



(WEDNESDAY, please)
State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-0035/2

DAK:wlj:rs

2005 BILL

REGENERATE ✓

1 AN ACT *to repeal* 50.04 (2) (d); *to renumber* 46.277 (1m) (a) and 49.498 (7) (a);
2 *to renumber and amend* 50.09 (1); *to amend* 46.277 (1), 46.277 (2) (intro.),
3 46.277 (3) (a), 46.277 (3) (b) 1., 46.277 (3) (b) 2., 46.277 (4) (a), 46.277 (4) (b),
4 46.277 (5) (g), 46.277 (5g) (a), 49.498 (6) (a), 49.498 (7) (b) (intro.), 50.02 (2) (bn),
5 50.09 (title), 50.09 (2), (4) and (5) and 50.09 (6) (a), (b) and (d); and *to create*
6 13.94 (12), 16.009 (1) (em) 7., 20.432 (1) (gt), 46.27 (11) (c) 9., 46.275 (5) (b) 8.,
7 46.277 (1m) (ag), 46.277 (4) (c), 46.277 (5) (h), 48.685 (2) (am) 2g., 48.685 (2) (am)
8 2r., 48.685 (2) (b) 1. bg., 48.685 (2) (b) 1. br., 49.45 (6m) (a) 3m., 49.45 (6m) (a)
9 4m., 49.45 (6m) (a) 6., 49.45 (6m) (m), 49.498 (7) (ag), 49.498 (7) (am) 6., 49.498
10 (7) (am) 7., 50.034 (3) (e), 50.034 (9), 50.04 (2) (e), 50.065 (2) (am) 2g., 50.065 (2)
11 (am) 2r., 50.065 (2) (b) 1g., 50.065 (2) (b) 2r. and 50.09 (1g) of the statutes;
12 **relating to:** authorizing access by the long-term care ombudsman or his or her
13 representative to a client or resident in a residential care apartment complex,
14 imposing an annual assessment on occupied apartments of residential care

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1 apartment complexes, expanding rights of residents of facilities; minimum
2 staffing requirements for certain nursing homes; requiring audits by the
3 Legislative Audit Bureau; requiring reports; home and community-based
4 services under a community integration program for persons relocated from
5 facilities; admission, denial of admission, provision of services, transfer, and
6 discharge for individuals by nursing facilities and community-based
7 residential facilities that are providers of Medical Assistance; caregiver
8 background checks; quality of nursing home care; requiring the exercise of
9 rule-making authority; and making an appropriation.

Analysis by the Legislative Reference Bureau**RESIDENTIAL CARE APARTMENT COMPLEXES**

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 (C-BRF), a place in which care is provided under a 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.

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.

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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 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.

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.

NURSING HOME MINIMUM STAFFING REQUIREMENTS

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. A registered nurse, licensed practical nurse, or nurse's assistant must provide these minimum hours.

This bill requires 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 number 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 DHFS rules, provide training to DHFS staff on enforcement of the standards, and 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 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 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 (MA) Program reimbursement methodology. DHFS must develop the report after first referring to

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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 conduct 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.

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.

HOME AND COMMUNITY-BASED SERVICES

Currently, DHFS administers a Community Integration Program (CIP II), under which MA moneys are paid to counties to provide home and community-based services, under a waiver of federal Medicaid laws, to elderly and physically disabled persons who meet the level of care requirements for MA-reimbursed nursing home care or who are relocated from facilities. DHFS must establish a uniform daily rate for CIP II and reimburse counties up to that rate for each person enrolled in CIP II. DHFS may provide enhanced reimbursement for CIP II services for a person who is relocated to the community from a nursing home by a county after July 26, 2003, if the nursing home bed used by the person is delicensed upon the person's relocation.

This bill authorizes DHFS to provide CIP II funding for home and community-based services to an MA-eligible person who relocates from a facility to the community. Reimbursement is not conditioned on delicensure of a nursing home bed upon the person's relocation. The funding begins on the date of the relocation and ends on the date that the person discontinues program participation or no longer meets the level of care requirements for MA reimbursement in a nursing home. Funding in the aggregate for these relocated persons may not exceed the total MA costs for the persons if served in nursing homes. DHFS may provide an enhanced reimbursement rate for the services. The total number of persons who may participate in this particular aspect of CIP II is not restricted by limitations on numbers participating in the remainder of CIP II.

