

1987 Assembly Bill 636

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1987 Wisconsin Act 127

AN ACT to amend 50.03 (2) (c) and 146.82 (2) (a) 5; to repeal and recreate 50.095; and to create 50.01 (2), 50.04 (2) (c), 50.04 (5) (a) 5m and 50.096 of the statutes; and to affect 1987 Wisconsin Act 27, section 3024 (22d); 1987 Wisconsin Act 27, section 3024 (22n); and 1987 Wisconsin Act 27, section 3204 (24) (ma), relating to nursing home announced and unannounced inspections; access to certain medical records; nursing home minimum staffing; nursing home residents' rights; reporting of certain nursing home information; providing for studies; and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 50.01 (2) of the statutes is created to read:

50.01 (2) "Nurse's assistant" means a person who performs routine patient care duties delegated by a registered nurse or licensed practical nurse who supervises the person, for the direct health care of a patient or resident. "Nurse's assistant" does not mean a person who is licensed, permitted, certified or registered under ch. 441, 448, 449, 450, 455 or 459 or a person whose duties primarily involve skills that are different than those taught in instructional programs for nurse's assistants.

SECTION 2. 50.03 (2) (c) of the statutes is amended to read:

50.03 (2) (c) The department ~~may~~ shall conduct both announced and unannounced inspections. Inspections of records not directly related to resident health, welfare or safety shall be made between the hours of 8 a.m. and 5 p.m. unless specifically authorized by the secretary. Any employe of the department who intentionally gives or causes to be given advance notice of an unannounced inspection to any unauthorized person is subject to disciplinary action ranging from a 5-day suspension without pay to termination of employment.

SECTION 3. 50.04 (2) (c) of the statutes is created to read:

50.04 (2) (c) 1. Except as provided in subd. 2, beginning July 1, 1988, the department shall enforce nurs-

ing home minimum staffing requirements based on daily staffing levels.

2. The department may enforce nursing home minimum staffing requirements based on weekly staffing levels for a nursing home if the secretary determines that the nursing home is unable to comply with nursing home minimum staffing requirements based on daily staffing levels because:

a. The nursing home minimum staffing requirements based on daily staffing levels violate the terms of a collective bargaining agreement that is in effect on the effective date of this subdivision [revisor inserts date]; or

b. A shortage of nurses or nurse's assistants available for employment by the nursing home exists; or

c. The nursing home minimum staffing requirements based on daily staffing levels would impose an undue financial hardship on the nursing home. The secretary shall review each determination under this subdivision 2. c at least once every 90 days. The secretary shall rescind his or her determination if the undue financial hardship no longer exists. This subdivision 2. c does not apply after June 30, 1989.

SECTION 5m. 50.04 (5) (a) 5m of the statutes is created to read:

50.04 (5) (a) 5m. Beginning on the effective date of this subdivision [revisor inserts date], the department may consider, for purposes of applying triple forfeitures under subd. 5, any notice of violation issued by the department within the 2-year period preceding the effective date of this subdivision [revisor inserts date], or issued by the department on or after

the effective date of this subdivision [revisor inserts date].

SECTION 5p. 50.095 of the statutes, as affected by 1987 Wisconsin Act 27, is repealed and recreated to read:

50.095 Resident's right to know. Every resident in or prospective resident of a nursing home has the right to know certain information from the nursing home which would aid an individual in assessing the quality of care provided by a nursing home.

SECTION 6. 50.096 of the statutes is created to read:

50.096 Nursing home reports. (1) Beginning in 1988, the department may request from a nursing home information necessary for preparation of a report under sub. (2), and the nursing home, if so requested, shall provide the information.

(2) By July 1, 1988, and annually thereafter, the department shall provide each nursing home with a report that includes the following information for the nursing home:

(a) The direct care nursing home staffing ratio at each skill level on a daily basis and the percentage, if any, by which the ratio is above the staffing requirements of the department for the previous year.

(b) The staff replacement rates for full-time and part-time nursing staff, nurse's assistants and administrators for the previous year.

(c) Violations of statutes or rules by the nursing home during the previous year.

(3) Upon receipt of a report under sub. (2), the nursing home shall make the report available to any person requesting the report.

SECTION 7. 146.82 (2) (a) 5 of the statutes is amended to read:

146.82 (2) (a) 5. In response to a written request by any federal or state governmental agency to perform a legally authorized function, including but not limited to management audits, financial audits, program monitoring and evaluation, facility licensure or certification or individual licensure or certification. The private pay patient, except if a resident of a nursing home, may deny access granted under this subdivision by annually submitting to the a health care provider, other than a nursing home, a signed, written request on a form provided by the department. The provider, if a hospital or nursing home, shall submit a copy of the signed form to the patient's physician.

SECTION 7m. 1987 Wisconsin Act 27, section 3024 (22d) is repealed.

SECTION 8. 1987 Wisconsin Act 27, section 3024 (22n) is repealed and recreated to read:

(1987 Wisconsin Act 27) Section 3024 (22n) NURSING HOME STAFFING PATTERNS. The department of health and social services shall study the adequacy of current hourly requirements for the provision to residents of nursing homes of skilled or intermediate nursing care and the financial impact of computing nursing personnel service on a daily, rather than weekly, basis and shall, no later than March 1, 1988, submit a report of its findings and recommendations to the chief clerk of each house of the legislature for distribution under section 13.172 (3) of the statutes to standing committees with jurisdiction over health matters.

SECTION 8r. 1987 Wisconsin Act 27, section 3204 (24) (ma) is amended to read:

(1987 Wisconsin Act 27) Section 3204 (24) (ma) *Nursing home resident's right to know.* The treatment of section 50.095 (1) and (3) of the statutes takes effect on January 1, 1989.

SECTION 9. Nonstatutory provisions; health and social services. (1) **STUDY ON PAYMENT OF FACILITY EMPLOYEE WAGE INCREASES.** By October 1, 1988, the department of health and social services shall submit to the chief clerk of each house of the legislature, for distribution under section 13.172 (3) of the statutes to standing committees with jurisdiction over health matters, a report on the method by which an element of the medical assistance facility payment formula under section 49.45 (6m) of the statutes would be established through which a facility would receive funding for the purpose of modifying employee wages.

(2m) **STUDY ON REPEATED SERIOUS RULE VIOLATIONS.** By January 31, 1988, the department of health and social services shall submit to the chief clerk of each house of the legislature, for distribution under section 13.172 (3) of the statutes to standing committees with jurisdiction over health matters, a report that specifies rules promulgated by the department of health and social services concerning nursing homes that have been repeatedly violated in 1986 and 1987 and that have resulted in class "A" or class "B" violations, as defined in section 50.04 (4) (b) 1 and 2 of the statutes.

SECTION 9m. Nonstatutory provisions; legislature. (1) **LEGISLATIVE COUNCIL STUDY.** The legislative council is requested to study the nursing home reimbursement formula under which payment for care is provided to nursing homes and certain community-based residential facilities and to report its findings to the chief clerk of each house of the legislature for distribution to the appropriate standing committees no later than December 31, 1988.