

2001 DRAFTING REQUEST

Bill

Received: **05/17/2001**

Received By: **isagerro**

Wanted: **As time permits**

Identical to LRB:

For: **Peggy Krusick (608) 266-1733**

By/Representing: **Christian**

This file may be shown to any legislator: **NO**

Drafter: **kenneda**

May Contact:

Addl. Drafters:

Subject: **Health - facility licensure**

Extra Copies:

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

Convert current minimum nursing home staffing requirements to ratios

Instructions:

See Attached

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>
/1	isagerro 07/13/2001	jdyer 07/13/2001	rschluet 07/13/2001	_____	grctskl 07/13/2001		S&L
/2	kenneda 10/18/2001	jdyer 10/19/2001	haugeca 10/23/2001	_____	lrb_docadmin 10/23/2001		S&L
/3	kenneda 11/02/2001	jdyer 11/02/2001 jdyer 11/07/2001	kfollet 11/09/2001	_____ _____ _____	lrb_docadmin 11/09/2001		S&L

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/4	kenneda 11/27/2001	jdyer 11/27/2001	jfrantze 11/28/2001	_____	lrb_docadmin 11/28/2001	lrb_docadminS&L 02/01/2002	

FE Sent For: 07/13/2001, 10/24/2001, 11/13/2001, [REDACTED]

("1") ("2") ("3") <END>
 ↗ ↗ ↗
 "4"
 At intro.

↑
 Requested
 by Ruth

2001 DRAFTING REQUEST

Bill

Received: **05/17/2001**

Received By: **isagerro**

Wanted: **As time permits**

Identical to LRB:

For: **Peggy Krusick (608) 266-1733**

By/Representing: **Christian**

This file may be shown to any legislator: **NO**

Drafter: **kenneda**

May Contact:

Addl. Drafters:

Subject: **Health - facility licensure**

Extra Copies:

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

Convert current minimum nursing home staffing requirements to ratios

Instructions:

See Attached

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>
/1	isagerro 07/13/2001	jdycr 07/13/2001	rschluet 07/13/2001	_____	gretskl 07/13/2001		S&L
/2	kenneda 10/18/2001	jdycr 10/19/2001	haugcca 10/23/2001	_____	lrb_docadmin 10/23/2001		S&L
/3	kenneda 11/02/2001	jdycr 11/02/2001 jdycr 11/07/2001	kfollet 11/09/2001	_____ _____ _____	lrb_docadmin 11/09/2001		S&L

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/4	kenneda 11/27/2001	jdyer 11/27/2001	jfrantze 11/28/2001	_____	lrb_docadmin 11/28/2001		S&L

FE Sent For: **07/13/2001, 10/24/2001, 11/13/2001.**

<END>

2001 DRAFTING REQUEST

Bill

Received: **05/17/2001**

Received By: **isagerro**

Wanted: **As time permits**

Identical to LRB:

For: **Peggy Krusick (608) 266-1733**

By/Representing: **Christian**

This file may be shown to any legislator: **NO**

Drafter: **kenneda**

May Contact:

Addl. Drafters:

Subject: **Health - facility licensure**

Extra Copies:

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

Convert current minimum nursing home staffing requirements to ratios

Instructions:

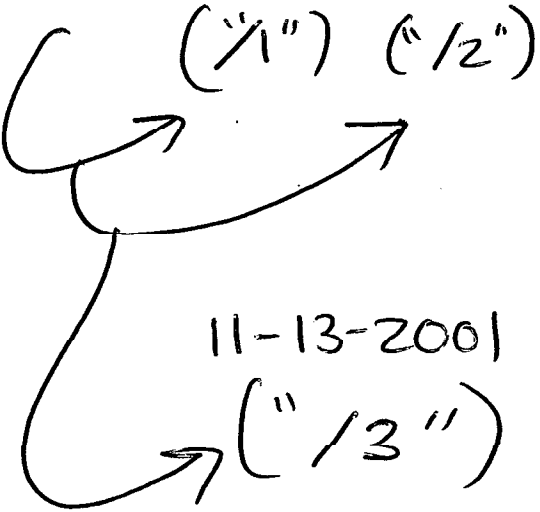
See Attached

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>
/1	isagerro 07/13/2001	jdyer 07/13/2001	rschluct 07/13/2001	_____	gretskl 07/13/2001		S&L
/2	kenneda 10/18/2001	jdyer 10/19/2001	haugeca 10/23/2001	_____	lrb_docadmin 10/23/2001		S&L
/3	kenneda 11/02/2001	jdyer 11/02/2001	kfollet 11/09/2001	_____	lrb_docadmin 11/09/2001		S&L
		jdyer 11/07/2001		_____			

Handwritten notes:
 /4 1/27 jld
 11/28
 11/28

FE Sent For: 07/13/2001, 10/24/2001.



<END>

2001 DRAFTING REQUEST

Bill

Received: **05/17/2001**

Received By: **isagerro**

Wantcd: **As time permits**

Identical to LRB:

For: **Peggy Krusick (608) 266-1733**

By/Representing: **Christian**

This file may be shown to any legislator: **NO**

Drafter: **kenneda**

May Contact:

Addl. Drafters:

Subject: **Health - facility licensure**

Extra Copies:

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

Convert current minimum nursing home staffing requirements to ratios

Instructions:

See Attached

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>
/1	isagerro 07/13/2001	jdyer 07/13/2001	rschluet 07/13/2001	_____	gretskl 07/13/2001		S&L
/2	kenneda 10/18/2001	jdyer 10/19/2001	haugcca 10/23/2001	_____	lib_docadmin 10/23/2001		S&L

FE Sent For: **07/13/2001.**

"1/2" sent for w/24 requested by Christian

13 1/2

11/8

11/9 <END>

2001 DRAFTING REQUEST

Bill

Received: 05/17/2001

Received By: isagerro

Wanted: As time permits

Identical to LRB:

For: Peggy Krusick (608) 266-1733

By/Representing: Christian

This file may be shown to any legislator: NO

Drafter: kenneda

May Contact:

Addl. Drafters:

Subject: Health - facility licensure

Extra Copies:

Submit via email: NO

Pre Topic:

No specific pre topic given

Topic:

Convert current minimum nursing home staffing requirements to ratios

Instructions:

See Attached

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>
/1	isagerro 07/13/2001	jdyer 07/13/2001	rschluet 07/13/2001		gretskl 07/13/2001		S&L

FE Sent For: 07/13/2001.

