



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-0029/2
DAK:lmk&wlj:rs

2005 BILL

1 **AN ACT** *to renumber and amend* 50.09 (1); *to amend* 50.09 (title), 50.09 (2),
2 (4) and (5) and 50.09 (6) (a), (b) and (d); and *to create* 16.009 (1) (em) 7., 20.432
3 (1) (gt), 50.034 (3) (e), 50.034 (9) and 50.09 (1g) of the statutes; **relating to:**
4 authorizing access by the long-term care ombudsman or his or her
5 representative to a client or resident in a residential care apartment complex,
6 imposing an annual assessment on occupied apartments of residential care
7 apartment complexes, expanding rights of residents of facilities to include
8 residents of residential care apartment complexes, requiring posting of a
9 notice, requiring the exercise of rule-making authority, and making an
10 appropriation.

Analysis by the Legislative Reference Bureau

Under current law, under the Long-Term Care Ombudsman Program, the long-term care ombudsman or his or her designated representative may enter a long-term care facility at any time, without notice, and have access to clients and residents of the facility. "Long-term care facility" is defined as a nursing home, a community-based residential facility, a place in which care is provided under a

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continuing care contract, a swing bed in an acute care or extended care facility, or an adult family home. The ombudsman or representative may communicate in private with a client or resident, review records with consent of the client or resident or his or her legal counsel, and have access to records of the long-term care facility or of the the Department of Health and Family Services (DHFS) concerning regulation of the long-term care facility.

Also under current law, residential care apartment complexes are certified or registered and otherwise regulated by DHFS. A “residential care apartment complex” is defined as a place where five or more adults reside that consists of independent apartments, each of which has an individual lockable entrance and exit, a kitchen with a stove, and individual bathroom, sleeping, and living areas, and that provides to a resident not more than 28 hours per week of supportive, personal, and nursing services.

Lastly, current law specifies rights of residents of nursing homes and community-based residential facilities, including the rights to have private and unrestricted communication with others, to present grievances without justifiable fear of reprisal, and to be fully informed of all services, charges for services, and changes in service.

This bill expands the definition of a long-term care facility, for purposes of activities by the long-term care ombudsman or his or her designated representative, to include residential care apartment complexes.

The bill imposes an assessment on each residential care apartment complex of \$12 per year per occupied apartment, which, beginning on July 1, 2006, the complex must pay annually to DHFS. The assessment is based on occupied apartments for the complex for the preceding June. DHFS must enforce and collect the assessment, which must be credited to an appropriation of program revenues for expenditure by the Board on Aging and Long-Term Care for activities under the Long-Term Care Ombudsman Program in residential care apartment complexes.

The bill also includes residents of residential care apartment complexes as persons entitled to the rights that are specified under current law for residents of nursing homes and community-based residential facilities.

Finally, the bill requires a residential care apartment complex to post in a conspicuous location a notice of the name, address, and telephone number of the Long-Term Care Ombudsman Program.

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.** 16.009 (1) (em) 7. of the statutes is created to read:
2 16.009 (1) (em) 7. A residential care apartment complex, as defined in s. 50.01
3 (1d).

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1 (c) By July 1 annually, a complex shall submit to the department the amount
2 due under par. (b) for each occupied apartment of the complex for the preceding June.
3 The department shall verify the number of apartments of a complex and, if necessary,
4 make adjustments to the payment, notify the complex of changes in the payment
5 owing, and send the complex an invoice for the additional amount due or send the
6 complex a refund.

7 (d) Sections 77.59 (1) to (5), (6) (intro.), (a), and (c), and (7) to (10), 77.60 (1) to
8 (7), (9), and (10), 77.61 (9) and (12) to (14), and 77.62, as they apply to the taxes under
9 subch. III of ch. 77, apply to the assessment under this subsection.

10 (e) 1. The department shall enforce and collect the assessment under this
11 subsection and shall develop and distribute forms necessary for levying and
12 collection.

13 2. The department shall promulgate rules that establish procedures and
14 requirements for levying the assessment under this subsection.

15 (f) 1. An affected complex may contest an action by the department under this
16 subsection by submitting a written request for a hearing to the department within
17 30 days after the date of the department's action.

18 2. An order or determination made by the department under a hearing as
19 specified in subd. 1. is subject to judicial review as prescribed under ch. 227.

20 **SECTION 6.** 50.09 (title) of the statutes is amended to read:

21 **50.09 (title) Rights of residents in certain facilities and complexes.**

22 **SECTION 7.** 50.09 (1) of the statutes is renumbered 50.09 (1m), and 50.09 (1m)
23 (intro.), (b), (c), (e), (f) 1. and 3., (g), (j) (intro.) and 2. (intro.) and a. and (L), as
24 renumbered, are amended to read:

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1 50.09 (1m) ~~RESIDENTS' RIGHTS.~~ (intro.) Every resident in a ~~nursing home or~~
2 ~~community-based residential facility~~ or a complex shall, except as provided in sub.
3 (5), have the right to:

4 (b) Present grievances on the resident's own behalf or others to the ~~facility's~~
5 staff or administrator of the facility or complex, to public officials or to any other
6 person without justifiable fear of reprisal, and to join with other residents or
7 individuals within or outside of the facility or complex to work for improvements in
8 resident care.

