

AN EVALUATION

Regulation of Nursing Homes and Assisted Living Facilities

Department of Health and Family Services

02-21

December 2002

2001-2002 Joint Legislative Audit Committee Members

Senate Members:

Gary R. George, Co-chairperson
Judith Robson
Brian Burke
Joanne Huelsman
Mary Lazich

Assembly Members:

Joseph K. Leibham, Co-chairperson
Samantha Kerkman
John Gard
David Cullen
Barbara Gronemus

LEGISLATIVE AUDIT BUREAU

The Bureau is a nonpartisan legislative service agency responsible for conducting financial and program evaluation audits of state agencies. The Bureau's purpose is to provide assurance to the Legislature that financial transactions and management decisions are made effectively, efficiently, and in compliance with state law and that state agencies carry out the policies of the Legislature and the Governor. Audit Bureau reports typically contain reviews of financial transactions, analyses of agency performance or public policy issues, conclusions regarding the causes of problems found, and recommendations for improvement.

Reports are submitted to the Joint Legislative Audit Committee and made available to other committees of the Legislature and to the public. The Audit Committee may arrange public hearings on the issues identified in a report and may introduce legislation in response to the audit recommendations. However, the findings, conclusions, and recommendations in the report are those of the Legislative Audit Bureau. For more information, write the Bureau at 22 E. Mifflin Street, Suite 500, Madison, WI 53703, call (608) 266-2818, or send e-mail to Leg.Audit.Info@legis.state.wi.us. Electronic copies of current reports are available on line at www.legis.state.wi.us/lab/windex.htm.

State Auditor - Janice Mueller

Editor of Publications - Jeanne Thieme

Audit Prepared by

Kate Wade, Director and Contact Person

Joshua Smith

James (Joe) Chrisman

David Bajkiewicz

Melinda Gustafson

Julia North

CONTENTS

Letter of Transmittal	1
Summary	3
Introduction	9
Nursing Homes	11
Assisted Living Facilities	12
State Regulatory Resources	14
Inspecting Long-Term Care Facilities	19
The Inspection Process	19
The Inspection Team	21
Outcomes of Inspections	22
Citations Issued	22
Severity Levels for Nursing Home Citations	24
Regional Variations in Citations Issued	26
Complaint Investigation	30
Inspection Frequency	33
Future Considerations	36
Enforcement Options	39
The Enforcement Process	39
Financial Penalties for Nursing Homes	40
State Forfeiture Assessments	40
Federal Civil Money Penalties	46
Assisted Living Facility Forfeitures	47
Other Penalty Options	48
Restrictions on Admissions or Reimbursement	49
Licensure Constraints	51
Management Controls	51
State Criminal Charges	53
Informal Dispute Resolution and the Appeals Process	57
Informal Dispute Resolution	57
Outcomes of Informal Dispute Resolution	57
Timeliness of Informal Dispute Resolution Decisions	58
Appeals Process	61

Appendix 1—Federal Categories of Scope and Severity for Nursing Home Citations

Appendix 2—State Categories of Severity for Nursing Home Citations

Appendix 3—Nursing Home and Assisted Living Facility Citations by Region

Appendix 4—Estimated Medicaid Reimbursement

Appendix 5—Forfeiture Ranges for State Nursing Home Violations

Appendix 6—Nursing Home Informal Dispute Resolution Decisions

Appendix 7—Response from the Department of Health and Family Services



State of Wisconsin \ LEGISLATIVE AUDIT BUREAU

JANICE MUELLER
STATE AUDITOR

22 E. MIFFLIN ST., STE. 500
MADISON, WISCONSIN 53703
(608) 266-2818
FAX (608) 267-0410
Leg.Audit.Info@legis.state.wi.us

December 13, 2002

Senator Gary R. George and
Representative Joseph K. Leibham, Co-chairpersons
Joint Legislative Audit Committee
State Capitol
Madison, Wisconsin 53702

