



SOON - In edit 9/23
State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-0035/23

DAK:wlj:es

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Stays

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

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1 homes; requiring audits by the Legislative Audit Bureau; requiring reports;
2 ~~home and community-based services under a community integration program~~
3 ~~for persons relocated from facilities;~~ admission, denial of admission, provision
4 of services, transfer, and discharge for individuals by nursing facilities and
5 community-based residential facilities that are providers of Medical
6 Assistance; caregiver background checks; quality of nursing home care;
7 requiring the exercise of 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.

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

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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 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

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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 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.

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 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

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a Community Integration Program for elderly and physically disabled persons who meet the level-of-care requirements for MA reimbursed nursing home care or who are relocated from facilities

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 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.

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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.

15 **SECTION 2.** 16.009 (1) (em) 7. of the statutes is created to read:

16 16.009 (1) (em) 7. A residential care apartment complex, as defined in s. 50.01
17 (1d).

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

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1 delay the admission of the applicant, notice of the decision. If the community-based
2 residential facility has decided to deny or delay admission of the applicant, the notice
3 shall include a statement of the reason for the denial or delay.

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

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

7 a. Establishes and maintains identical policies and practices regarding
8 admission, transfer, discharge, and service provision for all individuals regardless
9 of source of payment.

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

13 c. Provides to an applicant or his or her guardian or agent, in writing, within
14 5 days of a decision by the community-based residential facility to admit, deny, or
15 delay the admission of the applicant, notice of the decision. If the community-based
16 residential facility has decided to deny or delay admission of the applicant, the notice
17 shall include a statement of the reason for the denial or delay.

18 **SECTION 7.** 46.277 (1m) (a) of the statutes is renumbered 46.277 (1m) (ak).

19 **SECTION 8.** 46.277 (1m) (ag) of the statutes is created to read:

20 46.277 (1m) (ag) "Delicensed" means deducted from the number of beds stated
21 on a facility's license, as specified under s. 50.03 (4) (e).

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

23 46.277 (5) (g) The department may provide enhanced reimbursement for
24 services provided under this section to an individual who is relocated to the
25 community from a nursing home by a county department on or after July 26, 2003

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1 ~~the effective date of this paragraph ... [revisor inserts date], if the nursing home bed~~
2 ~~that was used by the individual is delicensed upon relocation of the individual~~
3 ~~number of individuals served under this paragraph does not exceed the number of~~
4 ~~nursing home beds that are delicensed as part of plans submitted by nursing homes~~
5 ~~and approved by the department. The department shall develop and utilize a~~
6 ~~formula to determine the enhanced reimbursement rate.~~

7 **SECTION 10.** 46.277 (5) (h) of the statutes is created to read:

8 46.277 (5) (h) No county or private nonprofit agency may use funds received
9 under this subsection to provide services in a community-based residential facility
10 unless the community-based residential facility does all of the following:

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

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

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

22 **SECTION 11.** 48.685 (2) (am) 2g. of the statutes is created to read:

23 48.685 (2) (am) 2g. Information maintained by the department of corrections
24 in the registry of sex offenders under s. 301.45 (2).

25 **SECTION 12.** 48.685 (2) (am) 2r. of the statutes is created to read:

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1 48.685 (2) (am) 2r. 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 13.** 48.685 (2) (b) 1. bg. of the statutes is created to read:

5 48.685 (2) (b) 1. bg. Information maintained by the department of corrections
6 in the registry of sex offenders under s. 301.45 (2).

7 **SECTION 14.** 48.685 (2) (b) 1. br. of the statutes is created to read:

8 48.685 (2) (b) 1. br. 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 15.** 49.45 (6m) (a) 3m. of the statutes is created to read:

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

14 **SECTION 16.** 49.45 (6m) (a) 4m. of the statutes is created to read:

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

17 **SECTION 17.** 49.45 (6m) (a) ^{5m}6₁ of the statutes is created to read:

18 49.45 (6m) (a) ^{5m}6₁ “Registered nurse” means a nurse who has a certificate of
19 registration under s. 441.06 or a temporary permit order under s. 441.08.