NONDISCRIMINATION FOR MA RESIDENTS OF FACILITIES

Under current law, nursing homes that are certified to provide care that is reimbursed by MA are prohibited from taking certain actions with respect to admissions. Nursing homes also must have identical policies and practices for transfer, discharge, and service provision for all nursing home residents, regardless of payment.

This bill requires MA-certified nursing homes to establish and maintain identical policies and practices for admission of all persons regardless of payment source. The bill prohibits these nursing homes from considering the available source

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of payment when deciding to admit or expedite the admission of a person who is or will be entitled to MA. Further, the bill requires that these nursing homes provide notice, in writing, to an applicant or to his or her guardian or agent within five days of deciding to admit or deny the applicant or delay the admission of the applicant. If the applicant is denied or his or her admission is delayed, the notice must include a statement of the reason for the denial or delay. The bill clarifies that a nursing home must establish identical policies and practices concerning transfer, discharge, and provision of services for all persons regardless of the source of their payment.

Under current law, MA may be used to reimburse a C-BRF for services provided to a resident of the facility under the Long-Term Support Community Options Program (COP), under the Community Integration Program for Residents of State Centers (for persons relocated from the state centers for the developmentally disabled), and under CIP II. Numerous requirements apply to C-BRFs that receive the MA reimbursement.

The bill prohibits a county, private nonprofit agency, or aging unit from using MA funds under COP or either community integration program to provide services in a C-BRF unless the C-BRF establishes and maintains identical policies and practices for admission, transfer, discharge, and service provision for all individuals regardless of payment source; refrains from considering an applicant's available source of payment when deciding to admit the applicant or expedite his or her admission; and provides to an applicant, in writing, notice of a decision by the C-BRF to admit or deny the applicant or delay the applicant's admission, within five days of the decision.

CRIMINAL BACKGROUND CHECKS

Under current law relating to criminal histories and child abuse record searches, DHFS, a county department, a child welfare agency, or a school board must conduct background checks by obtaining certain information with respect to persons who have or are seeking licenses, certifications, or contracts to operate entities, and an entity must obtain the same information with respect to a caregiver of the entity. ("Entity" is defined as a child welfare agency, a licensed foster home or treatment foster home, a group home, a shelter care facility, a day care center, a day care provider, or a temporary employment agency that provides caregivers to another entity.) The information that must be obtained is a criminal history search from records maintained by the Department of Justice; any information in a registry kept by DHFS of persons against whom DHFS has made findings of misappropriation of property, neglect, or abuse; any applicable information maintained by the Department of Regulation and Licensing about the status of the person's credentials; information maintained by DHFS about substantiated reports of the person's child abuse or neglect; and information maintained by DHFS about denial to the person of a license, certification, or certain contracts, employment, or permission to reside at an entity, for specific reasons including conviction for a serious crime. Very similar laws relating to criminal histories and patient abuse record searches apply to persons who have or are seeking a license, certificate, registration, or certificate of approval issued by DHFS to operate a facility, organization, or service (such as a

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hospital or a personal care worker agency) that is licensed, certified, or registered with DHFS to provide direct care or services to patients.

This bill creates two additional sources of information that must be checked with respect to persons who have or are seeking licenses, certifications, or contracts to operate entities, facilities, organizations, or services: (1) information maintained by the Department of Corrections in the registry of sex offenders; and (2) information on persons convicted of crimes as specified under the circuit court automation information system maintained by the Wisconsin court system on its Internet site.

QUALITY OF NURSING HOME CARE

This bill requires DHFS to submit to the legislature a proposal for legislation to create a program to provide grants to nursing homes for quality-of-care improvement projects.

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

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1 **SECTION 2.** 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).

4 **SECTION 3.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert
5 the following amounts for the purposes indicated:

	2005-06	2006-07
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7 **20.432 Board on aging and long-term care**

8 (1) IDENTIFICATION OF THE NEEDS OF THE AGED AND
9 DISABLED

(gt)	Activities in residential care					
	apartment complexes	PR	A	-0-	48,900	

12 **SECTION 4.** 20.432 (1) (gt) of the statutes is created to read:

13 20.432 (1) (gt) *Activities in residential care apartment complexes.* The amounts
14 in the schedule for Long-Term Care Ombudsman Program activities in residential
15 care apartment complexes. All moneys received under s. 50.034 (9) shall be credited
16 to this appropriation account.

17 **SECTION 5.** 46.27 (11) (c) 9. of the statutes is created to read:

18 46.27 (11) (c) 9. No county, private nonprofit agency, or aging unit may use
19 funds received under this subsection to provide services in a community-based
20 residential facility unless the community-based residential facility does all of the
21 following:

22 a. Establishes and maintains identical policies and practices regarding
23 admission, transfer, discharge, and service provision for all individuals regardless
24 of source of payment.