Handwritten: 1/2 10/19 jld

Handwritten: CH 10-22

Handwritten: SF 10-22

<END>

2001 DRAFTING REQUEST

Bill

Received: **05/17/2001**

Received By: **isagerro**

Wanted: **As time permits**

Identical to LRB:

For: **Peggy Krusick (608) 266-1733**

By/Representing: **Christian**

This file may be shown to any legislator: **NO**

Drafter: **isagerro**

May Contact:

Addl. Drafters:

Subject: **Health - facility licensure**

Extra Copies: **DAK**

Submit via email: **NO**

Requester's email:

Pre Topic:

No specific pre topic given

Topic:

Convert current minimum nursing home staffing requirements to ratios

Instructions:

See Attached

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>
/1	isagerro 07/13/2001	jdyer 07/13/2001	rschluet 07/13/2001	_____	gretskl 07/13/2001		S&L

FE Sent For:

<END>

2001 DRAFTING REQUEST

Bill

Received: 05/17/2001

Received By: isagerro

Wanted: As time permits

Identical to LRB:

For: Peggy Krusick (608) 266-1733

By/Representing: Christian

This file may be shown to any legislator: NO

Drafter: isagerro

May Contact:

Addl. Drafters:

Subject: Health - facility licensure

Extra Copies: DAK

Submit via email: NO

Requester's email:

Pre Topic:

No specific pre topic given

Topic:

Convert current minimum nursing home staffing requirements to ratios

Instructions:

See Attached

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>
--------------	----------------	-----------------	--------------	----------------	------------------	-----------------	-----------------

1?	isagerro	1/7/3 JL		 P6			
----	----------	----------	---	--	--	--	--

Handwritten: 1/7/3 JL

Handwritten signature

Handwritten signature

Handwritten: 7-11-01

FE Sent For:

<END>

* Christian, Rep. Krusick's office

- Section 3v of a0478/2 as a bill

- requires DHS to convert current min.
staffing reqs ~~to~~ to ratios of
nurses to residents



JLD

2001 BILL

DNOTE

- 1 AN ACT ^{gen} relating to: minimum staffing requirements for nursing homes that
- 2 do not primarily serve the developmentally disabled.

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 ~~with~~ 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 convert the
 minimum staffing requirements that are based on the number of hours of nursing
 care provided per day to minimum staffing requirements that are based on the
 number of registered nurses, licensed practical nurses, and nurse's assistants on
 duty per number of residents per day. The bill also requires DHFS to enforce the
^{new} ~~converted~~ staffing requirements beginning on the first day of the third month
 beginning after publication of the bill.

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:*

(END)

Insert
1-3
3

provided to a facility was not expended as required under subd. 1., the department may recoup that part of the supplement that was not expended as required."

7 Page 3, line 14: after that line insert:

4

~~SECTION 3l.~~ 50.04 (2) (d) (intro.) of the statutes is amended to read:

5

50.04 (2) (d) (intro.) Each Except as provided in par. (e) ~~and (f)~~ each nursing home, other than nursing homes that primarily serve the developmentally disabled, shall provide at least the following hours of service by registered nurses, licensed practical nurses, or nurse's assistants:

9

~~SECTION 3v.~~ 50.04 (2) (e) of the statutes is created to read:

10

50.04 (2) (e) The department shall convert the minimum staffing requirements specified in par. (d) to minimum staffing requirements that are based on the number of registered nurses, licensed practical nurses, and nurse's assistants on duty per residents per day. ~~Except as provided in par. (f)~~ beginning beginning on the first day of the 3rd month beginning after the effective date of this paragraph [revisor inserts date], a nursing home, other than a nursing home that primarily serves the developmentally disabled, shall have on duty the number of registered nurses, licensed practical nurses, and nurses ^{assistants} ~~aides~~ necessary to satisfy the minimum staffing requirements developed by the department under this paragraph.

19

~~SECTION 3w.~~ 50.04 (2) (f) of the statutes is created to read:

20

50.04 (2) (f) No later than April 1, 2002, and each April 1 thereafter, the department shall submit a plan to increase the minimum staffing requirements specified in par. (e) to the joint committee on finance for review. The department shall calculate the increased minimum staffing requirements so that any increased costs to nursing homes that result from the increased minimum staffing

(end ins)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3330/1dn

ISR:.....

Jed

Representative Krusick:

This bill is based on SECTIONS 3t and 3v of LRBA0478/2. I apologize for the delay in getting you the ~~draft~~ bill but budget drafting has required all of my time.

Please feel free to contact me with any questions you may have about the bill.

Ivy G. Sager-Rosenthal
Legislative Attorney
Phone: (608) 261-4455
E-mail: ivy.sager-rosenthal@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3330/1dn
ISR:jld:rs

July 13, 2001

Representative Krusick:

This bill is based on SECTIONS 3t and 3v of LRBa0478/2. I apologize for the delay in getting you the bill but budget drafting has required all of my time.

Please feel free to contact me with and questions you may have about the bill.