20 **SECTION 18.** 49.45 (6m) (m) of the statutes is created to read:

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

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

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

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

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

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

15 e. Any correlation that may be shown between the number of notices of
16 violations for class “A,” “B,” or “C” violations a facility received under s. 50.04, if any,
17 and the frequency with which the facility used nonemployee purchased services of
18 registered nurses, licensed practical nurses, or nurse’s assistants.

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

22 **SECTION 19.** 49.498 (6) (a) of the statutes is amended to read:

23 49.498 (6) (a) A nursing facility shall establish and maintain identical policies
24 and practices regarding transfer, discharge and the provision of services required

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1 under the approved state medicaid plan for all individuals regardless of source of
2 payment.

3 **SECTION 20.** 49.498 (7) (a) of the statutes is renumbered 49.498 (7) (am).

4 **SECTION 21.** 49.498 (7) (ag) of the statutes is created to read:

5 49.498 (7) (ag) A nursing facility shall establish and maintain identical policies
6 and practices regarding admission for all individuals regardless of source of
7 payment.

8 **SECTION 22.** 49.498 (7) (am) 6. of the statutes is created to read:

9 49.498 (7) (am) 6. A nursing facility may not consider an applicant's available
10 source of payment when making a decision to admit or expedite the admission of an
11 individual who is or will be entitled to Medical Assistance for nursing facility
12 services.

13 **SECTION 23.** 49.498 (7) (am) 7. of the statutes is created to read:

14 49.498 (7) (am) 7. A nursing facility that decides to admit or deny or delay the
15 admission of an applicant shall provide, in writing, notice of the decision to the
16 applicant or his or her guardian or agent within 5 days of the decision. If the nursing
17 facility has decided to deny or delay admission of the applicant, the notice shall
18 include a statement of the reason for the denial or delay.

19 **SECTION 24.** 49.498 (7) (b) (intro.) of the statutes is amended to read:

20 49.498 (7) (b) (intro.) Paragraph ~~(a)~~ (am) may not be construed to do any of the
21 following:

22 **SECTION 25.** 50.02 (2) (bn) of the statutes is amended to read:

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

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1 **SECTION 26.** 50.034 (3) (e) of the statutes is created to read:

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

6 **SECTION 27.** 50.034 (9) of the statutes is created to read:

7 50.034 (9) ASSESSMENT ON OCCUPIED APARTMENTS. (a) In this subsection,
8 “complex” means a certified or registered residential care apartment complex.

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

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

18 (d) Sections 77.59 (1) to (5), (6) (intro.), (a), and (c), and (7) to (10), 77.60 (1) to
19 (7), (9), and (10), 77.61 (9) and (12) to (14), and 77.62, as they apply to the taxes under
20 subch. III of ch. 77, apply to the assessment under this subsection.

21 (e) 1. The department shall enforce and collect the assessment under this
22 subsection and shall develop and distribute forms necessary for levying and
23 collection.

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

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1 (f) 1. An affected complex may contest an action by the department under this
2 subsection by submitting a written request for a hearing to the department within
3 30 days after the date of the department's action.

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

6 **SECTION 28.** 50.04 (2) (d) of the statutes is repealed.

7 **SECTION 29.** 50.04 (2) (e) of the statutes is created to read:

8 50.04 (2) (e) 1. In this paragraph:

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

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

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

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

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

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

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

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

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

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

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

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

12 **SECTION 30.** 50.065 (2) (am) 2g. of the statutes is created to read:

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

15 **SECTION 31.** 50.065 (2) (am) 2r. of the statutes is created to read:

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

19 **SECTION 32.** 50.065 (2) (b) 1g. of the statutes is created to read:

20 50.065 (2) (b) 1g. Information maintained by the department of corrections in
21 the registry of sex offenders under s. 301.45 (2).

22 **SECTION 33.** 50.065 (2) (b) 2r. of the statutes is created to read:

23 50.065 (2) (b) 2r. Information on persons convicted of crimes as specified under
24 the circuit court automation information system maintained by the Wisconsin court
25 system on its Internet site.