Dear Senator George and Representative Leibham:

We have completed an evaluation of the Department of Health and Family Services' regulation of nursing homes and assisted living facilities, as requested by the Joint Legislative Audit Committee. As of June 30, 2001, there were 462 nursing homes and 2,114 assisted living facilities in Wisconsin; approximately \$1.0 billion in federal and state Medical Assistance (Medicaid) funds helped to support the cost of care provided to residents in these long-term care facilities. In fiscal year (FY) 2000-01, 80.2 percent of the Department's 215.7 full-time equivalent staff with regulatory responsibility for long-term care were regional regulatory staff. Expenditures for regional regulatory staff totaled \$12.5 million.

Although both nursing homes and assisted living facilities are inspected by state staff, there are significant differences in the oversight provided. Nursing homes are inspected under a well-established process that is dictated by federal regulations designed to ensure quality, occurs frequently, and employs teams of inspectors that include registered nurses who evaluate resident care. In contrast, the regulatory system for assisted living facilities, which is controlled entirely by the State, is less-established, and each inspection typically involves a single inspector who is not required to have medical credentials. Furthermore, as of June 30, 2001, 47.1 percent of assisted living facilities had not been visited by inspectors for any reason for at least one year. During our review period, there was an increase in the number of citations the Department issued to assisted living facilities, in part because of the implementation of new state regulations, and complaints about assisted living facilities increased 82.1 percent. In contrast, nursing home complaints decreased 3.0 percent. We provide options for the Legislature to consider if it is not satisfied with the current regulatory process for assisted living facilities.

We also reviewed the enforcement process for both nursing homes and assisted living facilities, which can include financial penalties, restrictions on new admissions, and other sanctions. Although prompt imposition of penalties is considered an effective method of compelling compliance, 64.6 percent of FY 2000-01 nursing home citations for which forfeitures could be assessed were awaiting review by the Department. Other available enforcement options have rarely been used. We include several recommendations to improve the current enforcement process.

We appreciate the courtesy and cooperation extended to us by the Department of Health and Family Services and the Department of Justice. A response from the Department of Health and Family Services is Appendix 7.

Respectfully submitted,

Janice Mueller
State Auditor

JM/KW/ss

Summary

In fiscal year (FY) 2000-01, 462 nursing homes and 2,114 residential assisted living facilities had the capacity to serve more than 80,000 Wisconsin residents whose physical or mental capacities were limited by illness, disability, or age. The Department of Health and Family Services regulates both types of long-term care facilities, primarily through facility inspections. In FY 2000-01, 215.7 full-time equivalent staff within the Bureau of Quality Assurance were involved in the regulation of nursing homes and assisted living facilities: 68.1 percent were regional nursing home regulatory staff, 12.1 percent were regional assisted living facility regulatory staff, and 19.8 percent were central office staff.

Chapter 50, Wis. Stats., defines a nursing home as a place where five or more persons who are not related to the operator or administrator reside, receive care or treatment, and require access to 24-hour limited, intermediate, or skilled nursing services because of their mental or physical condition. Because the majority of residents' care is funded, at least in part, through the federal Medical Assistance (Medicaid) or Medicare programs, nursing homes are subject to federal program rules as well as state regulations. In contrast, the three types of residential assisted living facilities in Wisconsin—community-based residential facilities, adult family homes, and residential care apartment complexes—are not subject to federal regulation and are regulated entirely by the State.

In FY 2000-01, the Department spent \$12.5 million for regional regulatory staff. From FY 1997-98 to FY 2000-01, regional staffing costs for nursing home regulation increased 13.5 percent to reach \$10.9 million. Federal funding to support regional nursing home regulatory staff increased only 1.6 percent during this period, whereas general purpose revenue funding increased 27.3 percent. Therefore, by FY 2000-01, federal funding supported only 56.9 percent of the cost of regional nursing home regulatory staff; in FY 1997-98, it had supported 63.5 percent.