9 (c) Manage the resident's own financial affairs, including any personal
10 allowances under federal or state programs, unless the resident delegates, in
11 writing, ~~such~~ this responsibility to the facility or complex and the facility or complex
12 accepts the responsibility, or unless the resident delegates to someone else of the
13 resident's choosing and that person accepts the responsibility. The resident shall
14 receive, upon written request by the resident or guardian, a written monthly account
15 of any financial transactions made by the facility or complex under such a delegation
16 of responsibility.

17 (e) Be treated with courtesy, respect and full recognition of the resident's
18 dignity and individuality, by all employees of the facility or complex and licensed,
19 certified, or registered providers of health care and pharmacists with whom the
20 resident comes in contact.

21 (f) 1. Privacy for visits by spouse. If both spouses are residents of the same
22 facility or complex, they shall be permitted to share a room or apartment unless
23 medically contraindicated as documented by the resident's physician in the
24 resident's medical record.

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1 3. Confidentiality of health and personal records, and the right to approve or
2 refuse their release to any individual outside the facility or complex, except in the
3 case of the resident's transfer to another facility or complex or as required by law or
4 3rd-party payment contracts and except as provided in s. 146.82 (2) and (3).

5 (g) Not to be required to perform services for the facility or complex that are not
6 included for therapeutic purposes in the resident's plan of care.

7 (j) (intro.) Be transferred or discharged, and be given reasonable advance notice
8 of any planned transfer or discharge, and an explanation of the need for and
9 alternatives to the transfer or discharge. The facility or complex to which the
10 resident is to be transferred must have accepted the resident for transfer, except in
11 a medical emergency or if the transfer or discharge is for nonpayment of charges
12 following a reasonable opportunity to pay a deficiency. No person may be
13 involuntarily discharged for nonpayment under this paragraph if the person meets
14 all of the following conditions:

15 2. (intro.) The funding of his or her care in the ~~nursing home or~~
16 ~~community-based residential~~ facility under s. 49.45 (6m) is reduced or terminated
17 because of one of the following:

18 a. He or she requires a level or type of care ~~which~~ that is not provided by the
19 ~~nursing home or community-based residential~~ facility.

20 (L) Receive adequate and appropriate care within the capacity of the facility
21 or complex.

22 **SECTION 8.** 50.09 (1g) of the statutes is created to read:

23 50.09 (1g) In this section, "complex" means a residential care apartment
24 complex.

25 **SECTION 9.** 50.09 (2), (4) and (5) of the statutes are amended to read:

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1 50.09 (2) The department, in establishing standards for ~~nursing homes and~~
2 ~~community-based residential facilities and complexes~~ may establish, by rule, rights
3 in addition to those specified in sub. (1) ~~(1m)~~ for residents in ~~such~~ the facilities or
4 complexes.

5 (4) Each facility or complex shall make available a copy of the rights and
6 responsibilities established under this section and the ~~facility's~~ rules of the facility
7 or complex to each resident and each resident's legal representative, if any, at or prior
8 to the time of admission to the facility or complex, to each person who is a resident
9 of the facility or complex, and to each member of the ~~facility's~~ staff of the facility or
10 complex. The rights, responsibilities, and rules shall be posted in a prominent place
11 in each facility or complex. Each facility or complex shall prepare a written plan and
12 provide appropriate staff training to implement each resident's rights established
13 under this section.

14 (5) Rights established under this section shall not, except as determined by the
15 department of corrections, be applicable to residents in ~~such~~ facilities or complexes,
16 if the resident is in the legal custody of the department of corrections and is a
17 correctional client in ~~such~~ a facility or complex.

18 **SECTION 10.** 50.09 (6) (a), (b) and (d) of the statutes are amended to read:

19 50.09 (6) (a) Each facility or complex shall establish a system of reviewing
20 complaints and allegations of violations of residents' rights established under this
21 section. The facility or complex shall designate a specific individual who, for the
22 purposes of effectuating this section, shall report to the administrator.

23 (b) Allegations of violations of such rights by persons licensed, certified, or
24 registered under chs. 441, 446 to 450, 455, and 456 shall be promptly reported by the
25 facility or complex to the appropriate licensing, examining, or affiliated

BILL**SECTION 10**

1 credentiaing board and to the person against whom the allegation has been made.
2 Any employee of the facility or complex and any person licensed, certified, or
3 registered under chs. 441, 446 to 450, 455, and 456 may also report such allegations
4 to the board. ~~Such~~ The board may make further investigation and take such
5 disciplinary action, within the board's statutory authority, as the case requires.

6 (d) The facility or complex shall attach a statement, which summarizes
7 complaints or allegations of violations of rights established under this section, to the
8 report required under s. 50.03 (4) (c) 1. or 2. The statement shall contain the date
9 of the complaint or allegation, the name of the persons involved, the disposition of
10 the matter, and the date of disposition. The department shall consider the statement
11 in reviewing the report.