Ivy G. Sager-Rosenthal
Legislative Attorney
Phone: (608) 261-4455
E-mail: ivy.sager-rosenthal@legis.state.wi.us

Barman, Mike

From: Barman, Mike

Sent: Wednesday, August 22, 2001 10:07 AM

To: Rep.Krusick

Subject: LRB-3330/1 (attached) (requested by Christian)

08/22/2001

Emery, Lynn

From: Emery, Lynn
Sent: Friday, September 28, 2001 11:30 AM
To: Rep.Krusick
Subject: LRB-3330/1 (attached as requested)

Lynn Emery

Lynn Emery - Program Asst. (PH. 608-266-3561)
(E-Mail: lynn.emery@legis.state.wi.us) (FAX: 608-264-6948)

Legislative Reference Bureau - Legal Section - Front Office
100 N. Hamilton Street - 5th Floor
Madison, WI 53703

9/28/2001

CONCURRENCE IN SENATE AMENDMENTS
 AB 1075 (Shelley)
 As Amended September 12, 2001
 Majority vote

ASSEMBLY:	47-24	(June 6, 2001)	SENATE:	24-10	(September 13, 2001)
-----------	-------	----------------	---------	-------	----------------------

Original Committee Reference: HEALTH

SUMMARY : Requires the Department of Health Services (DHS) to develop regulations that become effective August 1, 2003, that establish staff-to-patient ratios for direct caregivers working in a skilled nursing facility. Requires DHS to submit to the Legislature a status report on the implementation of this bill on April 1, 2002, April 1, 2003, and April 1, 2004. Specifically, this bill :

- 1) Requires DHS to develop regulations that become effective August 1, 2003, that establish staff-to-patient ratios for direct caregivers working in a skilled nursing facility (SNF).
- 2) Requires these ratios to include separate licensed nurse (LN) staff-to-patient ratios in addition to the ratios established for other direct caregivers.
- 3) Requires DHS in developing staff-to-patient ratios for direct caregivers and LNs required by this bill to convert the existing minimum 3.2 nursing hours per patient and to ensure that no less care is given than is required pursuant to existing law relating to the minimum nursing hours to patient for SNFs.
- 4) Requires DHS to develop the ratios in a manner that minimizes additional state costs, maximizes resident access to care, and takes into account the length of the shift worked.
- 5) Requires DHS, to develop a procedure for facilities to apply for a waiver that addresses individual patient needs in developing the regulations. Prohibits in any instance the minimum staff-to-patient ratios from being less than the 3.2 nursing hours per patient day required under specified current

- law.
- 6) Requires the staffing ratios to be developed pursuant to this bill to be minimum standards only.
 - 7) Require SNFs to employ and schedule additional staff as needed to ensure quality resident care based on the needs of individual residents and to ensure compliance with all relevant state and federal staffing requirements.
 - 8) Requires, no later than January 1, 2006, and every five years thereafter, DHS to consult with consumers, consumer advocates, recognized collective bargaining agents, and providers to determine the sufficiency of the staffing standards provided in this bill and permits DHS to adopt regulations to increase the minimum staffing ratios to adequate levels.
 - 9) Requires every SNF, in a manner pursuant to federal requirements, effective January 1, 2003, to post information about staffing levels that includes the current number of licensed and unlicensed nursing staff directly responsible for resident care in the facility. Requires this posting to include staffing requirements developed pursuant to this bill.
 - 10) Requires DHS to inspect for compliance with this bill during state and federal periodic inspections. Prohibits this inspection requirement from limiting DHS's authority in other circumstances to cite for violations of this bill or to inspect for compliance with this bill.
 - 11) Permits a violation of the regulations developed pursuant to this bill to constitute a class "B", "A", or "AA" violation pursuant to the standards set forth in current law relating to citations of long-term care facilities.
 - 12) Requires initial implementation of the staffing ratio developed pursuant to requirements set forth in this bill to be contingent on an appropriation in the annual Budget Act or another statute.
 - 13) Permits DHS, in implementing this bill, to contract as necessary, on a bid or nonbid basis, for professional consulting services from nationally recognized higher education and research institutions, or other qualified

AB 1075

Page 3

individuals and entities not associated with an SNF, with demonstrated expertise in long-term care. Specifies that this establishes an accelerated process for issuing contracts pursuant to this bill and exempts contracts entered into pursuant to this bill from current law relating to public contracts.

- 14) States the legislative intent to devise a Medi-Cal long-term

care reimbursement methodology that more effectively ensures individual access to appropriate long-term care services, promotes quality resident care, advances decent wages and benefits for nursing home workers, supports provider compliance with all applicable state and federal requirements, and encourages administrative efficiency.

- 15) Requires DHS to implement a facility-specific rate-setting system by August 1, 2004, subject to federal approval, that reflects the costs and staffing levels associated with quality of care for residents in nursing facilities that includes hospital-based nursing facilities.
- 16) Requires DHS to examine several alternative rate methodology models for a new Medi-Cal reimbursement system for SNFs to include, but not be limited to, consideration of the following:
 - a) Classification of residents based on the resource utilization group system or other appropriate acuity classification system;
 - b) Facility specific case mix factors;
 - c) Direct care labor based factors;
 - d) Geographic or regional differences in the cost of operating facilities and providing resident care; and,
 - e) Facility-specific cost based rate models used in other states.
- 17) Requires DHS to submit to the Legislature a status report on the implementation of this bill on April 1, 2002, April 1, 2003, and April 1, 2004 .
- 18) Requires the alternatives for a new system described in #16 above to be developed in consultation with recognized experts with experience in long-term care reimbursement, economists, the Attorney General, the federal Centers for Medicare and Medicaid Services, and other interested parties.

AB 1075

Page 4

- 19) Permits DHS, in implementing this bill, to contract as necessary, on a bid or nonbid basis, for professional consulting services from nationally recognized higher education and research institutions, or other qualified individuals and entities not associated with a SNF, with demonstrated expertise in long-term care reimbursement systems.
- 20) Specifies that #19 above establishes an accelerated process for issuing contracts pursuant to this bill and exempts contracts entered into pursuant to #19 above from specified law relating to public contracts.
- 21) Permits DHS to adopt emergency regulations to implement the applicable provisions of this bill.

