use disorder, and mental health; 4) provide screening for suicide and violence risk; 5) provide medication management and therapeutic counseling; 6) provide coordination of services for basic needs; 7) provide for the safety and security of both the staff and the patients; 8) have adequate staffing 24 hours a day, 7 days a week, including through use of telehealth, with a multidisciplinary team, including, as needed, psychiatrists or psychiatric nurse practitioners, nurses, licensed clinicians capable of completing assessments, peers with lived experience, and other appropriate staff; 9) allow for voluntary and involuntary treatment of individuals in crisis as a means to avoid unnecessary placement of those individuals in hospital inpatient beds and allow for an effective conversion to voluntary stabilization when warranted in the same setting; and 10) contribute, from one or more nonstate, federal, or third-party sources, an amount, as determined by DHS, in addition to any grant awarded by DHS under the bill. The bill requires that DHS must provide the Joint Committee on Finance with certain information and obtain approval of that committee before granting certification to a crisis urgent care and observation facility. The bill also requires DHS to provide an annual report to the Joint Committee on Finance regarding the facilities.

Under the bill, a certified crisis urgent care and observation facility must accept adult individuals for emergency detention, and may accept youths for emergency detention. The bill provides that a certified crisis urgent care and observation facility may accept individuals for services including voluntary stabilization; observation and treatment, including for assessments for mental health or substance use disorder; screening for suicide and violence risk; and medication management and therapeutic counseling.

The bill provides that a certified crisis urgent care and observation facility must coordinate to the fullest extent possible with any facility established or operated with funding received from settlement proceeds from the opiate litigation, which under current law refers to the litigation in *In re: National Prescription Opiate Litigation*, Case No.: MDL 2804 or any proceeding filed in a circuit court in this state containing allegations and seeking relief that is substantially similar to allegations contained and relief sought in that matter. The bill also requires that DHS promulgate rules establishing policies that encourage awareness of and communication and coordination between certified crisis urgent care and observation facilities and other facilities that provide similar services.

The bill requires DHS, in accordance with existing requirements to obtain approval from the Joint Committee on Finance, to request any necessary federal approval by seeking either a waiver, specifically, what is known as a 1115 waiver, or a Medical Assistance state plan amendment to add services provided by a crisis urgent care and observation facility as a type of crisis intervention service reimbursable under the Medical Assistance program. If DHS determines a state

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plan amendment is appropriate, DHS must follow the procedures for review by the Joint Committee on Finance, regardless of whether the amendment is expected to have a fiscal effect of \$7,500,000 or more. Under the bill, if federal approval is either unnecessary or is necessary and is granted, DHS may provide reimbursement for these services.

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.** 49.45 (41) (a) of the statutes is renumbered 49.45 (41) (a) (intro.)
2 and amended to read:

3 49.45 **(41)** (a) (intro.) In this subsection, “crisis intervention services” means
4 crisis intervention services for the treatment of mental illness, intellectual disability,
5 substance abuse, and dementia that are provided by ~~a~~ any of the following:

6 2. A crisis intervention program operated by, or under contract with, a county,
7 if the county is certified as a medical assistance provider.

8 **SECTION 2.** 49.45 (41) (a) 1. of the statutes is created to read:

9 49.45 **(41)** (a) 1. A crisis urgent care and observation facility certified under s.
10 51.036.

11 **SECTION 3.** 49.45 (41) (b) of the statutes is amended to read:

12 49.45 **(41)** (b) If a county elects to become certified as a provider of crisis
13 intervention services under par. (a) 2., the county may provide crisis intervention
14 services under this subsection in the county to medical assistance recipients through
15 the medical assistance program. A county that elects to provide the services shall
16 pay the amount of the allowable charges for the services under the medical
17 assistance program that is not provided by the federal government. The department
18 shall reimburse the county under this subsection only for the amount of the allowable

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1 charges for those services under the medical assistance program that is provided by
2 the federal government.