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1 b. Refrains from considering an applicant's available source of payment when
2 deciding to admit or expedite the admission of an applicant who is or will be entitled
3 to Medical Assistance for services of a community-based residential facility.

4 c. Provides to an applicant or his or her guardian or agent, in writing, within
5 5 days of a decision by the community-based residential facility to admit, deny, or
6 delay the admission of the applicant, notice of the decision. If the community-based
7 residential facility has decided to deny or delay admission of the applicant, the notice
8 shall include a statement of the reason for the denial or delay.

9 **SECTION 6.** 46.275 (5) (b) 8. of the statutes is created to read:

10 46.275 (5) (b) 8. Provide services in a community-based residential facility
11 unless the community-based residential facility does all of the following:

12 a. Establishes and maintains identical policies and practices regarding
13 admission, transfer, discharge, and service provision for all individuals regardless
14 of source of payment.

15 b. Refrains from considering an applicant's available source of payment when
16 deciding to admit or expedite the admission of an applicant who is or will be entitled
17 to Medical Assistance for services of a community-based residential facility.

18 c. Provides to an applicant or his or her guardian or agent, in writing, within
19 5 days of a decision by the community-based residential facility to admit, deny, or
20 delay the admission of the applicant, notice of the decision. If the community-based
21 residential facility has decided to deny or delay admission of the applicant, the notice
22 shall include a statement of the reason for the denial or delay.

23 **SECTION 7.** 46.277 (1) of the statutes is amended to read:

24 46.277 (1) **LEGISLATIVE INTENT.** The intent of the program under this section is
25 to provide home or community-based care to serve in a noninstitutional community

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1 setting a person who meets eligibility requirements under 42 USC 1396n (c) and is
2 relocated from an institution other than a state center for the developmentally
3 disabled or meets the level of care requirements for medical assistance
4 reimbursement in a skilled nursing facility or an intermediate care facility, except
5 that the number of persons who receive home or community-based care under this
6 section is not intended, other than under sub. (4)(c), to exceed the number of nursing
7 home beds that are delicensed as part of a plan submitted by the facility and
8 approved by the department. The intent of the program is also that counties use all
9 existing services for providing care under this section, including those services
10 currently provided by counties.

11 **SECTION 8.** 46.277 (1m) (a) of the statutes is renumbered 46.277 (1m) (ak).

12 **SECTION 9.** 46.277 (1m) (ag) of the statutes is created to read:

13 46.277 (1m) (ag) “Delicensed” means deducted from the number of beds stated
14 on a facility’s license, as specified under s. 50.03 (4) (e).

15 **SECTION 10.** 46.277 (2) (intro.) of the statutes is amended to read:

16 46.277 (2) DEPARTMENTAL POWERS AND DUTIES. (intro.) The department may
17 request a waiver from the secretary of the federal department of health and human
18 services, under 42 USC 1396n (c), authorizing the department to serve medical
19 assistance recipients, who meet the level of care requirements for medical assistance
20 reimbursement in a skilled nursing facility or an intermediate care facility, in their
21 communities by providing home or community-based services as part of medical
22 assistance. ~~The Except under sub. (4)(c), the number of persons for whom the waiver~~
23 ~~is requested may not exceed the number of nursing home beds that are delicensed~~
24 ~~as part of a plan submitted by the facility and approved by the department. If the~~
25 ~~department requests a waiver, it shall include all assurances required under 42 USC~~

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1 1396n (c) (2) in its request. If the department receives this waiver, it may request
2 one or more 3-year extensions of the waiver under 42 USC 1396n (c) and shall
3 perform the following duties:

4 **SECTION 11.** 46.277 (3) (a) of the statutes is amended to read:

5 46.277 (3) (a) Sections 46.27 (3) (b) and 46.275 (3) (a) and (c) to (e) apply to
6 county participation in this program, except that services provided in the program
7 shall substitute for care provided a person in a skilled nursing facility or
8 intermediate care facility who meets the level of care requirements for medical
9 assistance reimbursement to that facility rather than for care provided at a state
10 center for the developmentally disabled. The Except in sub. (4) (c), the number of
11 persons who receive services provided by the program under this paragraph may not
12 exceed the number of nursing home beds, other than beds specified in sub. (5g) (b),
13 that are delicensed as part of a plan submitted by the facility and approved by the
14 department.