The Senate amendments :

- 1) Remove language from this bill that requires SNFs to use specified staff-to-patient ratios for direct care givers and LNs, and instead require DHS to develop regulations that establish staff-to-patient ratios for direct caregivers and LNs working in SNFs.
- 2) Require DHS in developing staff-to-patient ratios for direct caregivers and LNs required by this bill to convert the existing minimum 3.2 nursing hours per patient and to ensure that no less care is given than is required pursuant to existing law relating to the minimum nursing hours to patient for SNFs.
- 3) Require DHS to develop the ratios in a manner that minimizes additional state costs, maximizes resident access to care, and takes into account the length of the shift worked.
- 4) Require DHS, in developing the regulations, to develop a procedure for facilities to apply for a waiver that addresses individual patient needs. Prohibit the minimum staff-to-patient ratios from being less than the 3.2 nursing hours per patient day required under specified current law in any instance.
- 5) Require, effective January 1, 2003, every SNF to post information about staffing levels that include the current

AB 1075

Page 5

number of licensed and unlicensed nursing staff directly responsible for resident care in the facility in a manner pursuant to federal requirements. Require this posting to include staffing requirements developed pursuant to this bill.

- 6) Permit, instead of requires, a violation of the regulations developed pursuant to this bill to constitute a class "B", "A", or "AA" violation pursuant to standards set forth in existing law relating to citations for long-term care facilities.
- 7) Permit DHS, to contract as necessary, on a bid or nonbid basis, for professional consulting services from nationally recognized higher education and research institutions, or other qualified individuals and entities not associated with an SNF, with demonstrated expertise in long-term care in implementing this bill. Specify that this establishes an accelerated process for issuing contracts pursuant to this bill and requires contracts entered into pursuant to this bill to be exempt from specified current law relating to public contracts.
- 8) Add to specified alternative rate methodology models DHS is required to examine for a new Medi-Cal reimbursement for SNFs,

facility-specific cost based rate models used in other states.

- 9) Require DHS to implement a facility-specific rate-setting system by August 1, 2004, subject to federal approval, that reflects the costs and staffing levels associated with quality of care for residents in nursing facilities that includes hospital-based nursing facilities.
- 10) Require the report DHS is required to submit to the Legislature in 2002, to also be issued on 2003 and 2004.
- 11) Permit DHS to adopt emergency regulations to implement the applicable provisions of this bill.

AS PASSED BY THE ASSEMBLY , this bill required a SNF to meet specified minimum staff-to-patient ratios for direct caregivers and licensed nurses. Established citations if a SNF does not comply with this bill. Required a SNF to post the staffing ratio requirements in a prominent location in the facility. Required DHS to consult with certain entities every five years

AB 1075

Page 6

to discuss the sufficiency and effectiveness of the implementation and enforcement of this bill's provisions.

FISCAL EFFECT : According to the Assembly Appropriations Committee analysis of the April 18th version of this bill, major Medi-Cal costs, \$60 million [\$30 million General Fund (GF)] in fiscal year (FY) 2001-02 (half year), likely exceeding \$750 million (\$375 million GF) by FY 2004-05 due to increases in the staffing ratios. Every 0.1 increase in nursing hours above the current 3.2 minimum equals \$40-50 million (GF) costs per year. The 2002 ratios in this bill equate to about 3.23 hours, while the 2004 ratios are about 4.1 hours. The implementation of these ratios is contingent on an appropriation in the Budget Act or other statute.

COMMENTS :

- 1) According to the author this bill is needed because staffing in SNFs is inadequate. The author argues that under this bill, staffing standards would become enforceable since residents, family members, and workers can more easily determine whether the SNF is complying with the requisite staffing ratios.
- 2) According to the sponsor of this bill, the Service Employees International Union (SEIU), California's nursing homes rank 47th in the nation in terms of quality of care and more than 90% of California's nursing homes fail to substantially comply with federal requirements regarding quality of care. SEIU argues that this bill will increase staffing in nursing homes by a third and make staffing levels comprehensible and enforceable. Improving staffing will improve working

conditions and encourage more workers to stay in the field.

The Congress of California Seniors (CCS) states that inadequate staffing in nursing homes results in bad care, and serious harm to residents. CCS argues that this bill would address this important issue by requiring the safe staffing standards recommended by the National Coalition for Nursing Home Reform.

The National Senior Citizens Law Center (NSCLC) states that the nursing facility industry received a Medi-Cal increase of over \$320 million (over \$160 million in state-only funds) in the current fiscal year's budget. NSCLC argues that the

AB 1075

Page 7

Legislature and the citizens of California have the right to expect adequate staffing for the considerable amount of money that is currently being expended.

The Older Women's League of California (OWL-CA) argues that insuring adequate staffing is the factor that is truly needed in finding the best way for older Californians, who can no longer care for themselves, to have a safe, pleasant, and humane environment.

The California Advocates for Nursing Home Reform (CANHR), states that numerous academic and government-sponsored reports have concluded that understaffing is the single most significant factor in substandard care in nursing homes. According to CANHR, the ratios proposed by this bill, which would be phased in over several years, would result in a staffing standard that is safer for nursing home residents, understandable to consumers, and more likely to be enforced.

The Gray Panthers states that this bill addresses the remaining and most pressing problem in California nursing homes - staffing. The Gray Panthers argue that this bill's approach of phasing in staffing requirements allows ample time for skilled nursing staff facilities to hire the appropriate staff by 2004.

The National Organization for Women states that adequate staffing is essential for older Californians who can no longer care for themselves and supports this bill.

- 3) (This bill was substantially amended after this position was taken. It is unclear to what extent recent amendments have addressed these concerns.) The California Association of Health Facilities (CAHF) states that it cannot support this bill unless it is substantially amended. CAHF proposes amendments to this bill that would: a) require skilled nursing facilities to post the staffing levels required by federal law; b) incrementally increase the minimum number of actual nursing hours per patient in a similar manner proposed by SB 1862 (Vasconcellos) of 1999, which was not enacted in

the Conference Committee; and, c) require the incremental increases in staffing hours to become effective only if certain criteria regarding Medi-Cal payment rates, adequacy of potential workers, and adequacy of training programs for these workers are met. CAHF also proposes to exempt certain skilled

AB 1075

Page 8

nursing facilities from the minimum hours per patient in certain situations.

