

Carol Roessler
STATE SENATOR

December 3, 2003

To: Member of the Senate Committee on Health, Children, Families, Aging and Long Term Care.

From: Senator Carol Roessler, Chair

Re: Clearinghouse Rule 03-080 relating to assessments on occupied, licensed beds in nursing homes and intermediate care facilities for the mentally retarded.

CR 03-080 has been referred to the Senate Committee on Health, Children, Families, Aging and Long Term Care. This proposed rule-making order implements 2003 Wisconsin Act 33, relating to assessments on occupied, licensed beds in nursing homes and intermediate care facilities for the mentally retarded. The Act makes a number of changes to section 50.14 of the Wisconsin statutes.

If you would like the Committee to hold a hearing on CR 03-080, please contact Jennifer Halbur in my office at 266-5300 by Tuesday December 16, 2003. /

**PROPOSED ADMINISTRATIVE RULES – CR03-080; HFS 15
ANALYSIS FOR LEGISLATIVE STANDING COMMITTEES
PURSUANT TO S. 227.19 (3), STATS.**

Need for Rules

2003 Wisconsin Act 33 modified section 50.14 of the Wisconsin statutes, relating to assessments on occupied, licensed beds in nursing homes and intermediate care facilities for the mentally retarded (ICF-MR.)

Under section 50.14 of the Wisconsin Statutes, nursing facilities (nursing homes and ICF-MRs) are assessed a monthly fee for each occupied bed. Facilities owned or operated by the state, federal government, or located out of state are exempt from the assessment. Beds occupied by a resident whose nursing home costs are paid by Medicare are also exempt. The rate, specified in section 50.14 (2) of the statutes, was \$32 per month per occupied bed for nursing homes and \$100 per month per occupied bed for ICF-MRs.

2003 Wisconsin Act 33 made the following changes to section 50.14:

1. It broadened the scope of which types of long-term care facilities must pay a monetary assessment to the Department by:

- eliminating exemptions from being subject to the assessments of facilities owned or operated by the state or federal government, and beds occupied by residents whose care is reimbursed in whole or in part by Medicare under 42 USC 1395 to 1395ccc; and
- eliminating the exclusion of unoccupied facility beds from facility bed count calculations.

2. It increased the per bed fee limit the Department may charge subject ICF-MRs, from \$100 per bed to \$435 per bed in fiscal year 2003-04 and \$445 per bed in fiscal year 2004-05.

3. It increased the per bed fee limit the Department may charge subject nursing homes, from \$32 per bed to \$75 per bed.

4. It establishes the requirement that amounts collected in excess of \$14.3 million in fiscal year 2003-04, \$13.8 million in fiscal year 2004-05, and, beginning July 1, 2005, amounts in excess of 45% of the amount collected be deposited in the Medical Assistance Trust Fund.

5. It specifies that facility beds that have been delicensed under section 49.45 (6m) (ap) 1. of the statutes, but not deducted from the nursing home's licensed bed capacity under section 49.45 (6m) (ap) 4. a., are to be included in the number of beds subject to the assessment.

In response to these statutory changes, the Department issued an identical emergency rule effective July 28, 2003 to modify chapter HFS 15 accordingly. Through its proposed order, the Department seeks to make permanent those changes to ch. HFS 15 contained in the emergency order.

Response to Clearinghouse Recommendations

The Clearinghouse did not submit any comments on the proposed rule.

Public Hearing and Written Comments

The Department held one public hearing on the proposed rule in Madison on October 15, 2003. That hearing also fulfilled the requirement for a public hearing for an emergency rules under s. 227.24 (4), Stats. David Lund and Jim Cobb, of the Department's Health Care Benefits Bureau in the Division of Health Care Financing staffed the hearing. No one attended the hearing. The Department's comment period remained open until Monday, October 20th, but the Department received no written comments.

Final Regulatory Analysis

The rule changes will affect about 10 facilities that may be considered small businesses as "small business" is defined in s. 227.114 (1) (a), Stats. However, the Department is not making any exception for those entities in the proposed rule because federal uniformity clauses do not allow exceptions for such assessments.

PROPOSED ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
REPEALING, AMENDING, AND REPEALING AND RECREATING RULES

To repeal HFS 15.02 (2), (6) and (8), to amend HFS 15.01, 15.04 and 15.07 (3), and to repeal and recreate HFS 15.03, relating to assessments on occupied, licensed beds in nursing homes and intermediate care facilities for the mentally retarded (ICF-MR.)

Analysis Prepared by the Department of Health and Family Services

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Under section 50.14 of the Wisconsin Statutes, nursing facilities (nursing homes and ICF-MRs) are assessed a monthly fee for each occupied bed. Facilities owned or operated by the state, federal government, or located out of state are exempt from the assessment. Beds occupied by a resident whose nursing home costs are paid by Medicare are also exempt. The rate, specified in section 50.14 (2) of the statutes, was \$32 per month per occupied bed for nursing homes and \$100 per month per occupied bed for ICF-MRs.

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In response to these statutory changes, the Department issued an identical emergency rule effective July 28, 2003 to modify chapter HFS 15 accordingly. Through this proposed order, the Department seeks to make permanent those changes to ch. HFS 15 contained in the emergency order.