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1 **SECTION 34.** 50.09 (title) of the statutes is amended to read:

2 **50.09 (title) Rights of residents in certain facilities and complexes.**

3 **SECTION 35.** 50.09 (1) of the statutes is renumbered 50.09 (1m), and 50.09 (1m)
4 (intro.), (b), (c), (e), (f) 1. and 3., (g), (j) (intro.) and 2. (intro.) and a. and (L), as
5 renumbered, are amended to read:

6 **50.09 (1m) ~~RESIDENTS' RIGHTS~~.** (intro.) Every resident in a ~~nursing home or~~
7 ~~community-based residential facility~~ or a complex shall, except as provided in sub.
8 (5), have the right to:

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

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

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

BILL**SECTION 35**

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

5 3. Confidentiality of health and personal records, and the right to approve or
6 refuse their release to any individual outside the facility or complex, except in the
7 case of the resident's transfer to another facility or complex or as required by law or
8 3rd-party payment contracts and except as provided in s. 146.82 (2) and (3).

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

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

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

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

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

BILL

1 **SECTION 36.** 50.09 (1g) of the statutes is created to read:

2 50.09 (1g) In this section, “complex” means a residential care apartment
3 complex.

4 **SECTION 37.** 50.09 (2), (4) and (5) of the statutes are amended to read:

5 50.09 (2) The department, in establishing standards for ~~nursing homes and~~
6 ~~community-based residential facilities and complexes~~ may establish, by rule, rights
7 in addition to those specified in sub. (1) ~~(1m)~~ for residents in ~~such~~ the facilities or
8 complexes.

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

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

22 **SECTION 38.** 50.09 (6) (a), (b) and (d) of the statutes are amended to read:

23 50.09 (6) (a) Each facility or complex shall establish a system of reviewing
24 complaints and allegations of violations of residents’ rights established under this

BILL**SECTION 38**

1 section. The facility or complex shall designate a specific individual who, for the
2 purposes of effectuating this section, shall report to the administrator.

3 (b) Allegations of violations of such rights by persons licensed, certified, or
4 registered under chs. 441, 446 to 450, 455, and 456 shall be promptly reported by the
5 facility or complex to the appropriate licensing, examining, or affiliated
6 credentialing board and to the person against whom the allegation has been made.
7 Any employee of the facility or complex and any person licensed, certified, or
8 registered under chs. 441, 446 to 450, 455, and 456 may also report such allegations
9 to the board. ~~Such~~ The board may make further investigation and take such
10 disciplinary action, within the board's statutory authority, as the case requires.

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

17 **SECTION 9102. Nonstatutory provisions; aging and long-term care**
18 **board.**

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

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

BILL

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

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

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

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

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

BILL**SECTION 9121**

1 not required to provide a finding of emergency for a rule promulgated under this
2 paragraph.

3 (4) PROPOSAL FOR NURSING HOME QUALITY IMPROVEMENT GRANT PROGRAM. By the
4 first day of the 7th month beginning after the effective date of this subsection, the
5 department of health and family services shall submit to the legislature in the
6 manner provided under section 13.172 (2) of the statutes a proposal for legislation
7 to create a program to provide grants to nursing homes for quality-of-care
8 improvement projects. In creating the proposal, the department of health and family
9 services shall consult with advocates for residents of nursing homes, employees of
10 or contractors for services with nursing homes or representatives of the employees
11 or contractors, nursing home administrators, and experts in long-term care issues.
12 Funding for the proposal required under this subsection must be generated within
13 the nursing home industry and may not include general purpose revenues.

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

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

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

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

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

25

(END)

Memo

To: Senator Representative

Krusick

(The Draft's Requester)

Per your request: ... the attached fiscal estimate was prepared for your unIntroduced 2005 draft.