12 **SECTION 11. Nonstatutory provisions; board on aging and long-term**
13 **care.**

14 (1) RESIDENTIAL CARE APARTMENT COMPLEX ACTIVITIES. The authorized FTE
15 positions for the board on aging and long-term care are increased by 1.0 PR position
16 on July 1, 2006, to be funded from the appropriation account under section 20.432
17 (1) (gt) of the statutes, as created by this act, for the purpose of performing long-term
18 care ombudsman activities in residential care apartment complexes.

19 **SECTION 12. Nonstatutory provisions; health and family services.**

20 (1) ASSESSMENTS ON RESIDENTIAL CARE APARTMENT COMPLEXES; RULES.

21 (a) The department of health and family services shall submit in proposed form
22 the rules required under section 50.034 (9) (e) 2. of the statutes, as created by this
23 act, to the legislative council staff under section 227.15 (1) of the statutes no later
24 than the first day of the 4th month beginning after the effective date of this
25 paragraph.

2005 DRAFTING REQUEST

Bill

Received: 08/25/2004

Received By: dkennedy

Wanted: As time permits

Identical to LRB:

For: Peggy Krusick (608) 266-1733

By/Representing: Herself

This file may be shown to any legislator: NO

Drafter: dkennedy

May Contact: Board on Aging and Long-Term Car

Addl. Drafters:

Subject: Health - facility licensure

Extra Copies: RLR

Submit via email: YES

Requester's email: Rep.Krusick@legis.state.wi.us

Carbon copy (CC:) to: robin.ryan@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Minimum nursing home staffing requirements

Instructions:

Same as 03-0284/2

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	dkennedy 10/07/2004	jdye 11/01/2004		_____			S&L
/1			pgreensl 11/01/2004	_____	lnorthro 11/01/2004		

FE Sent For:

<END>

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/?	dkennedy	<i>1/1 jca</i>	<i>1/1</i>	<i>1/1</i>			

FE Sent For:

<END>

George Klein 1/132

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU - LEGAL SECTION
(608-266-3561)

Make effective day after enactment
of budget act

8/10/04 Mtg w/ Rep Kinsick
Dick Sweet, George Potvarcke, Tom Frasier, Charlie Morgan, Jessica
Stallen,

① Redraft 03-0290/c

② " 03-0284/2 - NH Staffing ratios

③ - fit & qualified - was amendment
looks at char. of owners + Pettis'
fiscal stability bill AB 842
+ conditional license provision
George will provide

④ Pope-Popents
Money follows person - was taken out of
AB 920 - life lease
George - NHs want to be the case managers for the money

⑤ Senior Care for disabled
under 65 - Charlie: wd cost dozens of millions
Charlie - Senior Care for 1/1/2006 - operates under MA waiver
right now

Medicare - MA benefits will no longer have MA drug coverage -
will go on Medicare - Part B^{D?} as of 1/1/06

CM will do fiscal report on before draft request is
made

⑥ Reduce deductible for Senior Care to \$650; is now
~~\$850~~ \$850

Add request?

Report from DHS to Legis?

⑦ MA discrimination 03-0281

MA certified facil - can be avail to MA or priv. pay
Medicare - certified beds can only serve Medicare pts

Tom Frasier: ⑧ St driver's license ^{for everyone} 4 yrs. instead of 8 yrs
X (see Wasserman's bill) -
Group will talk together

⑨ legal services benefit specialist program
CWAG (Fraser): legal backup for 65/72 cos.

X Need \$ for services
Supervision

Tom will give Charlie M. a proposal
Cos now do not have 1 full-time (Ben Spc)
Perhaps fund

CWAG ⑩ MA - possible \$ from cigarette tax

X Tax on ^{65's} \$1.85/pack = \$300 mil. Current def is \$215.220 mil.

George: ⑪ Expand BOALTC volunteers - 6cos in SE

X Civil mandatory penalty fund
(CMP) Central Fox River Valley

[Amdt to AB 8+2 - ~~file~~ introduce as our bill
(makes assessment avail for BOALTC expand)

Rip Krasick ⑫ 100.13? 100.31 Any price discrimination

X ^{untable} Must charge everyone same price, but can have
volume discounts - need clarifying language
Dick Sweet familiar w/ this - DATCP putting out white
paper - Frasier has differing legal opinion on whether can enforce the law

Kennedy, Debora

From: Rep.Krusick
Sent: Wednesday, September 01, 2004 12:15 PM
To: Kennedy, Debora
Subject: Bill drafting request (long-term care package)

Debora,

As discussed at our meeting of August 10, please draft the following legislation as one Assembly bill for the 2005-06 session. At this point, the only addition will be a provision relating to the benefit specialists program. Draft language is being prepared.

- Life Lease (2003 AB 920)
- Fit and Qualified (AA2 to 2003 AB 842)
- Nursing Home Staffing (2003 AB 192)
- Ombudsmen in Residential Care Apartment Complexes (2003 AB 644)
- Medicaid Discrimination (2003 AB 241)
- Nursing Home Forfeitures (2003 AB 842 as amended by AA1)
- Extending SeniorCare coverage to the disabled (2003 SB 114). Remove cigarette tax increase provision.
- Reducing SeniorCare deductible from \$850 to \$650.