3 **SECTION 4.** 49.45 (41) (c) (intro.) of the statutes is amended to read:

4 49.45 (41) (c) (intro.) Notwithstanding par. (b), if a county elects, pursuant to
5 par. (a) 2., to deliver crisis intervention services under the Medical Assistance
6 program on a regional basis according to criteria established by the department, all
7 of the following apply:

8 **SECTION 5.** 49.45 (41) (d) of the statutes is created to read:

9 49.45 (41) (d) The department shall, in accordance with all procedures set forth
10 under s. 20.940, request a waiver under 42 USC 1315 or submit a Medical Assistance
11 state plan amendment to the federal department of health and human services to
12 obtain any necessary federal approval required to provide reimbursement to crisis
13 urgent care and observation facilities certified under s. 51.036 for crisis intervention
14 services under this subsection. If the department determines submission of a state
15 plan amendment is appropriate, the department shall, notwithstanding whether the
16 expected fiscal effect of the amendment is \$7,500,000 or more, submit the
17 amendment to the joint committee on finance for review in accordance with the
18 procedures under s. 49.45 (2t). If federal approval is granted or no federal approval
19 is required, the department shall provide reimbursement under s. 49.46 (2) (b) 15.
20 If federal approval is necessary but is not granted, the department may not provide
21 reimbursement for crisis intervention services provided by crisis urgent care and
22 observation facilities.

23 **SECTION 6.** 51.036 of the statutes is created to read:

24 **51.036 Crisis urgent care and observation facilities. (1) DEFINITIONS.** In
25 this section:

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1 (a) “Crisis” means a situation caused by an individual’s apparent mental or
2 substance use disorder that results in a high level of stress or anxiety for the
3 individual, persons providing care for the individual, or the public and that is not
4 resolved by the available coping methods of the individual or by the efforts of those
5 providing ordinary care or support for the individual.

6 (b) “Crisis urgent care and observation facility” means a treatment facility that
7 admits an individual to prevent, de-escalate, or treat the individual’s mental health
8 or substance use disorder and includes the necessary structure and staff to support
9 the individual’s needs relating to the mental health or substance use disorder.

10 **(2) CERTIFICATION REQUIRED; EXEMPTION; GRANTS.** (a) The department shall
11 establish a certification process for crisis urgent care and observation facilities and
12 a grant program to award grants to develop and support crisis urgent care and
13 observation facilities. No person may operate a crisis urgent care and observation
14 facility without a certification under this section. The department may limit the
15 number of certifications it grants to operate crisis urgent care and observation
16 facilities. The department shall, using the department’s division of the state into
17 regions by county, include statewide geographic consideration in its evaluation of
18 applications for certification under this section to ensure geographic diversity among
19 the regions in the location of crisis urgent care and observation facilities certified
20 under this section.

21 (b) 1. A crisis urgent care and observation facility certified under this section
22 is not subject to facility regulation under ch. 50, unless otherwise required due to the
23 facility’s licensure or certification for other services or purposes. A crisis urgent care
24 and observation facility is not a hospital subject to approval under ss. 50.32 to 50.39
25 and nothing in this subsection limits services a hospital may provide under ch. 50.

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1 2. Notwithstanding par. (d), the department shall promote certification and
2 encourage any facility that is licensed as a hospital under ch. 50 and provides
3 services consistent with those described in par. (c) 1. to 9. to apply for certification
4 under this section. The requirements under this section may not be construed to
5 prohibit, limit, or otherwise interfere with services provided by a county or a hospital
6 or other facility that are provided consistent with the facility's existing licensure or
7 certification, whether the facility is publicly or privately funded.

8 3. Notwithstanding s. 150.93, any hospital that expands psychiatric bed
9 capacity to accommodate admissions under this section may increase its approved
10 bed capacity by the number of psychiatric beds added under this subdivision.

11 4. The department shall take into account the geography of hospital facilities
12 granted certification under subd. 2. when considering certification applications for
13 other crisis urgent care and observations facilities.

14 (c) Subject to par. (d), the department may grant a certification to a crisis urgent
15 care and observation facility that specifies in an application the level of care the
16 facility can provide to patients and demonstrates in the application its ability to do
17 all of the following:

18 1. Accept referrals for crisis services for adults and, if applicable, for youth,
19 including involuntary patients under emergency detention, walk-ins, and
20 individuals brought by law enforcement, emergency medical responders or
21 emergency medical services practitioners, or county crisis personnel.

22 2. Abstain from having a requirement for medical clearance before admission
23 assessment.

24 3. Provide assessments for physical health, substance use disorder, and mental
25 health.