LRB Number: LRB - 0035

Version: "1 / 2"

Fiscal Estimate Prepared By: (agency abbr.) LAB

If you have questions about the enclosed fiscal estimate, you may contact the state agency representative that prepared the fiscal estimate. If you disagree with the enclosed fiscal estimate, please contact the LRB drafter of your proposal to discuss your options under the fiscal estimate procedure.

Entered In Computer And Copy Sent To Requester Via E-Mail: 03 / 09 / 2005

* * * * *

To: LRB - Legal Section PA's

Subject: *Fiscal Estimate Received For An Unintroduced Draft*

> **If redrafted** ... please insert this cover sheet and attached early fiscal estimate into the drafting file ... after the draft's old version (the version that this fiscal estimate was based on), and before the markup of the draft on the updated version.

> **If introduced** ... and the version of the attached fiscal estimate is for a **previous version** ... please insert this cover sheet and attached early fiscal estimate into the drafting file ... after the draft's old version (the version that this fiscal estimate was based on), and before the markup of the draft on the updated version. Have Mike (or Lynn) get the ball rolling on getting a fiscal estimate prepared for the introduced version.

> **If introduced** ... and the version of the attached fiscal estimate is for the **current version** ... please write the draft's introduction number below and give to Mike (or Lynn) to process.

THIS DRAFT WAS INTRODUCED AS: 2005 _____

Barman, Mike

From: Barman, Mike
Sent: Wednesday, March 09, 2005 12:05 PM
To: Rep.Krusick
Subject: LRB 05-0035/2 (FE by LAB - attached - for your review)



FE_Krusick.PDF

Fiscal Estimate - 2005 Session

Original Updated Corrected Supplemental

LRB Number 05-0035/2		Introduction Number	
Subject Long-term care changes			
Fiscal Effect State: <input type="checkbox"/> No State Fiscal Effect <input type="checkbox"/> Indeterminate <input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Increase Existing Revenues <input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Decrease Existing Revenues <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Create New Appropriations <input type="checkbox"/> Decrease Costs			
Local: <input type="checkbox"/> No Local Government Costs <input type="checkbox"/> Indeterminate 1. <input type="checkbox"/> Increase Costs 3. <input type="checkbox"/> Increase Revenue 5. Types of Local Government Units Affected <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities 2. <input type="checkbox"/> Decrease Costs 4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts			
Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS s. 20.765 (3)(c)		Affected Ch. 20 Appropriations	
Agency/Prepared By LAB/ Jacob Klam (608) 259-9828		Authorized Signature Jacob Klam (608) 259-9828	Date 3/9/2005

Fiscal Estimate Narratives

LAB 3/9/2005

LRB Number 05-0035/2	Introduction Number	Estimate Type Original
Subject Long-term care changes		

Assumptions Used in Arriving at Fiscal Estimate

LRB-0035/2 requires that the Legislative Audit Bureau conduct an evaluation of nursing home staffing requirements under s. 50.04(2) and to investigate whether staffing requirements should be based in part on the level of care for physical and mental conditions that a nursing home resident requires. The first evaluation would be required by July 1, 2008, and evaluations would be required every 48 months thereafter. The evaluations can be accommodated within current agency operations, though the evaluations may delay other evaluation projects and reduce the flexibility of the Joint Legislative Audit Committee in directing the Audit Bureau to conduct future evaluations.

Long-Range Fiscal Implications

Memo

To: Senator Representative Krusick

(The Draft's Requester)

Per your request: ... the attached fiscal estimate was prepared for your unIntroduced 2005 draft.

LRB Number: LRB -0035

Version: "1/2"

Fiscal Estimate Prepared By: (agency abbr.) DHFS

If you have questions about the enclosed fiscal estimate, you may contact the state agency representative that prepared the fiscal estimate. If you disagree with the enclosed fiscal estimate, please contact the LRB drafter of your proposal to discuss your options under the fiscal estimate procedure.

Entered In Computer And Copy Sent To Requester Via E-Mail: 05/23 / 2005

* * * * *

To: LRB - Legal Section PA's

Subject: *Fiscal Estimate Received For An Unintroduced Draft*

> **If redrafted** ... please insert this cover sheet and attached early fiscal estimate into the drafting file ... after the draft's old version (the version that this fiscal estimate was based on), and before the markup of the draft on the updated version.