The Department's authority to repeal, amend, and repeal and recreate these rules is found in s. 50.14 (5) (b), Stats. The rules interpret s. 50.14, Stats.

SECTION 1. HFS 15.01 is amended to read:

HFS 15.01 Authority and purpose. This chapter is promulgated under the authority of s. 50.14 (5) (b), Stats., to establish procedures and other requirements necessary for levying and collecting the monthly assessment imposed under s. 50.14 (2), Stats., on all ~~occupied~~ licensed beds in intermediate care facilities for the mentally retarded (ICF-MR) and nursing homes, except facilities that are ~~owned and operated by state government or the federal government or located outside the state, or beds occupied by residents whose care is reimbursed in whole or in part by medicare under 42 USC 1395 to 1395ccc.~~

SECTION 2. HFS 15.02 (2), (6) and (8) are repealed.

SECTION 3. HFS 15.03 is repealed and recreated to read:

HFS 15.03 Facilities not subject to assessment. Facilities located outside the state are excluded from assessments imposed under this chapter and s. 50.14, Stats.

SECTION 4. HFS 15.04 is amended to read:

HFS 15.04 Assessment calculation. (1) ASSESSMENT. Every facility ~~which~~ that is not excluded under s. HFS 15.03 (4) shall pay an assessment per ~~occupied~~ licensed bed as prescribed by s. 50.14, Stats., and as calculated pursuant to this section and s. 50.14, Stats. The amounts of the assessment per ~~occupied~~ licensed bed shall be as specified by s. 50.14, Stats.

(2) CALCULATION. (a) The assessment shall be on the ~~average~~ number of ~~occupied~~ licensed beds of the facility ~~for on the 15th day of the calendar month previous to the month of assessment, based on an average daily midnight census computed and reported by the facility and as verified by the department. Beds for which payment is made by medicare under 42 USC 1395 to 1395ccc shall be excluded from the calculation. A bed occupied by a person who is eligible for both medicare and medicaid, and for which medicare pays a portion of the room and board for the person, is excluded from the calculation.~~

(b) 1. In determining the number of ~~occupied~~ licensed beds, if the number of beds is other than a whole number, the fractional part of the amount shall be disregarded unless it equals 50% or more of a whole number, in which case the amount shall be increased to the next whole number.

2. The number of licensed beds of a nursing home includes any number of beds that have been delicensed under s. 49.45 (6m) (ap) 1., Stats., but not deducted from the nursing home's licensed bed capacity under s. 49.45 (6m) (ap) 4. a., Stats.

(c) In a facility having some beds that are licensed as ICF-MR beds and some beds that are licensed as nursing home beds, separate calculations shall be performed for the ICF-MR beds and for the nursing home beds. ~~The bed of a person with a developmental disability as defined under s. HFS 132.13 (4) or 134.13 (9) who is a resident of a nursing home shall be assessed at that facility's rate, while the bed of a resident who is not developmentally disabled but who is residing in an ICF-MR shall be assessed at the ICF-MR rate.~~

SECTION 5. HFS 15.07 (3) is amended to read:

HFS 15.07 (3) If the department determines that a facility's ~~bed calculation is inaccurate~~ number of licensed beds has changed, the department shall notify the facility of ~~any~~ changes in the number of beds and calculation ~~or assessment~~ and shall send the facility an invoice for the additional amount due or send the facility a refund. Any additional amount due shall be paid by the facility no later than 30 days following the date of the department's notice.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2) (intro.), Stats.

Wisconsin Department of Health
and Family Services

Dated:

By: _____
Helene Nelson
Secretary

SEAL:

Fiscal Estimate – 2003 Session

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number HFS 15

Subject
 Nursing Facilities Bed Assessment

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or effects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs – May be possible to absorb within agency's budget.

Yes No

Decrease Costs

Local: No Local Government Costs

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory
3. Increase Costs
 Permissive Mandatory
4. Decrease Costs
 Permissive Mandatory

5. Types of Local Government Units Affected:

- Towns Villages Cities
 Counties Others:
 School Districts WCTS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

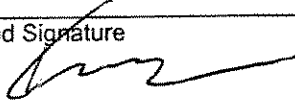
2003 Act 33, the 03-05 Biennial Budget Bill, includes the following changes to the Nursing Facilities Bed Assessment:

- (a) Eliminates the exemption of state facilities from the assessment.
 (b) Changes the assessment from an assessment on occupied beds to an assessment on licensed beds.
 (c) Increases the assessment from \$32 to \$75 per bed per month for nursing homes and from \$100 to \$435 in FY 04 and \$445 in FY 05 per bed per month for Intermediate Care Facilities for the Mentally Retarded (ICFs-MR).

Act 33 allows the Department to submit through an emergency rule procedure changes to HFS 15 to conform with the changes in the Act.

The local and state fiscal effect of the changes to the bed assessment in Act 33 have been included in the funding allocated through the Biennial Budget Bill. Because the state and local fiscal effects are assumed in Act 33, this rule change has no state or local fiscal effect.

Long Range Fiscal Implications

Prepared By: Anne Miller	Telephone Number 266-5422	Agency DHFS, OSF
Authorized Signature 	Telephone Number 266-9622	Date (mm/dd/ccyy) 08/07/03