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- 1 4. Provide screening for suicide and violence risk.
- 2 5. Provide medication management and therapeutic counseling.
- 3 6. Provide coordination of services for basic needs.
- 4 7. Provide for the safety and security of both the staff and the patients.
- 5 8. Have adequate staffing 24 hours a day, 7 days a week, including through use
- 6 of telehealth, as described under s. 49.45 (61), with a multidisciplinary team that
- 7 includes, as needed, psychiatrists or psychiatric nurse practitioners, nurses,
- 8 licensed clinicians capable of completing assessments, peers with lived experience,
- 9 and other appropriate staff.
- 10 9. Allow for voluntary and involuntary treatment of individuals in crisis as a
- 11 means to avoid unnecessary placement of those individuals in hospital inpatient
- 12 beds and allow for an effective conversion to voluntary stabilization when warranted
- 13 in the same setting.
- 14 10. Contribute, from at least one nonstate, federal, or 3rd-party revenue
- 15 source, an amount, as determined by the department, in addition to any grant
- 16 awarded by the department under this section.
- 17 (d) Before the department may grant certification to a facility under this
- 18 section, the department shall submit the proposal for certification to the joint
- 19 committee on finance for approval. If the cochairpersons of the joint committee on
- 20 finance do not notify the department within 14 working days after the date of the
- 21 submittal under this paragraph that the committee has scheduled a meeting for the
- 22 purpose of reviewing the proposal, the department may grant certification of that
- 23 facility as described in the proposal. If, within 14 working days after the date of the
- 24 submittal under this paragraph, the cochairpersons of the committee notify the
- 25 department that the committee has scheduled a meeting for the purpose of reviewing

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1 the proposal, the department may grant certification of that facility only upon
2 approval by the committee. When submitting a proposal regarding certification of
3 a facility under this paragraph, the department shall provide the joint committee on
4 finance with all of the following information about the facility proposed for
5 certification:

- 6 1. The department's rationale for selecting the facility.
- 7 2. Where the facility is to be located.
- 8 3. A specific description of the entity that will be awarded certification.
- 9 4. A description of how the funding for the facility will work.
- 10 5. The timeline of the facility for accepting patients.
- 11 6. The distance from the facility to the nearest hospital.
- 12 7. A description of the facility's plan for staffing, including staff on call.
- 13 8. The number of beds in the facility.
- 14 9. A description of the facility's admission, hold, and discharge policies.
- 15 10. Security considerations for patients and staff at the facility.
- 16 11. The estimated population to be served.
- 17 12. The estimated number of diversions from the Winnebago Mental Health
18 Institute had the facility been operating the past 5 years.
- 19 13. Policies that ensure the facility has the capacity to assess physical health
20 needs and deliver care for most minor physical health challenges, while also having
21 an identified process in order to transfer an individual to a facility with more
22 medically staffed services if needed.

23 (e) No later than June 30 of each year, beginning by June 30, 2025, the
24 department shall submit to the joint committee on finance a report regarding crisis

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1 urgent care and observation facilities under this section, including information
2 relating to all of the following:

3 1. Applications for certification received by the department.

4 2. The number of admissions, including both voluntary and involuntary
5 admissions.

6 3. Data regarding how patients are arriving for admission, including through
7 transport by law enforcement, family, emergency medical responders or emergency
8 medical services practitioners, or county crisis personnel.

9 4. Average wait times.

10 5. The length of patient stays.

11 6. The time of day patients are admitted.

12 7. The source of payments for patient care, including private payment sources
13 or payment under the Medical Assistance program under subch. IV of ch. 49.

14 8. Data regarding the county of residence for each patient in counties for which
15 the county's data is equal to or greater than 20 patients.

16 9. The estimated number of diversions from the Winnebago Mental Health
17 Institute.

18 10. A description of the number and type of employees providing staffing during
19 the various times of day.

20 11. A description of rules and procedures for determining where to take an
21 individual in need of crisis services if a crisis urgent care and observation facility
22 does not have capacity or otherwise does not accept an individual.

23 **(3) ADMISSIONS.** (a) A crisis urgent care and observation facility certified under
24 this section may accept individuals for any of the following services:

25 1. Voluntary stabilization.

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1 2. Observation and treatment, including for assessments for mental health or
2 substance use disorder.

3 3. Screening for suicide and violence risk.

4 4. Medication management and therapeutic counseling.

5 (b) A crisis urgent care and observation facility certified under this section shall
6 accept an adult individual for emergency detention under s. 51.15 and may accept
7 a youth for emergency detention under s. 51.15. If the facility does not have capacity
8 to accept an adult individual for purposes of emergency detention or if the facility
9 does not accept a youth for purposes of emergency detention, that individual shall
10 be transported to another appropriate facility in accordance with rules established
11 by the department under sub. (4). A county crisis assessment under s. 51.15 (2) (c)
12 is required prior to admission to a crisis urgent care and observation facility for
13 purposes of emergency detention, but the medical clearance requirement under s.
14 51.15 (2) (b) does not apply to crisis urgent care and observation facility admissions
15 for purposes of emergency detention.