> **If introduced** ... and the version of the attached fiscal estimate is for a **previous version** ... please insert this cover sheet and attached early fiscal estimate into the drafting file ... after the draft's old version (the version that this fiscal estimate was based on), and before the markup of the draft on the updated version. Have Mike (or Lynn) get the ball rolling on getting a fiscal estimate prepared for the introduced version.

> **If introduced** ... and the version of the attached fiscal estimate is for the **current version** ... please write the draft's introduction number below and give to Mike (or Lynn) to process.

THIS DRAFT WAS INTRODUCED AS: 2005 _____

Barman, Mike

From: Barman, Mike
Sent: Monday, May 23, 2005 2:33 PM
To: Rep.Krusick
Cc: Moran, Christian
Subject: LRB 05-0035/2 (FE by DHFS - attached - for your review)



FE_Krusick.PDF

Fiscal Estimate - 2005 Session

Original
 Updated
 Corrected
 Supplemental

LRB Number 05-0035/2	Introduction Number
-----------------------------	---------------------

Subject
 Long-term care changes

Fiscal Effect

State:

No State Fiscal Effect
 Indeterminate

<input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Create New Appropriations	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Local:

No Local Government Costs
 Indeterminate

1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Government Units Affected <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
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Fund Sources Affected	Affected Ch. 20 Appropriations
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS	

Agency/Prepared By DHFS/ Mark Resheske (608) 267-0356	Authorized Signature Andy Forsaith (608) 266-7684	Date 5/23/2005
-----------------------------------------------------------------	-------------------------------------------------------------	--------------------------

Fiscal Estimate Narratives
DHFS 5/23/2005

LRB Number	05-0035/2	Introduction Number	Estimate Type	Original
Subject				
Long-term care changes				

Assumptions Used in Arriving at Fiscal Estimate

This bill makes several changes to the long term care system.

1) Residential Care Apartment Complexes

The bill changes current law to include residential care apartment complexes (RCACs) in the Long Term Care Ombudsman Program. It is estimated that including RCACs in the Long Term Care Ombudsman Program would result in DHFS receiving an additional 4 complaint investigations annually. DHFS would investigate the additional complaints which is estimated to cost the Department approximately \$2,000 AF (\$1,500 GPR and \$500 FED). The bill imposes an annual assessment of \$12 per year for an occupied residential care apartment which would be credited to a Board on Long Term Care appropriation. Assuming 6,614 apartments and an 80% occupancy rate, the fee would generate approximately \$63,500 PR annually. The bill requires the Department to collect the assessment verifying occupied RCAC apartments. Completing the assessments and written notices of the annual fee and performing onsite verifications of occupied RCAC apartments would require approximately 0.3 FTE, costing the Department approximately \$25,500 AF (\$19,125 GPR and \$6,375 FED per year).

2) Nursing Home Minimum Staffing Requirements

Current law requires nursing homes that do not primarily serve the developmentally disabled to provide each patient with a minimum number of hours of nursing care per day. This bill directs the Department to convert the current minimum nursing hours standards to standards based on a minimum number of registered nurses, licensed practical nurses, and nurse's assistants per resident per work shift per day.

It is assumed that the bill intends that the new standards developed by the Department would require the same general level of nursing home staff as required in the current standards. In addition, under the new standards, if the number of residents in a facility would require a fraction of a staff person, it is assumed that the Department would consider the facility in compliance if the staff person works a partial shift. For example, if the standard required 1 nursing staff for every 12 residents, and a facility has 126 residents, the standard would require 10.5 nursing staff. It is assumed that the Department would consider the facility in compliance if 10 staff work full shifts and one staff person works a half shift.