15 **SECTION 12.** 46.277 (3) (b) 1. of the statutes is amended to read:

16 46.277 (3) (b) 1. If Except under sub. (4) (c), if the provision of services under
17 this section results in a decrease in the statewide nursing home bed limit under s.
18 150.31 (3), the facility affected by the decrease shall submit a plan for delicensing all
19 or part of the facility that is approved by the department.

20 **SECTION 13.** 46.277 (3) (b) 2. of the statutes is amended to read:

21 46.277 (3) (b) 2. Each county department participating in the program shall
22 provide home or community-based care to persons eligible under this section, except
23 that the number of persons who receive home or community-based care under this
24 section may not exceed, other than under sub. (4) (c), the number of nursing home

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1 beds, other than beds specified in sub. (5g) (b), that are delicensed as part of a plan
2 submitted by the facility and approved by the department.

3 **SECTION 14.** 46.277 (4) (a) of the statutes is amended to read:

4 46.277 (4) (a) Any medical assistance recipient who meets the level of care
5 requirements for medical assistance reimbursement in a skilled nursing facility or
6 intermediate care facility is eligible to participate in the program, except that the
7 number of participants may not exceed, other than under par. (c), the number of
8 nursing home beds, other than beds specified in sub. (5g) (b), that are delicensed as
9 part of a plan submitted by the facility and approved by the department. Such a
10 recipient may apply, or any person may apply on behalf of such a recipient, for
11 participation in the program. Section 46.275 (4) (b) applies to participation in the
12 program.

13 **SECTION 15.** 46.277 (4) (b) of the statutes is amended to read:

14 46.277 (4) (b) ~~To~~ Except as provided under par. (c) and to the extent authorized
15 under 42 USC 1396n, if a person discontinues participation in the program, a
16 medical assistance recipient may participate in the program in place of the
17 participant who discontinues if that recipient meets the level of care requirements
18 for medical assistance reimbursement in a skilled nursing facility or intermediate
19 care facility, ~~except that~~ unless the number of participants ~~may not exceed~~ exceeds
20 the number of nursing home beds, other than beds specified in sub. (5g) (b), that are
21 delicensed as part of a plan submitted by the facility and approved by the
22 department.

23 **SECTION 16.** 46.277 (4) (c) of the statutes is created to read:

24 46.277 (4) (c) The department may, under this paragraph, provide funding
25 under this section for services for a medical assistance recipient who relocates from

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1 a facility to the community, beginning on the date of the relocation and ending on the
2 date that the individual discontinues participation in the program or no longer meets
3 the level of care requirements for medical assistance reimbursement in a skilled
4 nursing facility or an intermediate care facility. Funding for medical assistance costs
5 for individuals relocated under this paragraph may not exceed, in the aggregate,
6 total medical assistance costs for the individuals if served in facilities. The total
7 number of individuals who may participate in the program under this paragraph is
8 not restricted by any otherwise applicable limitation on the number of individuals
9 who may participate in the program under this section.

10 **SECTION 17.** 46.277 (5) (g) of the statutes is amended to read:

11 46.277 (5) (g) The department may provide enhanced reimbursement for
12 services provided under this section to an individual who is relocated to the
13 community from a nursing home by a county department on or after July 26, 2003,
14 if the nursing home bed that was used by the individual is delicensed upon relocation
15 of the individual or if the individual is relocated under sub. (4) (c). The department
16 shall develop and utilize a formula to determine the enhanced reimbursement rate.

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17 **SECTION 18.** 46.277 (5) (h) of the statutes is created to read:

18 46.277 (5) (h) No county or private nonprofit agency may use funds received
19 under this subsection to provide services in a community-based residential facility
20 unless the community-based residential facility does all of the following:

21 1. Establishes and maintains identical policies and practices regarding
22 admission, transfer, discharge, and service provision for all individuals regardless
23 of source of payment.

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1 2. Refrains from considering an applicant's available source of payment when
2 deciding to admit or expedite the admission of an applicant who is or will be entitled
3 to Medical Assistance for services of a community-based residential facility.

4 3. Provides to an applicant or his or her guardian or agent, in writing, within
5 5 days of a decision by the community-based residential facility to admit, deny, or
6 delay the admission of the applicant, notice of the decision. If the community-based
7 residential facility has decided to deny or delay admission of the applicant, the notice
8 shall include a statement of the reason for the denial or delay.