Thanks. Just call with any questions.

Peggy
6-1733

Krusick 2005 Aging Initiatives

Ombudsmen in Residential Care Apartment Complexes (AB 644)

- \$12 annual fee for each apartment
- RCAC residents get same rights as residents of nursing homes and CBRFs
- Each complex must post these rights in a prominent place and provide appropriate staff training to implement each resident's rights.

Nursing Home Staffing (AB 192)

- Convert from *hours* per resident day to a *ratios* of caregivers to residents for each work shift
- DHFS reports on:
 - (1) methods nursing homes can use to better recruit and retain caregivers;
 - (2) proposed new minimum nursing home staffing ratios that facilitate the highest quality resident care and maximize access to such care;
 - (3) a proposed new nursing home reimbursement formula that advance caregiver wages and benefits.
- Annual Audit Bureau report for each nursing home on wages, benefits, usage of pool help, staff turnover, total revenue and expenses, staff training, code violations and other related information.

Fit and Qualified (AA2 to AB 842)

- All long term care providers would be held to F & Q standards at initial license application and periodically throughout lifetime of license.
- Financial
 - Fiscal reserves should be sufficient to support a facility's needs for one year. (Currently nursing homes must have 6 months of financial reserves).
 - Regulators allowed to identify and follow links between local facilities and any parent corporations.

Ownership

- Includes all individual and corporate owners, regardless of where they're located.
- Out-of-state corporate owners must have operating unit located in Wisconsin in order to operate a facility.
- Requirements for owners should be created to ensure that they are of good character and professional competence.

Conditional license

- Period of heightened scrutiny increased from 12 to 30 months. Conditional licenses may be extended for only one additional term. (Currently there's no limit on license extensions). Conditional licenses are imposed for quality or fiscal concerns.

Pattern of noncompliance

- Exists when more than 25% of facilities owned by a corporation have fiscal problems or provide substandard care.

Life Lease (AB 920)

- Enhanced CIP II (Community Integration Program) funds follow nursing home resident from facility to community.
- Currently these enhanced CIP funds are only available if the program participant's nursing home bed is closed. The bill eliminates this requirement.
- Saves state Medicaid budget (GPR) almost \$700,000 for 2005 b/c community care is about \$33 cheaper a day per recipient.

(SOON - In edit 10/7)

2005-2006

2003-2004 LEGISLATURE

0030/1

LRB-02847

DAK:kmg-cph

e jld

2003 ASSEMBLY BILL 192

March 25, 2003 - Introduced by Representatives KRUSICK, BERCEAU, BLACK, COGGS, COLON, LASSA, J. LEHMAN, MORRIS, SHERMAN, SHILLING, SINICKI, TURNER, YOUNG and ZEPNICK, cosponsored by Senators ROBSON and CARPENTER, by request of Service Employees International Union - Wisconsin State Council, Coalition of Wisconsin Aging Groups, AARP, AFSCME Council 11, Wisconsin State AFL-CIO, Wisconsin Federation of Nurses and Health Professionals, Wisconsin Citizen Action and Allied Council of Senior Citizens of Wisconsin. Referred to Committee on Aging and Long-Term Care.

Reger

- 1 AN ACT to repeal 50.04 (2) (d); to amend 50.02 (2) (bn); and to create 13.94 (12),
- 2 49.45 (6m) (a) 3m., 49.45 (6m) (a) 4m., 49.45 (6m) (a) 6., 49.45 (6m) (m) and 50.04
- 3 (2) (e) of the statutes; relating to: minimum staffing requirements for nursing
- 4 homes that do not primarily serve the developmentally disabled, requiring
- 5 audits by the Legislative Audit Bureau, requiring reports, and requiring the
- 6 exercise of rule-making authority.

Analysis by the Legislative Reference Bureau

Current law requires a nursing home that does not primarily serve the developmentally disabled to provide each resident of the nursing home a minimum number of hours of nursing care per day according to the level of nursing care that the resident requires. These minimum hours must be provided by a registered nurse, licensed practical nurse, or nurse's assistant.

This bill requires the Department of Health and Family Services (DHFS) to promulgate rules to specify minimum staffing standards that instead are based on ratios between the number of residents of a nursing home and the numbers of registered nurses, licensed practical nurses, and certified nurse's assistants (as defined in the bill) on duty in the nursing home during morning, afternoon, and evening shifts. By July 1, 2004, minimum nursing home staffing requirements under current law are eliminated, and DHFS must convert those minimum staffing requirements to the minimum staffing standards specified in the DHFS rules, must

2007

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2009 ✓

2007 ✓

provide training to DHFS staff on enforcement of the standards, and must assist nursing homes in implementing the standards. DHFS must, by January 1, ~~2005~~, report to the governor and to the legislature concerning the status of the DHFS compliance with these requirements. By July 1, ~~2005~~, nursing homes must have on duty the number of registered nurses, licensed practical nurses, and certified nurse's assistants necessary to satisfy the minimum staffing standards specified in the DHFS rules. Support personnel and certain other nursing home staff may not be used for purposes of calculating the minimum staffing ratios.