However, it is possible that some nursing homes may add staff in order to ensure they comply with the new standards. It may be difficult for a facility to schedule staff for partial shifts that precisely match the required staff ratio based on the number of residents at the facility. As a result, a facility may schedule staff for longer shifts than necessary to ensure compliance. In addition, because the bill would require separate staff to resident ratios for each work shift, it is possible that a facility would have to reassign staff from a morning to an evening shift to be in compliance. If so the facility may incur an additional expense for shift differential pay for those staff.

Based on these assumptions, changes in the bill related to staffing standards could increase nursing home staffing costs and, therefore, costs to the Medical Assistance program and to local units of government that own nursing homes. However, the precise fiscal effect of these changes cannot be estimated.

Under the bill DHFS must submit a report to the Governor and the Legislature with recommendations as to methods by which nursing homes would be more able to effectively recruit and retain caregivers; proposed revised minimum nursing home staff ratios that minimize state costs, maximize access to care, facilitate care of the highest quality, and take into account patient acuity levels; and a proposed revised nursing home Medical Assistance reimbursement methodology.

The Department has no available staff resources to complete this effort. An estimated 1.0 FTE research analyst and 0.5 FTE support positions would be needed on an ongoing basis, at a total cost of \$104,270

GPR.

The bill also requires DHFS to provide to the Legislature annually, at the beginning of each of calendar years 2006-09, a report providing previous year's data for each nursing facility. This report would include information from the preceding year pertaining to personnel expenses and other staff information, costs of nonemployee nursing services, total revenues and expenses, law violations and other related information. It is estimated that this additional reporting would result in an additional 0.5 FTE and \$43,000 GPR per year to obtain and review the information provided, compile the data, and prepare the supplemental report.

3) Home and Community Based Services

This bill modifies the Community Integration Program (CIP II) statute to allow the Department to provide enhanced reimbursement under CIP II for any nursing home resident who relocates to the community from a nursing home as long as the total number of people relocated does not exceed the number of de-licensed nursing home beds. The language that is proposed in this bill is identical to the language proposed in the Governor's 2005-07 biennial budget, AB 100.

It is estimated that this provision will lead to a significant increase in the number of relocations from nursing homes. This fiscal analysis uses the same projections as in AB 100. It compares actual nursing home costs for the individuals who have care needs that make them most likely to be able to relocate to the community to the actual cost of individuals currently in the community with the same care needs. It compares their nursing home and fee-for-service costs to the MA waiver, Family Care, and fee-for-service costs of individuals with equivalent care needs in the community. The cost differential under this methodology is approximately \$24 per day per recipient.

Assuming the same rate of relocations as is projected in AB 100, 540 individuals in FY 06 and 900 individuals in FY 07, MA costs would decrease by \$1,950,700 AF (\$822,800 GPR) in FY 06 and \$7,234,000 AF (\$3,081,700 GPR) in FY 07. These savings have been assumed in AB 100.

There is no local fiscal effect. The bill does not require counties to relocate individuals from a nursing home to the community. For individuals who are relocated under this bill, the Department would provide counties waiver funding at a level that is projected to cover the individual's cost of care in the community.

4) Nondiscrimination for MA Residents of Facilities

The bill requires MA-certified nursing homes to establish identical policies and practices for admission of all persons regardless of the payment source and provide written notice to the applicant within five days of the decision to admit or deny admission. 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 CBRF unless they follow the same procedure listed above for MA-certified nursing homes. Nursing homes and CBRFs would need to expend significant staff time and possibly incur additional expenses providing written notices to applicants of admission decisions. However, it is not possible to estimate the workload and costs associated with the written notices, and therefore the precise fiscal effect of this provision cannot be determined.

This bill would mandate equal access to MA-eligible individuals seeking residence in MA-certified nursing facilities. Data shows that there is an excess supply of available nursing home beds, compared with the demand from MA-eligible individuals seeking beds. For this reason, this bill would likely not increase the number of MA clients in nursing homes statewide and therefore, the bill's effect on nursing home expenditures would be limited. It is possible that the composition of homes could shift as a result of this bill. Nursing homes that tend to have a higher than average private-pay resident population may decide to opt out of providing services to MA-eligible individuals. This shift may result in slightly lower costs overall, as facilities that tend to provide services primarily to private-pay residents may be more expensive in general. On the other hand, if these facilities opt to stay in the pool and offer services to more MA-eligible individuals, it is also possible that overall MA costs could increase slightly as MA recipients have increased access to more expensive facilities. This result seems unlikely as nursing homes assess their costs and benefits of providing services, particularly since MA rates are low relative to private-pay rates.