CAHF states that California has the second highest minimum staffing level in the nation. CAHF argues that SNFs will only be able to implement a staffing increase when: a) the staffing increases are based on objective findings; b) wages are sufficient to attract additional staffing; c) state programs are developed to encourage nursing facility career choices; d) training capacity is sufficient to generate a new supply of workers; and, e) Medi-Cal pays its share of any new staffing mandate.

According to CAHF, the proposed mandatory shift ratios are not supported by any data and have no connection to individual resident needs or facility characteristics. CAHF adds that the proposed mandatory staff ratios are also inefficient since the proposed ratios will require facilities to hire more staff than is actually specified for a given shift since it is not feasible to hire a portion of a person. For example, if the specified ratio is 1 CNA to 10 patients, 80 patients require eight CNAs, but 81 patients require nine CNAs.

- 4) (This bill was substantially amended after this position was taken. It is unclear to what extent recent amendments have addressed these concerns.) Sunbridge Healthcare Corporation (Sunbridge) states that it is one of the nation's leading providers of skilled nursing and long-term residential care facilities and currently operates 82 facilities in California, providing housing and care for 8,269 patients in the state. Sunbridge argues that it is not possible to specify a single ratio of staff for every shift in every facility. Sunbridge adds that if the long-term care profession is expected to meet the health demands and challenges of current and future generations, then it is essential that California provide the necessary funding and guidance to support the profession.

The California Chamber of Commerce argues that California is experiencing a shortage of nursing staff and this bill will exacerbate this shortage and lead to cost increases in other parts of the health care system.

The California Healthcare Association argues that the proposed shift ratios are designed for the typical 99-bed facility that operates on three shifts a day, and these assumptions do not

AB 1075
Page 9

apply to, and thus the ratios do not work for, small facilities and facilities that operate on 12-hour shifts.

Analysis Prepared by : David Gonzalez / HEALTH / (916) 319-2097

FN: 0003589

10/4 Tel. conv. w/ Christian

① Convert current current hour/staff to ratios -
Delay this by 12 mos. - DHFS to develop new standard
DHFS to notify nhs + assist in changing, so
can be implemented on eff date

② DHFS + other groups (unions, nhs, aging groups)
examine curr. standards + ~~report on~~
^{re staffing}
~~different standards~~ make recommendations
to legislature by 2 yrs. from publication
& and how nhs are reimbursed

- 3330 / 2

Q for Christian Moran:

6-1733

Dick Sweet's proposed language would delay the bill's eff. date for 12 months to allow promulg. of rules:

① Do they intend to require DHFS to prom. rules that change the minimums?

② If so, s. 50.02 (2) (b) must be changed to "shall" from "may"

③ If so, do they want to require that DHFS submit the proposed rules to the leg council staff by, say, 6mo after ~~eff. date~~ publication?

④ If not, why would they delay the act's eff. date?

⑤ Do they still want DHFS to make the conversion by 3 months after publication?

⑥ Do they intend that the new reqts. for nursing homes (which may be less strict than the rules) go into effect at the same time the rules do?

Kennedy, Debora

From: Moran, Christian
Sent: Friday, September 28, 2001 12:03 PM
To: Kennedy, Debora
Subject: NH Staffing Bill (LRB-3330/1)

Debora, as mentioned in my voice mail, here are the staffing bill and the changes Dick Sweet prepared. Just give me a call with any questions or to discuss the bill further. Thanks.

Christian
6-1733

To accomplish what we discussed regarding changing the minimum hourly staffing requirements to minimum staffing ratios, you might want to change LRB-3330/1 as follows:

- ✓ 1. SECTION 1 would repeal 50.04(2)(d).
- ✓ 2. SECTION 2 would be amended to replace "par. (d)" on page 2, line 8, with "s. 50.04(2)(d), 1999-00 Stats."
- ✓ 3. The whole bill would have a delayed effective date to allow time for promulgation of rules, e.g. 12 months. *Also require rules?*
4. Section 50.02(2)(bn) would be changed to refer to s. 50.04(2)(e) and staffing ratios, thereby allowing DHFS to be stricter than statutes regarding staffing requirements.

TO: DEBORA KENNEDY, Managing Attorney
FROM: Christian Moran (Peggy Krusick's office, 6-1733)
DATE: October 5, 2001
SUBJECT: Revisions to LRB-3330/1 (Nursing home staffing bill)

As we discussed yesterday, here is an overview of the provisions Peggy would like LRB-3330 to contain.

Included within the descriptions of the first three provisions are applicable references to LRB-0025/2, Peggy's other nursing home staffing bill. This bill draft is attached and the references are highlighted.

Under the fourth provision is applicable language drafted by Dick Sweet and selected provisions found in the bill analysis of California Assembly Bill 1075, a similar--yet more comprehensive--nursing home staffing bill. The bill analysis of California Assembly Bill 1075 is attached with the references highlighted. The bill text of California AB 1075 is also attached.

As always, thanks for your help. Just give me a call if you have any questions.

Proposed provisions for LRB-3330, references to LRB-0025/2 (attached), language drafted by Dick Sweet and selected provisions from bill analysis of California AB 1075 (attached)

✓ **LRB-3330** (1)DHFS shall convert the current minimum nursing home staffing requirement of set hours per resident day to a standard based on staff-to-patient ratios. (Currently, nursing home residents require a certain amount of care from a licensed nurse and a certain amount of care from a nurse's aide. Is it necessary to specifically say in the bill that separate ratios must be established for RNs/LPNs to residents and CNAs to residents? If so, LRB-0025/2, page 5, line 13-14, has a definition of CNA). DHFS would have 12-months following passage-of the bill to convert the standard, train surveyors on how to enforce the new standard, and assist nursing homes on how to implement the new standard.

ok
needs to be at least 18 mo (Jan 1, 2004)
to develop + require rules to implement

✓ **LRB-3330** (2)Support services cannot be counted for purposes of calculating minimum staffing ratios (see LRB-0025/2, page 8, lines 10-13).