9 **SECTION 19.** 46.277 (5g) (a) of the statutes is amended to read:

10 46.277 (5g) (a) ~~The Except under sub. (4) (c), the number of persons served~~
11 under this section may not exceed the number of nursing home beds that are
12 delicensed as part of a plan submitted by the facility and approved by the
13 department.

14 **SECTION 20.** 48.685 (2) (am) 2g. of the statutes is created to read:

15 48.685 (2) (am) 2g. Information maintained by the department of corrections
16 in the registry of sex offenders under s. 301.45 (2).

17 **SECTION 21.** 48.685 (2) (am) 2r. of the statutes is created to read:

18 48.685 (2) (am) 2r. Information on persons convicted of crimes as specified
19 under the circuit court automation information system maintained by the Wisconsin
20 court system on its Internet site.

21 **SECTION 22.** 48.685 (2) (b) 1. bg. of the statutes is created to read:

22 48.685 (2) (b) 1. bg. Information maintained by the department of corrections
23 in the registry of sex offenders under s. 301.45 (2).

24 **SECTION 23.** 48.685 (2) (b) 1. br. of the statutes is created to read:

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1 48.685 (2) (b) 1. br. Information on persons convicted of crimes as specified
2 under the circuit court automation information system maintained by the Wisconsin
3 court system on its Internet site.

4 **SECTION 24.** 49.45 (6m) (a) 3m. of the statutes is created to read:

5 49.45 (6m) (a) 3m. “Licensed practical nurse” means a nurse who is licensed
6 or has a temporary permit under s. 441.10.

7 **SECTION 25.** 49.45 (6m) (a) 4m. of the statutes is created to read:

8 49.45 (6m) (a) 4m. “Nurse’s assistant” has the meaning given in s. 146.40 (1)
9 (d).

10 **SECTION 26.** 49.45 (6m) (a) 6. of the statutes is created to read:

11 49.45 (6m) (a) 6. “Registered nurse” means a nurse who has a certificate of
12 registration under s. 441.06 or a temporary permit order under s. 441.08.

13 **SECTION 27.** 49.45 (6m) (m) of the statutes is created to read:

14 49.45 (6m) (m) By January 1, 2006, 2007, 2008, and 2009, the department shall
15 submit a report to the chief clerk of each house of the legislature, for distribution to
16 the legislature under s. 13.172 (2), that shall include all of the following:

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

18 a. The staff turnover rate for registered nurses, licensed practical nurses, and
19 nurse’s assistants employed by the facility.

20 b. The average hourly wage and fringe benefit costs, including specific
21 unemployment compensation and worker’s compensation costs, for registered
22 nurses, licensed practical nurses, nurse’s assistants, dietary staff, housekeeping
23 staff, and laundry staff employed by the facility and the average hourly cost for
24 nonemployee purchased services, if any, of registered nurses, licensed practical
25 nurses, and nurse’s assistants.

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1 c. Total revenues and expenses, total net income after taxes, expenses for each
2 of the facility's cost centers under par. (am), the medical assistance reimbursement
3 rate and method of calculation, the number of patient beds, and the number of
4 patient days.

5 d. Total cost of recruiting, screening, educating, and training the nursing staff
6 of the facility.

7 e. Any correlation that may be shown between the number of notices of
8 violations for class "A," "B," or "C" violations a facility received under s. 50.04, if any,
9 and the frequency with which the facility used nonemployee purchased services of
10 registered nurses, licensed practical nurses, or nurse's assistants.

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

14 **SECTION 28.** 49.498 (6) (a) of the statutes is amended to read:

15 49.498 (6) (a) A nursing facility shall establish and maintain identical policies
16 and practices regarding transfer, discharge and the provision of services required
17 under the approved state medicaid plan for all individuals regardless of source of
18 payment.

19 **SECTION 29.** 49.498 (7) (a) of the statutes is renumbered 49.498 (7) (am).

20 **SECTION 30.** 49.498 (7) (ag) of the statutes is created to read:

21 49.498 (7) (ag) A nursing facility shall establish and maintain identical policies
22 and practices regarding admission for all individuals regardless of source of
23 payment.

24 **SECTION 31.** 49.498 (7) (am) 6. of the statutes is created to read:

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1 49.498 (7) (am) 6. A nursing facility may not consider an applicant's available
2 source of payment when making a decision to admit or expedite the admission of an
3 individual who is or will be entitled to Medical Assistance for nursing facility
4 services.