This bill would increase Bureau of Quality Assurance (BQA) surveyors' workload, since they are responsible for determining compliance with new regulations when a facility is recertified or relicensed. The Department estimates that this bill would increase staff workload by 6 to 8 hours per survey, including nonsurveyor professional and clerical time per relicensure survey. BQA conducts approximately 400 surveys each year. Costs for surveying would be estimated to increase by \$149,000 GPR and 1.54 FTE Health Service Specialists (HSS) and .8 FTE support staff. The Department would also experience increased costs to investigate complaints of discriminatory admission policies. The Department estimates increased complaint costs at \$90,000 GPR and 1.0 FTE Health Service Specialists and 0.52 FTE support staff, assuming 100

complaints per year and 21 hours of staff time per complaint. Since these new activities would be related to enforcing state regulations, the additional cost would be 100% state funds (GPR).

Under current policy for CBRF services, the State requires counties to make the most cost-effective care plan that meets the needs of the clients they choose to serve, subject to the county's quality standards. In contrast to nursing homes, which are subject to MA reimbursement rates, CBRFs are reimbursed at rates negotiated with counties for their services. The non-discrimination requirement may make it more costly for counties to contract for CBRF services since the facilities would have higher costs to meet this additional requirement. However, it is uncertain if the impact would be significant. Counties currently expend their entire MA waiver allocation and have a waiting list for waiver services. If costs for the current waiver services were to increase, counties would serve fewer individuals and the number of people on waiting lists may grow. If costs were to decrease as a result of this bill, they would serve more individuals.

5) Criminal Background Checks

Under current law, DHFS must conduct caregiver background checks of health care, long term care, child welfare, and child care providers, and providers must conduct checks of their staff. The bill requires DHFS and providers to check two additional sources when conducting a caregiver background check: information maintained by the Department of Corrections in the registry of sex offenders and information on persons convicted of crimes as specified under the Wisconsin court system on its internet site. The Department is able to check license applicants on the registry of sex offenders and information on persons convicted of crimes, as specified under the circuit court automation system maintained by the Wisconsin court system, over the internet for free. Providers conducting their own background checks on service employees will also be able to perform the check over the internet for no charge. The Department would be able to absorb the minimal staff time to check the two additional sources when performing a background check of license applicants.

6) Quality of Nursing Home Care

The 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. The Department will need to contract with a consultant at a one time cost of \$10,000 GPR to develop the proposal.

Summary

The fiscal effect of this bill consists of:

- 1) Approximately \$63,500 in program revenue generated annually to the Board on Aging and Long Term Care.
- 2) Cost savings of \$1,950,700 All Funds (\$822,800 GPR) in FY 06 \$7,234,000 All Funds (\$3,081,700 GPR) in FY 07 due to the implementation of the Community Relocations Initiative. These savings have also been assumed in the Governor's 2005-07 biennial budget bill (AB 100).
- 3) Cost increases to DHFS administrative costs of \$10,000 GPR on a one time basis and \$413,770 All Funds (\$6,875 FED and \$406,895 GPR) and 6.16 FTE on an ongoing basis.
- 4) Indeterminate costs related to nursing home staffing standards and nondiscrimination provisions.

Long-Range Fiscal Implications

TELEPHONE DRAFTING INSTRUCTIONS

Drafting instructions received by Debora Kennedy.

DATE:

12/1/05

**CONVERSATION
WITH:**

Christian Moran

OF:

Krusick's office

TELEPHONE NO:

6-1733

**REGARDING LRB #
OR DRAFT TOPIC:**

0035/3

INSTRUCTIONS:

Delete MA discrim provisions