Under the bill, DHFS must, by January 1, ~~2007~~, submit a report to the governor and to the legislature with recommendations as to methods by which nursing homes would be able more effectively to recruit and retain caregivers; proposed revised minimum nursing home staffing ratios that minimize additional state costs, maximize access to care, facilitate care of the highest quality, and take into account the levels of care for physical or mental conditions that nursing home residents require; and a proposed revised nursing home Medical Assistance Program reimbursement methodology. DHFS must develop the report after first referring to the most recent national research on nursing home staffing and consulting with specified persons and entities.

2008 ✓

Also, under the bill, by July 1, ~~2008~~, and by July 1 every 48 months thereafter, the Legislative Audit Bureau must perform a performance evaluation audit of the nursing home staffing requirements, investigate whether the staffing requirements should be based in part on the level of care for physical or mental conditions that a nursing home resident requires, and file a report of the audit with the governor and the legislature.

2006 ✓

2009 ✓

Lastly, under the bill, DHFS must submit to the legislature by each January 1 from ~~2006~~ to ~~2007~~, a report that includes information from the preceding year for each nursing home on average wage and fringe benefit costs, costs of nonemployee purchased nursing services, staff turnover, total revenue and expenses, staff training and continuing education costs, and law violations and related information. Each report must also include recommendations by DHFS for ways by which nursing homes may reduce their reliance on nonemployee purchased nursing 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:

2008 ✓

- 1 **SECTION 1.** 13.94 (12) of the statutes is created to read:
- 2 13.94 (12) NURSING HOME STAFFING. By July 1, ~~2008~~, and by July 1 every 48
- 3 months thereafter, the legislative audit bureau shall perform a performance
- 4 evaluation audit of the nursing home staffing requirements under s. 50.04 (2) and

ASSEMBLY BILL 192

1 investigate whether the staffing requirements should be based in part on the level
2 of care for physical or mental conditions that a nursing home resident requires. The
3 legislative audit bureau shall consult advocates for nursing home residents,
4 physicians, nurses, nursing home employees or their representatives, nursing home
5 administrators, and other experts in the field of long-term[✓] care and shall consider
6 current research and case data, as well as any other relevant resources, in assessing
7 whether the staffing ratios are sufficient to meet the needs of nursing home
8 residents. The legislative audit bureau shall file a report of each audit with the
9 legislature under s. 13.172 (3) and with the governor no later than[✓] 30 days after
10 completion of the audit.

11 **SECTION 2.** 49.45 (6m) (a) 3m.[✓] of the statutes is created to read:

12 49.45 (6m) (a) 3m. “Licensed practical nurse”[✓] means a nurse who is licensed
13 or has a temporary permit under s. 441.10.[✓]

14 **SECTION 3.** 49.45 (6m) (a) 4m.[✓] of the statutes is created to read:

15 49.45 (6m) (a) 4m. “Nurse’s assistant”[✓] has the meaning given in s. 146.40 (1)
16 (d).[✓]

17 **SECTION 4.** 49.45 (6m) (a) 6.[✓] of the statutes is created to read:

18 49.45 (6m) (a) 6. “Registered nurse”[✓] means a nurse who has a certificate of
19 registration under s. 441.06 or a temporary permit order under s. 441.08.[✓]

20 **SECTION 5.** 49.45 (6m) (m) of the statutes is created to read:

21 49.45 (6m) (m) By January 1, ~~2004, 2005, 2006, and 2007~~², the department shall
22 submit a report to the chief clerk of each house of the legislature, for distribution to
23 the legislature under s. 13.172 (2), that shall include all of the following:[✓]

24 1. For the preceding calendar year for each facility:

2006, 2007, 2008,
and 2009

ASSEMBLY BILL 192

SECTION 5

1 a. The staff turnover rate for registered nurses, licensed practical nurses, and
2 nurse's assistants employed by the facility.

3 b. The average hourly wage and fringe benefit costs, including specific
4 unemployment compensation and worker's compensation costs, for registered
5 nurses, licensed practical nurses, nurse's assistants, dietary staff, housekeeping
6 staff, and laundry staff employed by the facility and the average hourly cost for
7 nonemployee purchased services, if any, of registered nurses, licensed practical
8 nurses, and nurse's assistants.

9 c. Total revenues and expenses, total net income after taxes, expenses for each
10 of the facility's [✓] cost centers under par. (am), [✓] the medical assistance reimbursement
11 rate and method of calculation, the number of patient beds, and the number of
12 patient days.

13 d. Total cost of recruiting, screening, educating, and training the nursing staff
14 of the facility.

15 e. Any [✓] correlation that may be shown between the number of notices of
16 violations for class "A," "B," or "C" violations received under s. 50.04 [✓] by a facility, if
17 any, and the frequency of use by the facility of nonemployee purchased services of
18 registered nurses, licensed practical nurses, or nurse's assistants.

