



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.

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, 2005, 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, 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.

Also, under the bill, by July 1, 2006, 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 2004 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:

- 1 **SECTION 1.** 13.94 (12) of the statutes is created to read:
- 2 13.94 (12) NURSING HOME STAFFING. By July 1, 2006, 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, 2004, 2005, 2006, and 2007, 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 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).

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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, 2005, the department shall convert the minimum staffing
22 requirements specified in s. 50.04 (2) (d), 2001 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, 2005, 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, 2007, 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, 2005, 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, 2005.

23 (END)