5 **SECTION 32.** 49.498 (7) (am) 7. of the statutes is created to read:

6 49.498 (7) (am) 7. A nursing facility that decides to admit or deny or delay the
7 admission of an applicant shall provide, in writing, notice of the decision to the
8 applicant or his or her guardian or agent within 5 days of the decision. If the nursing
9 facility has decided to deny or delay admission of the applicant, the notice shall
10 include a statement of the reason for the denial or delay.

11 **SECTION 33.** 49.498 (7) (b) (intro.) of the statutes is amended to read:

12 49.498 (7) (b) (intro.) Paragraph (a) (am) may not be construed to do any of the
13 following:

14 **SECTION 34.** 50.02 (2) (bn) of the statutes is amended to read:

15 50.02 (2) (bn) The department may, by rule, increase the minimum ~~hours of~~
16 ~~nursing home care per day~~ staffing standards that are specified in s. 50.04 (2) (d) ~~1.~~
17 ~~to 3.~~ (e).

18 **SECTION 35.** 50.034 (3) (e) of the statutes is created to read:

19 50.034 (3) (e) Post in a conspicuous location in the residential care apartment
20 complex a notice, provided by the board on aging and long-term care, of the name,
21 address, and telephone number of the Long-Term Care Ombudsman Program under
22 s. 16.009 (2) (b).

23 **SECTION 36.** 50.034 (9) of the statutes is created to read:

24 50.034 (9) ASSESSMENT ON OCCUPIED APARTMENTS. (a) In this subsection,
25 "complex" means a certified or registered residential care apartment complex.

BILL

1 (b) For the privilege of doing business in this state, there is imposed on all
2 occupied apartments of a complex an annual assessment that shall be credited to the
3 appropriation account under s. 20.432 (1) (gt) and that is \$12 per apartment.

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

10 (d) Sections 77.59 (1) to (5), (6) (intro.), (a), and (c), and (7) to (10), 77.60 (1) to
11 (7), (9), and (10), 77.61 (9) and (12) to (14), and 77.62, as they apply to the taxes under
12 subch. III of ch. 77, apply to the assessment under this subsection.

13 (e) 1. The department shall enforce and collect the assessment under this
14 subsection and shall develop and distribute forms necessary for levying and
15 collection.

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

18 (f) 1. An affected complex may contest an action by the department under this
19 subsection by submitting a written request for a hearing to the department within
20 30 days after the date of the department's action.

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

23 **SECTION 37.** 50.04 (2) (d) of the statutes is repealed.

24 **SECTION 38.** 50.04 (2) (e) of the statutes is created to read:

25 50.04 (2) (e) 1. In this paragraph:

BILL

1 a. “Afternoon work shift” means the 8–hour work shift that begins immediately
2 after the morning shift.

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

5 c. “Evening work shift” means the 8–hour work shift that begins immediately
6 after the afternoon work shift.

7 d. “Morning work shift” means the first 8–hour work shift that begins after
8 midnight.

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

18 3. By July 1, 2007, the department shall convert the minimum staffing
19 requirements specified in s. 50.04 (2) (d), 2005 stats., to the minimum staffing
20 standards specified in subd. 2., shall provide training to staff on enforcement of the
21 standards, and shall assist nursing homes in implementing the standards.

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

BILL

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

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

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

20 b. Proposed revised minimum nursing home staffing ratios that minimize
21 additional state costs, maximize access to care, facilitate care of the highest quality,
22 and take into account the levels of care for physical or mental conditions that nursing
23 home residents require.

24 c. A proposed revised nursing home medical assistance reimbursement
25 methodology that more effectively promotes resident care of high quality, advances

BILL

1 wages and benefits for nursing home workers, supports nursing home provider
2 compliance with applicable state statutes and rules and federal statutes and
3 regulations, and encourages administrative efficiency.

4 **SECTION 39.** 50.065 (2) (am) 2g. of the statutes is created to read:

5 50.065 (2) (am) 2g. Information maintained by the department of corrections
6 in the registry of sex offenders under s. 301.45 (2).

7 **SECTION 40.** 50.065 (2) (am) 2r. of the statutes is created to read:

8 50.065 (2) (am) 2r. Information on persons convicted of crimes as specified
9 under the circuit court automation information system maintained by the Wisconsin
10 court system on its Internet site.

11 **SECTION 41.** 50.065 (2) (b) 1g. of the statutes is created to read:

12 50.065 (2) (b) 1g. Information maintained by the department of corrections in
13 the registry of sex offenders under s. 301.45 (2).