✓ **LRB-3330** (3)The Joint Legislative Council shall create nursing home staffing review committee (see LRB 0025/2, page 4, lines 2-14). I would appreciate your suggestions on appropriate effective dates.

language is odd - does he want the council to dissolve + create a new committee?

all **LRB-3330** (4)No later than 24-months after passage of the bill, DHFS shall submit a report to the Legislature that contains the following recommendations: (a) ways that nursing homes can better recruit and retain caregivers; (b) new

Have effective for 1 yr

minimum nursing home staffing ratios that minimize additional state costs, maximize access to care, and take into account patient acuity levels; (c) a nursing home reimbursement methodology that more effectively promotes quality resident care, advances decent wages and benefits for nursing home workers, supports provider compliance with applicable state and federal regulations and encourages administrative efficiency. DHFS shall prepare the report after consulting with the groups mentioned in Dick's language, #18 of the selected provisions of California AB 1075. DHFS should also refer to the latest national research on nursing home staffing before preparing the report.

Dick Sweet SECTION 19m. Nonstatutory provisions; health and family services. The department of health and family services shall submit a report to the governor and to the chief clerk of each house of the legislature for distribution to the legislature under section 13.172(2) on how nursing homes can better recruit and retain registered nurses, licensed practical nurses and certified nurse's assistants. The department shall prepare the report after consultation with representatives of the nursing home industry, unions representing nursing homes employees, and advocates for elderly or disabled persons.

CA AB 1075 Analysis (4) Requires DHS to develop the ratios in a manner that minimizes additional state costs, maximizes resident access to care, and takes into account the length of the shift worked.

Delete a waiver to the staff ratios? For the staffing standards

(5) Requires DHS, to develop a procedure for facilities to apply for a ~~waiver that addresses individual patient needs in developing the regulations.~~ Prohibits in any instance the minimum staff-to-patient ratios from being less than the 3.2 nursing hours per patient day required under specified current AB 1075 Page 2 law.

(6) Requires the staffing ratios to be developed pursuant to this bill to be minimum standards only.

Delete No do not do legis. intents

(14) States the legislative intent to devise a Medi-Cal long-term care reimbursement methodology that more effectively ensures individual access to appropriate long-term care services, promotes quality resident care, advances decent wages and benefits for nursing home workers, supports provider compliance with all applicable state and federal requirements, and encourages administrative efficiency.

Delete What does this mean? How does it fit in w/ (16)?

(15) Requires DHS to implement a facility-specific rate-setting system by August 1, 2004, subject to federal approval, that reflects the costs and staffing levels associated with quality of care for residents in nursing facilities that includes hospital-based nursing facilities.

Buy
what
time?
Refer

medical
assistant?

(16) Requires DHS to examine several alternative rate methodology models for a new Medi-Cal reimbursement system for SNFs to include, but not be limited to, consideration of the following: a) Classification of residents based on the resource utilization group system or other appropriate acuity classification system; b) Facility specific case mix factors; c) Direct care labor based factors; d) Geographic or regional differences in the cost of operating facilities and providing resident care; and, e) Facility-specific cost based rate models used in other states.

(18) Requires the alternatives for a new system described in #16 above to be developed in consultation with recognized experts with experience in long-term care reimbursement, economists, the Attorney General, the federal Centers for Medicare and Medicaid Services, and other interested parties.

BILL NUMBER: AB 1075 AMENDED
BILL TEXT

AMENDED IN SENATE SEPTEMBER 12, 2001
AMENDED IN ASSEMBLY JUNE 4, 2001
AMENDED IN ASSEMBLY APRIL 18, 2001

INTRODUCED BY Assembly Member Shelley

(Principal coauthors: Assembly Members Florez and Horton)

(Coauthors: Assembly Members Alquist, Aroner, Calderon, Cardenas, Chan, Chavez, Cohn, Corbett, Diaz, Frommer, Goldberg, Havice, Keeley, Kehoe, Koretz, Liu, Longville, Lowenthal, Nakano, Nation, Salinas, Strom-Martin, Vargas, Washington, and Wiggins)

(Principal coauthor: Senator Ortiz)

(Coauthors: Senators Alarcon, Burton, Chesbro, Dunn, Karnette, Kuehl, ~~Ortiz~~, Perata, Romero, Soto, and Torlakson)

FEBRUARY 23, 2001

An act to add Section 1276.65 to the Health and Safety Code, and to amend Section 14126.02 of the Welfare and Institutions Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1075, as amended, Shelley. Skilled nursing facilities: staffing ratios.

Existing law provides for the licensure and regulation of health facilities, including skilled nursing facilities, by the State Department of Health Services. Existing law specifies various minimum staff-to-patient ratio requirements in skilled nursing facilities. A violation of these provisions by health facilities is subject to criminal sanction.

This bill ~~, commencing July 1, 2002, and July 1, 2004,~~ would require ~~every skilled nursing facility to meet specified minimum~~ the department to develop regulations that become effective August 1, 2003, that establish staff-to-patient ratios with regard to direct caregivers, as defined, ~~and licensed nurses. The~~ working in a skilled nursing facility.

The bill would require ~~the~~ a skilled nursing facility to post ~~the~~ information about staffing ~~ratio requirements as provided under the bill~~ levels. The bill would make a violation of ~~these provisions~~ the regulations subject to citation and fine. The bill would make the implementation of the staffing ratio requirements set forth in the bill contingent on an appropriation in the annual Budget Act or another statute.