Although regional staffing costs have been significantly lower for assisted living facility regulation, they increased 60.0 percent from FY 1997-98 to FY 2000-01 to reach \$1.6 million. Most of this increase was supplied by an increase in the licensure fees paid by assisted living facilities.

Both nursing home and assisted living facility inspectors observe care; interview residents, their families, and caregivers; and review medical and facility records. However, there are significant differences in the oversight provided to nursing homes and assisted living facilities. For example, under federal Medicaid and Medicare program rules, nursing homes are subject to routine, unannounced inspections by teams of inspectors that must include at least one registered nurse and that typically are on-site for four to five days. In contrast, inspections of assisted living facilities are typically performed by a single inspector in one day. We found that nursing home inspectors generally had more education and prior work experience in long-term care than assisted living facility inspectors.

When inspectors determine that nursing homes or assisted living facilities have violated applicable regulations, the Department issues citations, which are formal findings of deficient practice. While the number of citations issued to assisted living facilities increased 140.3 percent, from less than 2,000 in FY 1997-98 to more than 4,000 in each of the next three years, the number of citations issued to nursing homes increased 6.1 percent, from 3,051 in FY 1997-98 to 3,236 in FY 2000-01. The Department attributes the significant increase in assisted living facility citations to the amendment and implementation of administrative code governing community-based residential facilities, as well as to a shift in oversight responsibility from its Division of Community Services to its Bureau of Quality Assurance.

It should be noted that in 92.7 percent of federal nursing home citations issued from FY 1997-98 through FY 2000-01, the Department identified a potentially harmful situation before any residents were harmed. The potential for harm to residents is not specified in assisted living facility citations, but we found that 37.3 percent of citations issued in community-based residential facilities and 43.4 percent of citations issued in adult family homes pertained to physical environment and safety, which typically do not involve direct harm to residents but rather help prevent situations in which harm may occur.

We also found that the number of citations issued to both nursing homes and assisted living facilities varied significantly among the Department's five regulatory regions. For example, in FY 2000-01, three times as many federal nursing home citations were issued in the Southeastern Region as in the Northeastern Region. Likewise, nearly five times the number of state nursing home citations were issued in the Western Region as in the Southern Region. The number of state citations issued to assisted living facilities during routine inspections also varied significantly by region. The average ranged from 2.9 in the Western Region to 6.6 in the Northern Region.

Some of the regional variation in nursing home citations appears to be the result of inconsistent application of nursing home regulations. For example, when state inspectors were accompanied by federal inspection staff, they issued 54.5 percent more federal citations in FY 1999-2000 and 139.1 percent more federal citations in FY 2000-01.

It is unclear whether differences in regional citation patterns among assisted living facilities indicate differences in the quality of the facilities inspected or variations in inspector performance. However, increases in the number of complaints against assisted living facilities, the rate at which complaints are substantiated, and the relative infrequency of assisted living facility inspections suggest that in contrast to nursing home regulation, the regulatory system for assisted living facilities has reached a critical juncture.

From FY 1997-98 through FY 2000-01, the number of nursing home complaints decreased 3.0 percent, and the capacity of nursing homes decreased by 4.3 percent. In contrast, assisted living facility complaints increased 82.1 percent, while the estimated capacity of assisted living facilities increased 35.4 percent. The Department partially substantiated 74.3 percent of the 2,061 assisted living facility complaints it investigated, and 32.9 percent of the 3,792 investigated nursing home complaints for which complete data were available.

Moreover, assisted living facilities are inspected less frequently than nursing homes. From October 1999 through September 2001, nursing homes were inspected, on average, once every 12 months. When both routine inspections and complaint investigations are considered, nursing homes were visited by state regulatory staff an average of 4.4 times in FY 2000-01. In contrast, as of June 30, 2001, 47.1 percent of assisted living facilities had not been visited by state regulatory staff for any purpose for at least one year. Under administrative code, residential care apartment complexes are to be inspected at least once every three years, but there are no formal requirements in statutes or administrative code concerning the frequency of inspections for the other types of assisted living facilities: community-based residential facilities or adult family homes.