14 **SECTION 42.** 50.065 (2) (b) 2r. of the statutes is created to read:

15 50.065 (2) (b) 2r. Information on persons convicted of crimes as specified under
16 the circuit court automation information system maintained by the Wisconsin court
17 system on its Internet site.

18 **SECTION 43.** 50.09 (title) of the statutes is amended to read:

19 **50.09 (title) Rights of residents in ~~certain~~ facilities and complexes.**

20 **SECTION 44.** 50.09 (1) of the statutes is renumbered 50.09 (1m), and 50.09 (1m)
21 (intro.), (b), (c), (e), (f) 1. and 3., (g), (j) (intro.) and 2. (intro.) and a. and (L), as
22 renumbered, are amended to read:

23 50.09 (1m) ~~RESIDENTS' RIGHTS.~~ (intro.) Every resident in a nursing home or
24 ~~community-based residential facility or a complex~~ shall, except as provided in sub.
25 (5), have the right to:

BILL

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

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

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

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

22 3. Confidentiality of health and personal records, and the right to approve or
23 refuse their release to any individual outside the facility or complex, except in the
24 case of the resident's transfer to another facility or complex or as required by law or
25 3rd-party payment contracts and except as provided in s. 146.82 (2) and (3).

BILL

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

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

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

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

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

18 **SECTION 45.** 50.09 (1g) of the statutes is created to read:

19 50.09 (1g) In this section, "complex" means a residential care apartment
20 complex.

21 **SECTION 46.** 50.09 (2), (4) and (5) of the statutes are amended to read:

22 50.09 (2) The department, in establishing standards for ~~nursing homes and~~
23 ~~community-based residential~~ facilities and complexes may establish, by rule, rights
24 in addition to those specified in sub. (1) ~~(1m)~~ for residents in ~~such~~ the facilities or
25 complexes.

BILL

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

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

14 **SECTION 47.** 50.09 (6) (a), (b) and (d) of the statutes are amended to read:

15 50.09 (6) (a) Each facility or complex shall establish a system of reviewing
16 complaints and allegations of violations of residents' rights established under this
17 section. The facility or complex shall designate a specific individual who, for the
18 purposes of effectuating this section, shall report to the administrator.

19 (b) Allegations of violations of such rights by persons licensed, certified, or
20 registered under chs. 441, 446 to 450, 455, and 456 shall be promptly reported by the
21 facility or complex to the appropriate licensing, examining, or affiliated
22 credentialing board and to the person against whom the allegation has been made.
23 Any employee of the facility or complex and any person licensed, certified, or
24 registered under chs. 441, 446 to 450, 455, and 456 may also report such allegations

BILL**SECTION 47**

1 to the board. ~~Such~~ The board may make further investigation and take such
2 disciplinary action, within the board's statutory authority, as the case requires.

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

9 **SECTION 9102. Nonstatutory provisions; aging and long-term care**
10 **board.**

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

16 **SECTION 9121. Nonstatutory provisions; health and family services.**

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

22 (2) NURSING HOME STAFFING STANDARDS; REPORT. By January 1, 2007, the
23 department of health and family services shall report to the legislature in the
24 manner provided under section 13.172 (3) of the statutes and to the governor

BILL

1 concerning the status of the department's compliance with the requirements of
2 section 50.04 (2) (e) 3. of the statutes, as created by this act.

3 (3) ASSESSMENTS ON RESIDENTIAL CARE APARTMENT COMPLEXES; RULES.

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

9 (b) Using the procedure under section 227.24 of the statutes, the department
10 of health and family services may promulgate rules required under section 50.034
11 (9) (e) 2. of the statutes, as created by this act, for the period before the effective date
12 of the rules submitted under paragraph (a), but not to exceed the period authorized
13 under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24
14 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide
15 evidence that promulgating a rule under this paragraph as an emergency rule is
16 necessary for the preservation of the public peace, health, safety, or welfare and is
17 not required to provide a finding of emergency for a rule promulgated under this
18 paragraph.

19 (4) PROPOSAL FOR NURSING HOME QUALITY IMPROVEMENT GRANT PROGRAM. By the
20 first day of the 7th month beginning after the effective date of this subsection, the
21 department of health and family services shall submit to the legislature in the
22 manner provided under section 13.172 (2) of the statutes a proposal for legislation
23 to create a program to provide grants to nursing homes for quality-of-care
24 improvement projects. In creating the proposal, the department of health and family
25 services shall consult with advocates for residents of nursing homes, employees of

BILL**SECTION 9121**

1 or contractors for services with nursing homes or representatives of the employees
2 or contractors, nursing home administrators, and experts in long-term care issues.
3 Funding for the proposal required under this subsection must be generated within
4 the nursing home industry and may not include general purpose revenues.