Because the bill would change the definition of a crime with regard to health facilities, it would impose a state-mandated local program.

The bill would require the department, no later than January 1, 2006, and every 5 years thereafter, to consult with designated entities to determine the sufficiency of the staffing standards, and would authorize the department to adopt regulations to increase the minimum staffing ratios to adequate levels ~~, as necessary, and to examine the effectiveness of the implementation and enforcement of the bill.~~

Existing law requires the department to perform a specified review

of the current Medi-Cal reimbursement system and submit a report.

This bill would, instead, require the department to implement a facility-specific rate-setting system by August 1, 2004, subject to federal approval, and to submit status reports on this implementation.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) Skilled nursing facilities need adequate staffing levels in order to provide the ~~decent and humane~~ quality of care that patients deserve.

(2) Compliance with minimum staffing requirements will be increased if residents, residents' families, facility employees, and state inspectors can determine easily whether or not a skilled nursing facility is in compliance.

(3) It is difficult for residents, residents' families, facility employees, and state inspectors to monitor a skilled nursing facility's compliance with a staffing standard based on the nursing hours per patient day provided by a facility.

(4) The State Department of Health Services is responsible for adopting regulations prescribing the staffing requirements for skilled nursing facilities.

(5) The department is required to examine alternative rate methodology models for a new Medi-Cal reimbursement system for skilled nursing facilities.

(b) It is the intent of the Legislature to enact legislation that does all of the following:

(1) ~~Increases~~ Creates a mechanism to increase minimum staffing requirements to a level that assures ~~decent and humane~~ high quality care for patients.

(2) Requires that minimum staffing requirements be set forth as ratios of patients per direct caregiver, so that residents, residents' families, facility employees, state inspectors, and others may assist in ensuring compliance with the law.

(c) It is further the intent of the Legislature that the department, consistent with its regulatory responsibility and legislative mandates, act as expeditiously as possible to implement the provisions of this act to ensure compliance with the timeframes set forth in this act.

SEC. 2. Section 1276.65 is added to the Health and Safety Code, to read:

1276.65. (a) For purposes of this section, the following definitions shall apply:

(1) "Direct caregiver" means a registered nurse, as referred to in Section 2732 of the Business and Professions Code, a licensed vocational nurse, as referred to in Section 2864 of the Business and Professions Code, a psychiatric technician, as referred to in Section 4516 of the Business and Professions Code, and a certified nurse assistant, as defined in Section 1337.

(2) "Skilled nursing facility" means a skilled nursing facility as

defined in subdivision (c) of Section 1250.

(b) A person employed to provide services such as food preparation, housekeeping, laundry, or maintenance services shall not provide nursing care to residents and shall not be counted in determining ratios under this section.

~~(c) (1) Effective July 1, 2002, in a skilled nursing facility, there shall be direct caregivers working in at least the following ratios:~~

~~(A) During the day shift, the direct caregiver to patient ratio shall be one direct caregiver for each seven or fewer patients at all times.~~

~~(B) During the afternoon shift, the direct caregiver to patient ratio shall be one direct caregiver for each 12 or fewer patients at all times.~~

~~(C) During the night shift, the direct caregiver to patient ratio shall be one direct caregiver for each 17 or fewer patients at all times.~~

~~(2) Effective July 1, 2004, in a skilled nursing facility, there shall be direct caregivers working in at least the following ratios:~~

~~(A) During the day shift, the direct caregiver to patient ratio shall be one direct caregiver for each five or fewer patients at all times.~~

~~(B) During the afternoon shift, the direct caregiver to patient ratio shall be one direct caregiver for each 10 or fewer patients at all times.~~

~~(C) During the night shift, the direct caregiver to patient ratio shall be one direct caregiver for each 15 or fewer patients at all times.~~

~~(d) (1) Effective July 1, 2002, a skilled nursing facility, in addition to the direct caregivers required in paragraph (1) of subdivision (c), shall employ licensed nurses to provide direct care in at least the following ratios:~~

~~(A) During the day shift, the licensed nurse to patient ratio shall be one licensed nurse for each 20 or fewer patients at all times.~~

~~(B) During the afternoon shift, the licensed nurse to patient ratio shall be one licensed nurse for each 25 or fewer patients at all times.~~

~~(C) During the night shift, the licensed nurse to patient ratio shall be one licensed nurse for each 35 or fewer patients at all times.~~

~~(2) Effective July 1, 2004, a skilled nursing facility, in addition to the direct caregivers required in paragraph (2) of subdivision (c), shall employ licensed nurses to provide direct care in at least the following ratios:~~

~~(A) During the day shift, the licensed nurse to patient ratio shall be one licensed nurse for each 15 or fewer patients at all times.~~

~~(B) During the afternoon shift, the licensed nurse to patient ratio shall be one licensed nurse for each 20 or fewer patients at all times.~~

~~(C) During the night shift, the licensed nurse to patient ratio shall be one licensed nurse for each 30 or fewer patients at all times.~~

~~(e) The staffing ratios set forth in this section are minimum~~

(c) (1) Notwithstanding any other provision of law, the State Department of Health Services shall develop regulations that become effective August 1, 2003, that establish staff-to-patient ratios for direct caregivers working in a skilled nursing facility. These ratios shall include separate licensed nurse staff-to-patient ratios in addition to the ratios established for other direct caregivers.

(2) The department in developing staff-to-patient ratios for

direct caregivers and licensed nurses required by this section shall convert the existing requirement under Section 1276.5 of this code and Section 14110.7 of the Welfare and Institutions Code for 3.2 nursing hours per patient day of care and shall ensure that no less care is given than is required pursuant to Section 1276.5 of this code and Section 14110.7 of the Welfare and Institutions Code. Further, the department shall develop the ratios in a manner that minimizes additional state costs, maximizes resident access to care, and takes into account the length of the shift worked. In developing the regulations, the department shall develop a procedure for facilities to apply for a waiver that addresses individual patient needs except that in no instance shall the minimum staff-to-patient ratios be less than the 3.2 nursing hours per patient day required under Section 1276.5 of this code and Section 14110.7 of the Welfare and Institutions Code.