19 2. Recommendations of the department for incentives for facilities to reduce
20 reliance on nonemployee purchased services of registered nurses, licensed practical
21 nurses, or nurse's assistants.

22 **SECTION 6.** 50.02 (2) (bn) [✓] of the statutes is amended to read:

23 50.02 (2) (bn) The department may, by rule, increase the minimum ~~hours of~~
24 ~~nursing home care per day staffing standards~~ that are specified in s. 50.04 (2) (d) 1-
25 ~~to 3-~~ [✓] (e).

ASSEMBLY BILL 192

1 SECTION 7. 50.04 (2) (d) ^X of the statutes is repealed.

2 SECTION 8. 50.04 (2) (e) of the statutes is created to read:

3 50.04 (2) (e) 1. [✓] In this paragraph:

4 a. "Afternoon work shift" [✓] means the 8-hour work shift that begins immediately
5 after the morning shift.

6 b. [✓] "Certified nurse's assistant" means a nurse's assistant who meets the
7 requirements specified under 42 USC 1296r (b) (5) (A) to (E).

8 c. [✓] "Evening work shift" means the 8-hour [✓] work shift that begins immediately
9 after the afternoon work shift.

10 d. "Morning work shift" [✓] means the first 8-hour work shift that begins after
11 midnight.

12 2. The department shall promulgate rules that specify minimum staffing
13 standards that are based on ratios between the numbers of registered nurses on duty
14 in a nursing home per [✓] morning work shift, afternoon work shift, or evening work
15 shift and the number of residents of the nursing home, between the numbers of
16 licensed practical nurses on duty in a nursing home per morning work shift,
17 afternoon work shift, or evening work shift and the number of residents of the
18 nursing home, and between the numbers of certified nurse's assistants on duty in a
19 nursing home per morning work shift, afternoon work shift, or evening work shift
20 and the number of residents of the nursing home. [✓] 2007

21 3. By July 1, ~~2007~~ ², the department shall convert the minimum staffing
22 requirements specified in s. 50.04 (2) (d), 200~~3~~ ³ stats., to the minimum staffing
23 standards specified in subd. 2., [✓] shall provide training to staff on enforcement of the
24 standards, and shall assist nursing homes in implementing the standards.

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SECTION 8

2007

1 4. By July 1, ~~2007~~, a nursing home, other than a nursing home that primarily
2 serves the developmentally disabled, shall have on duty the number of registered
3 nurses, licensed practical nurses, and certified nurse's assistants necessary to satisfy
4 the minimum staffing standards developed by the department under [✓]subd. 2.

5 5. A registered nurse, licensed practical nurse, or certified nurse's assistant
6 who while on duty provides primarily support services, including food preparation,
7 housekeeping, laundry, or maintenance services, may not be counted for purposes of
8 calculating the minimum staffing ratios [✓]under subd. 2. A registered nurse who is
9 employed as a director of nursing, as an assistant director of nursing, or as the charge
10 nurse required under [✓]par. (b), may not be counted for purposes of calculating the
11 minimum staffing requirements under subd. 2. while he or she is performing the
12 duties of a director of nursing, assistant director of nursing, or charge nurse.

2009

13 6. By January 1, ~~2009~~, after first referring to the most recent national research
14 on nursing home staffing and consulting with representatives of the nursing home
15 industry, labor unions that represent nursing home employees, advocates for elderly
16 and disabled persons, recognized experts with experience in long-term care
17 reimbursement, economists, the attorney general, the federal centers for medicare
18 and medicaid services, and other interested parties, the department shall submit a
19 report to the governor, and to the chief clerk of each house of the legislature for
20 distribution to the legislature under s. [✓]13.172 (2). The report shall contain all of the
21 following recommendations:

22 a. Proposed methods by which nursing homes are able more effectively to
23 recruit and retain caregivers.

24 b. Proposed revised minimum nursing home staffing ratios that minimize
25 additional state costs, maximize access to care, facilitate care of the highest quality,

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1 and take into account the levels of care for physical or mental conditions that nursing
2 home residents require.

3 c. A proposed revised nursing home[✓] medical assistance reimbursement
4 methodology that more effectively promotes resident care of high quality, advances
5 wages and benefits for nursing home workers, supports nursing home provider
6 compliance with applicable state statutes and rules and federal statutes and
7 regulations, and encourages administrative efficiency.

8 **SECTION 9. Nonstatutory provisions.**

9 (1) NURSING HOME STAFFING STANDARDS; RULES. The department of health and
10 family services shall submit in proposed form the rules required under section 50.02
11 (2) (e) of the statutes, as created by this act, to the legislative council staff under
12 section 227.15 (1) of the statutes no later than the first day of the 13th month
13 beginning after the effective date of this subsection. ✓ 2007

14 (2) NURSING HOME STAFFING STANDARDS; REPORT. By January 1, ~~2004~~⁹, the
15 department of health and family services shall report to the legislature in the
16 manner provided under section 13.172 (3) of the statutes and to the governor
17 concerning the status of the department's compliance with the requirements of
18 section 50.04 (2) (e) 3. of the statutes, as created by this act.