5 **SECTION 9321. Initial applicability; health and family services.**

6 (1) ASSESSMENTS ON RESIDENTIAL CARE APARTMENT COMPLEXES. The treatment of
7 section 50.034 (9) of the statutes first applies to an assessment due from a residential
8 care apartment complex for June 2006.

9 **SECTION 9421. Effective dates; health and family services.** This act takes
10 effect on the day after publication, except as follows:

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

13 (2) RESIDENTIAL CARE APARTMENT COMPLEXES. The treatment of sections 16.009
14 (1) (em) 7., 20.432 (1) (gt), 50.034 (3) (e) and (9), 50.09 (title), 50.09 (1), (1g), (2), (4),
15 (5), and (6) (a), (b), and (d) of the statutes takes effect on June 1, 2006.

16 (END)

RESEARCH APPENDIX - Draft Transfer/Copy Request Form

- Atty's please complete this form and give to Mike Barman (or Lynn E. in his absence)

(Request Made By: DAK) (Date: 3 / 1 / 05)



Please transfer the drafting file for
~~2001~~ ²⁰⁰³ LRB _____ to the drafting file
for **2003 LRB** _____

The final version of the 2001 draft and the final Request Sheet will be copied on yellow paper, and returned to the original 2001 drafting file. A new cover sheet will be created/included listing the new location of the drafting file's "guts".

For research purposes, because the 2001 draft was incorporated into a 2003 draft, the complete drafting file will be transferred, as a separate appendix, to the new 2003 drafting file. This request form will be inserted into the "guts" of the 2003 draft. If introduced, the appendix will be scanned/added to the electronic drafting file folder.

— OR —

Please copy the drafting file for
~~2001~~ ²⁰⁰⁵ LRB 0344 / ^{whole version} _____ (include the version) and place it in the
²⁰⁰⁵ drafting file for **2003 LRB** 0035

For research purposes, because the original 2003 draft was incorporated into another 2003 draft, the original drafting file will be copied on yellow paper (darkened/auto centered/reduced to 90%) and added, as a separate appendix, to the new 2003 drafting file. This request form will be inserted into the "guts" of the new 2003 draft. If introduced the appendix will be scanned/added to the electronic drafting file folder.

The original drafting file will then returned, intact, to it's folder and filed. For future reference, a copy of the transfer/copy request form will also be added to the "guts" of the original draft.

INSERTS

DOA:.....Milioto, BB0019 - Life Lease

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

MEDICAL ASSISTANCE

Currently, DHFS administers a Community Integration Program (commonly known as "CIP II"), under which Medical Assistance (MA) moneys are paid to counties to provide home and community-based services, under a waiver of federal Medicaid laws, to elderly and physically disabled persons who meet the level of care requirements for MA-reimbursed nursing home care or who are relocated from facilities. DHFS must establish a uniform daily rate for CIP II and reimburse counties up to that rate for each person enrolled in CIP II. DHFS may provide enhanced reimbursement for CIP II services for a person who is relocated to the community from a nursing home by a county if the nursing home bed used by the person is delicensed upon the person's relocation.

This bill authorizes DHFS to provide enhanced CIP II funding for home and community-based services to an MA-eligible person who relocates from a facility to the community, if the number of persons served does not exceed the number of nursing home beds delicensed as part of plans submitted by nursing homes and approved by DHFS.

INSERT
ANAL

STATE OF WISCONSIN

To Mike
Date 3-2-05 Time 12:49

WHILE YOU WERE OUT

M Christian
of Krusick's office
Phone 6-1733

Telephoned	<input checked="" type="checkbox"/>	Please Call	
Called to See You	<input checked="" type="checkbox"/>	Rush	
Returned Your Call	<input type="checkbox"/>	Will Call Again	

Message LRB 0035/1 had a
fiscal requested - now it
is at a /2 and it
needs a fiscal for that version

JN
Party Receiving Call



Call him if any
questions —

Kennedy, Debora

From: Moran, Christian
Sent: Thursday, September 22, 2005 4:55 PM
To: Kennedy, Debora
Subject: Bill redraft request

Hi Debora--

Can you please redraft LRB-0035/2 without the "Life Lease" provision. The Community Relocation provisions in Act 25 make life lease no longer necessary.

Thanks,

Christian
6-1733