16 (c) The department shall encourage each crisis urgent care and observation
17 facility certified under this section to operate with the intent to admit individuals for
18 no longer than 5 days, except in exceptional circumstances.

19 **(4) RULES.** The department shall promulgate rules to implement this section,
20 including all of the following:

21 (a) Establishment of the grant program described under sub. (2), including
22 procedures for administration and establishment of criteria for awarding grants.

23 (b) Establishment of requirements for crisis urgent care and observation
24 facilities to match a portion of any grant awarded by the department under this
25 section, as set forth under sub. (2) (c) 10., and for determining what types of

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1 contributions may count toward the matching requirement. The matching
2 requirement established by the department under this paragraph may be fulfilled
3 through in-kind contributions.

4 (c) Requirements for admitting, holding, and discharging individuals for
5 purposes of emergency detention.

6 (d) Minimum security requirements for crisis urgent care and observation
7 facilities certified under this section.

8 (e) Establishment of a target range for the number of beds in a crisis urgent care
9 and observation facility certified under this section.

10 (f) Establishment of policies and criteria to ensure that law enforcement and
11 other persons authorized to transport or cause transportation of an individual for
12 purposes of emergency detention have clear standards and procedures regarding all
13 of the following:

14 1. The circumstances under which law enforcement and other persons may
15 bring an individual to a crisis urgent care and observation facility certified under this
16 section.

17 2. The determination as to which facility law enforcement and other persons
18 authorized to transport or cause transportation of an individual for purposes of
19 emergency detention may take an individual.

20 (g) Establishment of policies relating to interfacility transfers, including how
21 such transfers should occur and who should be involved in such transfers. Barring
22 exigent circumstances that necessitate law enforcement involvement, law
23 enforcement may not transport an individual for purposes of an interfacility transfer
24 from a crisis urgent care and observation facility.

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1 (h) Establishment of procedures to coordinate communication regarding bed
2 availability before the arrival of a patient and establishment of a process for
3 determining where to take an individual in need of crisis services if a crisis urgent
4 care and observation facility does not have capacity or otherwise does not accept an
5 individual.

6 (i) Establishment of policies for coordination between crisis urgent care and
7 observation facilities certified under this section and any facility established or
8 operated with funding received under s. 165.12 from settlement proceeds from the
9 opiate litigation, as defined in s. 165.12 (1), as well as policies to encourage
10 awareness of and communication and coordination with other facilities that provide
11 services similar to those provided by crisis urgent care and observation facilities.

12 (j) Establishment of procedures to require a crisis urgent care and observation
13 facility to coordinate continuity of care with, when appropriate, a hub-and-spoke
14 health home pilot program for any patient treated at a crisis urgent care and
15 observation facility for a period of 5 or fewer days. The department shall establish
16 procedures for follow-up with other transition facilities in the event that a
17 hub-and-spoke health home pilot program is appropriate but not available.

18 (k) Establishment of policies and procedures for crisis urgent care and
19 observation facilities that intend to accept both youths and adults, including
20 requirements that youths be treated in a separate part of the facility from adults,
21 policies to address youth-related treatment issues, including parental input, and
22 staff training for youth-specific issues.

23 (L) Establishment of appropriate staffing level requirements.

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1 (m) Establishment of requirements to define the population to be served at a
2 given crisis urgent care and observation facility, including establishment of any
3 minimum age requirements.

4 **(5) COORDINATION.** In accordance with rules established by the department
5 under sub. (4) (i), a crisis urgent care and observation facility certified under this
6 section shall coordinate to the fullest extent possible with any facility established or
7 operated with funding received under s. 165.12 from settlement proceeds from the
8 opiate litigation, as defined in s. 165.12 (1), as well as with other facilities that
9 provide services similar to those provided by crisis urgent care and observation
10 facilities.

11 **SECTION 7.** 51.15 (2) (d) of the statutes is amended to read:

12 51.15 **(2)** (d) Detention under this section may only be in a treatment facility
13 approved by the department or the county department, if the facility agrees to detain
14 the individual, or a state treatment facility. The department shall approve for
15 purposes of this subsection any facility certified under s. 51.036.

16 **SECTION 8. Nonstatutory provisions.**

17 (1) When considering the initial certifications of crisis urgent care and
18 observation facilities under s. 51.036, the department of health services shall, to the
19 fullest extent possible, prioritize certification of a crisis urgent care and observation
20 facility to be located at least 100 miles from the Winnebago Mental Health Institute
21 and in the region of the state defined as the western region according to the
22 department's division of the state into five regions by county as of January 5, 2023,
23 for purposes of data analysis and communication.

24 (END)