



2001 SENATE BILL 428

February 7, 2002 - Introduced by Senators BURKE, ERPENBACH, GROBSCHMIDT, PLACHE and SHIBILSKI, cosponsored by Representatives KRUSICK, BERCEAU, BLACK, BOCK, CARPENTER, COGGS, LA FAVE, LASSA, J. LEHMAN, MILLER, MORRIS-TATUM, POCAN, POWERS, RICHARDS, RYBA, SCHNEIDER, SHERMAN, SINICKI, STASKUNAS, STEINBRINK, TRAVIS, TURNER, WALKER, WASSERMAN and YOUNG, by request of Service Employees International Union - Wisconsin State Council, Coalition of WI Aging Groups, AARP, Board on Aging and Long Term Care, AFSCME Council 11, WI State AFL-CIO, WI Federation of Nurses and Health Professionals, WI Citizen Action and Allied Council of Senior Citizens of WI. Referred to Committee on Human Services and Aging.

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

Analysis by the Legislative Reference Bureau

Current law requires nursing homes that do 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 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 numbers of registered nurses, licensed practical nurses, and certified nurse's assistants (as defined in the bill) on duty in a nursing home during morning, afternoon, and evening shifts and the number of residents of the nursing home. By July 1, 2003, 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 provide training to DHFS staff on enforcement of the standards, and must assist nursing homes in implementing the standards. DHFS must, by January 1, 2003, report to

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the governor and to the legislature concerning the status of the DHFS compliance with these requirements. By July 1, 2003, 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, 2005, 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 patient acuity levels; and a proposed revised nursing home medical assistant 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, 2004, 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 on a nursing home resident's acuity, and file a report of the audit with the governor and the legislature.

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, 2004, 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
5 investigate whether the staffing requirements should be based on a nursing home
6 resident's acuity. The legislative audit bureau shall consult advocates for nursing
7 home residents, physicians, nurses, nursing home employees or their
8 representatives, nursing home administrators, and other experts in the field of
9 long-term care and shall consider current research and case data, as well as any
10 other relevant resources, in assessing whether the staffing ratios are sufficient to

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1 meet the needs of nursing home residents. The legislative audit bureau shall file a
2 report of each audit with the legislature under s. 13.172 (3) and with the governor
3 no later than 30 days after completion of the audit.

4 **SECTION 2.** 50.02 (2) (bn) of the statutes is amended to read:

5 50.02 (2) (bn) The department may, by rule, increase the minimum hours of
6 nursing home care per day staffing standards that are specified in s. 50.04 (2) (d) 1.
7 ~~to 3.~~ (e).

8 **SECTION 3.** 50.04 (2) (d) of the statutes is repealed:

9 **SECTION 4.** 50.04 (2) (e) of the statutes is created to read:

10 50.04 (2) (e) 1. In this paragraph:

11 a. "Afternoon work shift" means the 8-hour work shift that begins immediately
12 after the morning shift.

13 b. "Certified nurse's assistant" means a nurse's assistant who meets the
14 requirements specified under 42 USC 1296r (b) (5) (A) to (E).

15 c. "Evening work shift" means the 8-hour work shift that begins immediately
16 after the afternoon work shift.

17 d. "Morning work shift" means the first 8-hour work shift that begins after
18 midnight.

19 2. The department shall promulgate rules that specify minimum staffing
20 standards that are based on ratios between the numbers of registered nurses on duty
21 in a nursing home per morning work shift, afternoon work shift, or evening work
22 shift and the number of residents of the nursing home, between the numbers of
23 licensed practical nurses on duty in a nursing home per morning work shift,
24 afternoon work shift, or evening work shift and the number of residents of the
25 nursing home, and between the numbers of certified nurse's assistants on duty in a

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1 nursing home per morning work shift, afternoon work shift, or evening work shift
2 and the number of residents of the nursing home.

3 3. By July 1, 2003, the department shall convert the minimum staffing
4 requirements specified in par. (d), 1999 stats., to the minimum staffing standards
5 specified in subd. 2., shall provide training to staff on enforcement of the standards,
6 and shall assist nursing homes in implementing the standards.

7 4. By July 1, 2003, a nursing home, other than a nursing home that primarily
8 serves the developmentally disabled, shall have on duty the number of registered
9 nurses, licensed practical nurses, and certified nurse's assistants necessary to satisfy
10 the minimum staffing standards developed by the department under subd. 2.

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

19 6. By January 1, 2005, after first referring to the most recent national research
20 on nursing home staffing and consulting with representatives of the nursing home
21 industry, labor unions that represent nursing home employees, advocates for elderly
22 and disabled persons, recognized experts with experience in long-term care
23 reimbursement, economists, the attorney general, the federal centers for medicare
24 and medicaid services, and other interested parties, the department shall submit a
25 report to the governor, and to the chief clerk of each house of the legislature for

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1 distribution to the legislature under s. 13.172 (2). The report shall contain all of the
2 following recommendations:

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

5 b. Proposed revised minimum nursing home staffing ratios that minimize
6 additional state costs, maximize access to care, facilitate care of the highest quality,
7 and take into account patient acuity levels.

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

13 **SECTION 5. Nonstatutory provisions.**

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

19 (2) NURSING HOME STAFFING STANDARDS; REPORT. By January 1, 2003, the
20 department of health and family services shall report to the legislature in the
21 manner provided under section 13.172 (3) of the statutes and to the governor
22 concerning the status of the department's compliance with the requirements of
23 section 50.04 (2) (e) 3. of the statutes, as created by this act.

24 **SECTION 6. Effective dates.** This act takes effect on the day after publication,
25 except as follows:

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SECTION 6

1 (1) NURSING HOME STAFFING STANDARDS. The treatment of sections 50.02 (2) (bn)
2 and 50.04 (2) (d) of the statutes takes effect on July 1, 2003.

3 (END)