19 **SECTION 10. Effective dates.** This act takes effect on the day after publication,
20 except as follows:

21 (1) NURSING HOME STAFFING STANDARDS. The treatment of sections 50.02 (2) (bn)
22 and 50.04 (2) (d) of the statutes takes effect on July 1, ~~2004~~[✓] 2007

23 (END)



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-0030/1
DAK:jld:pg

2005 BILL

1 **AN ACT** *to repeal* 50.04 (2) (d); *to amend* 50.02 (2) (bn); and *to create* 13.94 (12),
2 49.45 (6m) (a) 3m., 49.45 (6m) (a) 4m., 49.45 (6m) (a) 6., 49.45 (6m) (m) and 50.04
3 (2) (e) of the statutes; **relating to:** minimum staffing requirements for nursing
4 homes that do not primarily serve the developmentally disabled, requiring
5 audits by the Legislative Audit Bureau, requiring reports, and requiring the
6 exercise of rule-making authority.

Analysis by the Legislative Reference Bureau

Current law requires a nursing home that does not primarily serve the developmentally disabled to provide each resident of the nursing home a minimum number of hours of nursing care per day according to the level of nursing care that the resident requires. These minimum hours must be provided by a registered nurse, licensed practical nurse, or nurse's assistant.

This bill requires the Department of Health and Family Services (DHFS) to promulgate rules to specify minimum staffing standards that instead are based on ratios between the number of residents of a nursing home and the numbers of registered nurses, licensed practical nurses, and certified nurse's assistants (as defined in the bill) on duty in the nursing home during morning, afternoon, and evening shifts. By July 1, 2007, minimum nursing home staffing requirements under current law are eliminated, and DHFS must convert those minimum staffing requirements to the minimum staffing standards specified in the DHFS rules, must

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provide training to DHFS staff on enforcement of the standards, and must assist nursing homes in implementing the standards. DHFS must, by January 1, 2007, report to the governor and to the legislature concerning the status of the DHFS compliance with these requirements. By July 1, 2007, nursing homes must have on duty the number of registered nurses, licensed practical nurses, and certified nurse's assistants necessary to satisfy the minimum staffing standards specified in the DHFS rules. Support personnel and certain other nursing home staff may not be used for purposes of calculating the minimum staffing ratios.

Under the bill, DHFS must, by January 1, 2009, submit a report to the governor and to the legislature with recommendations as to methods by which nursing homes would be able more effectively to recruit and retain caregivers; proposed revised minimum nursing home staffing ratios that minimize additional state costs, maximize access to care, facilitate care of the highest quality, and take into account the levels of care for physical or mental conditions that nursing home residents require; and a proposed revised nursing home Medical Assistance Program reimbursement methodology. DHFS must develop the report after first referring to the most recent national research on nursing home staffing and consulting with specified persons and entities.

Also, under the bill, by July 1, 2008, and by July 1 every 48 months thereafter, the Legislative Audit Bureau must perform a performance evaluation audit of the nursing home staffing requirements, investigate whether the staffing requirements should be based in part on the level of care for physical or mental conditions that a nursing home resident requires, and file a report of the audit with the governor and the legislature.

Lastly, under the bill, DHFS must submit to the legislature by each January 1 from 2006 to 2009 a report that includes information from the preceding year for each nursing home on average wage and fringe benefit costs, costs of nonemployee purchased nursing services, staff turnover, total revenue and expenses, staff training and continuing education costs, and law violations and related information. Each report must also include recommendations by DHFS for ways by which nursing homes may reduce their reliance on nonemployee purchased nursing 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.** 13.94 (12) of the statutes is created to read:
- 2 13.94 (12) NURSING HOME STAFFING. By July 1, 2008, and by July 1 every 48
- 3 months thereafter, the legislative audit bureau shall perform a performance
- 4 evaluation audit of the nursing home staffing requirements under s. 50.04 (2) and

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1 investigate whether the staffing requirements should be based in part on the level
2 of care for physical or mental conditions that a nursing home resident requires. The
3 legislative audit bureau shall consult advocates for nursing home residents,
4 physicians, nurses, nursing home employees or their representatives, nursing home
5 administrators, and other experts in the field of long-term care and shall consider
6 current research and case data, as well as any other relevant resources, in assessing
7 whether the staffing ratios are sufficient to meet the needs of nursing home
8 residents. The legislative audit bureau shall file a report of each audit with the
9 legislature under s. 13.172 (3) and with the governor no later than 30 days after
10 completion of the audit.

11 **SECTION 2.** 49.45 (6m) (a) 3m. of the statutes is created to read:

12 49.45 (6m) (a) 3m. “Licensed practical nurse” means a nurse who is licensed
13 or has a temporary permit under s. 441.10.

14 **SECTION 3.** 49.45 (6m) (a) 4m. of the statutes is created to read:

15 49.45 (6m) (a) 4m. “Nurse’s assistant” has the meaning given in s. 146.40 (1)
16 (d).

17 **SECTION 4.** 49.45 (6m) (a) 6. of the statutes is created to read:

18 49.45 (6m) (a) 6. “Registered nurse” means a nurse who has a certificate of
19 registration under s. 441.06 or a temporary permit order under s. 441.08.