(d) The staffing ratios to be developed pursuant to this section shall be minimum standards only. ~~Nursing~~ Skilled nursing facilities shall employ and schedule additional staff as needed to ensure quality resident care ~~and based on the needs of individual residents~~ and to ensure compliance with all relevant state and federal staffing requirements.

~~(f)~~
(e) No later than January 1, 2006, and every five years thereafter, the department shall consult with consumers, consumer advocates, recognized collective bargaining agents, and providers to determine the sufficiency of the staffing standards provided in ~~this section and, as necessary, shall adopt regulations to increase the minimum staffing ratios to adequate levels. In this consultation and review process, the department shall also examine the effectiveness of the implementation and enforcement of this section.~~

~~(g) Every skilled nursing facility shall post the staffing ratios required by this section and any regulations adopted pursuant thereto in a prominent location in the facility. The posted information shall be in a poster format approved by the department.~~

~~(h) this section and may adopt regulations to increase the minimum staffing ratios to adequate levels.~~

(f) In a manner pursuant to federal requirements, effective January 1, 2003, every skilled nursing facility shall post information about staffing levels that include the current number of licensed and unlicensed nursing staff directly responsible for resident care in the facility. This posting shall include staffing requirements developed pursuant to this section.

(g) (1) Notwithstanding any other provision of law, the department shall inspect for compliance with this section during ~~inspection~~ state and federal periodic inspections including, but not limited to, those inspections required under Section 1422. This inspection requirement shall not limit the department's authority in other circumstances to cite for violations of this section or to inspect for compliance with this section.

~~(2) A violation of this section shall be subject to citation under Section 1424. A violation shall constitute no less than a class "B" violation, and may constitute a class "A"~~

(2) A violation of the regulations developed pursuant to this section may constitute a class "B", "A", or "AA" violation pursuant to the standards set forth in Section 1424.

~~(i)~~
(h) The requirements of this section are in addition to any requirement set forth in Section 1276.5 of this code and Section 14110.7 of the Welfare and Institutions Code.

~~(j) Implementation~~

(i) Initial implementation of the staffing ratio developed pursuant to requirements set forth in this section shall be contingent on an appropriation in the annual Budget Act or another statute.

~~SEC. 3.~~

(j) In implementing this section, the department may contract as necessary, on a bid or nonbid basis, for professional consulting services from nationally recognized higher education and research institutions, or other qualified individuals and entities not associated with a skilled nursing facility, with demonstrated expertise in long-term care. This subdivision establishes an accelerated process for issuing contracts pursuant to this section and contracts entered into pursuant to this section shall be exempt from the requirements of Chapter 1 (commencing with Section 10100) and Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contracts Code.

(k) This section shall not apply to facilities defined in Section 1276.9.

SEC. 3. Section 14126.02 of the Welfare and Institutions Code is amended to read:

14126.02. (a) It is the intent of the Legislature to devise a Medi-Cal long-term care reimbursement methodology that more effectively ensures individual access to appropriate long-term care services, promotes quality resident care, advances decent wages and benefits for nursing home workers, supports provider compliance with all applicable state and federal requirements, and encourages administrative efficiency.

(b) (1) ~~The department shall review the current Medi-Cal reimbursement system to evaluate the extent to which the methodology supports the objectives stated in subdivision (a). The scope of the review shall encompass the structure currently used for peer groups, audits, projections, updates and other rate development factors that have an impact on the quality of care.~~ implement a facility-specific rate-setting system by August 1, 2004, subject to federal approval, that reflects the costs and staffing levels associated with quality of care for residents in nursing facilities, as defined in subdivision (k) of Section 1250 of the Health and Safety Code, which shall include hospital-based nursing facilities

(2) The department shall examine several alternative rate methodology models for a new Medi-Cal reimbursement system for skilled nursing facilities to include, but not be limited to, consideration of the following:

- (A) Classification of residents based on the resource utilization group system or other appropriate acuity classification system.
- (B) Facility specific case mix factors.
- (C) Direct care labor based factors.
- (D) Geographic or regional differences in the cost of operating facilities and providing resident care.
- (E) Facility-specific cost based rate models used in other states.

(c) ~~On or before April 1, 2002, the~~ The department shall submit to the Legislature a ~~formal report and proposal for any statutory changes necessary to implement recommendations related to best meeting the objectives stated in subdivision (a) and the costs associated with any changes~~ status report on the implementation of this section on April 1, 2002, April 1, 2003, and April 1, 2004

(d) The alternatives for a new system described in paragraph (2) of subdivision (b) shall be developed in consultation with recognized experts with experience in long-term care reimbursement, economists, the Attorney General, the federal Centers for Medicare and Medicaid Services, and other interested parties.

(e) In implementing this section, the department may contract as necessary, on a bid or nonbid basis, for professional consulting services from nationally recognized higher education and research institutions, or other qualified individuals and entities not associated with a skilled nursing facility, with demonstrated expertise in long-term care reimbursement systems. The ~~review rate-setting system~~ specified in subdivision (b) shall be ~~conducted~~ developed

with all possible expedience. This subdivision establishes an accelerated process for issuing contracts pursuant to this section and contracts entered into pursuant to this subdivision shall be exempt from the requirements of Chapter 1 (commencing with Section 10100) and Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contracts Code.

SEC. 4. The State Department of Health Services may adopt emergency regulations to implement the applicable provisions of this act in accordance with rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The initial adoption of emergency regulations and one readoption of the initial regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety or general welfare. Initial emergency regulations and the first readoption of those regulations shall be exempt from review by the Office of Administrative Law. The initial emergency regulations and the first readoption of those regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations and each shall remain in effect for no more than 180 days.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIIIIB of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIIIIB of the California Constitution.