20 **SECTION 5.** 49.45 (6m) (m) of the statutes is created to read:

21 49.45 (6m) (m) By January 1, 2006, 2007, 2008, and 2009, the department shall
22 submit a report to the chief clerk of each house of the legislature, for distribution to
23 the legislature under s. 13.172 (2), that shall include all of the following:

24 1. For the preceding calendar year for each facility:

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1 **SECTION 7.** 50.04 (2) (d) of the statutes is repealed.

2 **SECTION 8.** 50.04 (2) (e) of the statutes is created to read:

3 50.04 (2) (e) 1. In this paragraph:

4 a. “Afternoon work shift” means the 8-hour work shift that begins immediately
5 after the morning shift.

6 b. “Certified nurse’s assistant” means a nurse’s assistant who meets the
7 requirements specified under 42 USC 1296r (b) (5) (A) to (E).

8 c. “Evening work shift” means the 8-hour work shift that begins immediately
9 after the afternoon work shift.

10 d. “Morning work shift” means the first 8-hour work shift that begins after
11 midnight.

12 2. The department shall promulgate rules that specify minimum staffing
13 standards that are based on ratios between the numbers of registered nurses on duty
14 in a nursing home per morning work shift, afternoon work shift, or evening work
15 shift and the number of residents of the nursing home, between the numbers of
16 licensed practical nurses on duty in a nursing home per morning work shift,
17 afternoon work shift, or evening work shift and the number of residents of the
18 nursing home, and between the numbers of certified nurse’s assistants on duty in a
19 nursing home per morning work shift, afternoon work shift, or evening work shift
20 and the number of residents of the nursing home.

21 3. By July 1, 2007, the department shall convert the minimum staffing
22 requirements specified in s. 50.04 (2) (d), 2003 stats., to the minimum staffing
23 standards specified in subd. 2., shall provide training to staff on enforcement of the
24 standards, and shall assist nursing homes in implementing the standards.

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1 4. By July 1, 2007, a nursing home, other than a nursing home that primarily
2 serves the developmentally disabled, shall have on duty the number of registered
3 nurses, licensed practical nurses, and certified nurse's assistants necessary to satisfy
4 the minimum staffing standards developed by the department under subd. 2.

5 5. A registered nurse, licensed practical nurse, or certified nurse's assistant
6 who while on duty provides primarily support services, including food preparation,
7 housekeeping, laundry, or maintenance services, may not be counted for purposes of
8 calculating the minimum staffing ratios under subd. 2. A registered nurse who is
9 employed as a director of nursing, as an assistant director of nursing, or as the charge
10 nurse required under par. (b), may not be counted for purposes of calculating the
11 minimum staffing requirements under subd. 2. while he or she is performing the
12 duties of a director of nursing, assistant director of nursing, or charge nurse.

13 6. By January 1, 2009, after first referring to the most recent national research
14 on nursing home staffing and consulting with representatives of the nursing home
15 industry, labor unions that represent nursing home employees, advocates for elderly
16 and disabled persons, recognized experts with experience in long-term care
17 reimbursement, economists, the attorney general, the federal centers for medicare
18 and medicaid services, and other interested parties, the department shall submit a
19 report to the governor, and to the chief clerk of each house of the legislature for
20 distribution to the legislature under s. 13.172 (2). The report shall contain all of the
21 following recommendations:

22 a. Proposed methods by which nursing homes are able more effectively to
23 recruit and retain caregivers.

24 b. Proposed revised minimum nursing home staffing ratios that minimize
25 additional state costs, maximize access to care, facilitate care of the highest quality,

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1 and take into account the levels of care for physical or mental conditions that nursing
2 home residents require.

3 c. A proposed revised nursing home medical assistance reimbursement
4 methodology that more effectively promotes resident care of high quality, advances
5 wages and benefits for nursing home workers, supports nursing home provider
6 compliance with applicable state statutes and rules and federal statutes and
7 regulations, and encourages administrative efficiency.

8 **SECTION 9. Nonstatutory provisions.**

9 (1) NURSING HOME STAFFING STANDARDS; RULES. The department of health and
10 family services shall submit in proposed form the rules required under section 50.02
11 (2) (e) of the statutes, as created by this act, to the legislative council staff under
12 section 227.15 (1) of the statutes no later than the first day of the 13th month
13 beginning after the effective date of this subsection.

14 (2) NURSING HOME STAFFING STANDARDS; REPORT. By January 1, 2007, the
15 department of health and family services shall report to the legislature in the
16 manner provided under section 13.172 (3) of the statutes and to the governor
17 concerning the status of the department's compliance with the requirements of
18 section 50.04 (2) (e) 3. of the statutes, as created by this act.

19 **SECTION 10. Effective dates.** This act takes effect on the day after publication,
20 except as follows:

21 (1) NURSING HOME STAFFING STANDARDS. The treatment of sections 50.02 (2) (bn)
22 and 50.04 (2) (d) of the statutes takes effect on July 1, 2007.

23

(END)