If the Legislature is not satisfied with the current regulatory process for assisted living facilities, a number of options are available, including establishing standards for the frequency with which assisted living facilities should be inspected, establishing minimum qualifications for assisted living facility inspectors, and increasing the number of staff assigned to inspect assisted living facilities.

Nursing homes and assisted living facilities that are cited by the Department are subject to an enforcement process during which penalties can be assessed. The most frequently imposed penalty is a state forfeiture, or fine. From FY 1997-98 through FY 2000-01, the

Department imposed a total of 864 forfeitures on nursing homes that violated state regulations. Complete data are available for 855 nursing home forfeitures, which had a total value of \$6.5 million. Of the 854 penalties imposed on assisted living facilities from FY 1997-98 through FY 2000-01, 67.7 percent were forfeitures, which totaled \$341,266. These forfeitures were imposed exclusively on community-based residential facilities because the Department did not implement inspections for residential care apartment complexes until 2002, and statutes do not allow the imposition of forfeitures on adult family homes. The Department has a well-documented process for determining nursing home forfeiture amounts; in contrast, there are no criteria in statutes or administrative code for determining assisted living facility forfeitures. We include a recommendation that the Department develop written criteria to guide forfeiture assessment for assisted living facilities.

While s. 50.04(5)(c), Wis. Stats., requires the Department to notify a nursing home if it determines that a forfeiture should be assessed for a violation, or for failure to correct a violation, statutes do not specify when the notice must be sent. The Department's internal standard is to assess forfeitures within four months, or 120 days, of the date a citation was issued. However, we found that only 26.0 percent of the 855 forfeitures assessed from FY 1997-98 through FY 2000-01 met the 120-day standard.

Forfeitures paid by nursing homes are deposited into the Common School Fund, which is used to make loans to local governments and to fund the purchase of instructional materials and library books by school districts. Statutes permit some agencies that assess forfeitures to retain a percentage of amounts received to cover their administrative costs, and the Legislature may wish to consider amending statutes so that a portion of the forfeitures paid by nursing homes and assisted living facilities is directed to the Department. We include a recommendation that the Department report to the Legislature on its administrative costs related to forfeitures.

In addition to state forfeitures, the Department may assess other penalties on nursing homes or assisted living facilities. These penalties range from restrictions on admissions or federal reimbursements to licensure constraints and management controls. We include a recommendation that the Legislature amend statutes to allow the Department to restrict admissions to nursing homes in a more timely manner.

The Department of Justice may file state criminal charges against either long-term care facility operators or individual caregivers based on information gathered through the regulation of nursing homes and assisted living facilities. Department of Justice data indicate one assisted

living facility, one facility for the developmentally disabled, and 24 individual caregivers were charged with criminal resident abuse and/or neglect from July 1999 through June 2002.

A nursing home that disagrees with a citation may participate in the informal dispute resolution process that has been required by federal regulations since 1995. From FY 1997-98 through FY 2000-01, nursing homes requested informal dispute resolution for an estimated 12.4 percent of all federal citations and 18.0 percent of all state citations. The Department met its 21-day standard for timeliness for only 32.5 percent of decisions. We include a recommendation that the Department report to the Legislature on its efforts to improve the timeliness of decisions it issues through the informal dispute resolution process.

When federal citations issued by state inspectors result in penalties, nursing homes may appeal to the federal Department of Health and Human Services. After receipt of a statement of deficiency containing a federal citation, federal law grants nursing home providers 60 days to request a hearing before an administrative law judge at the Department of Health and Human Services. Under state regulations, nursing homes and assisted living facilities may appeal both statements of deficiency for state citations and forfeiture amounts they have been assessed for these citations to the Department of Administration's Division of Hearings and Appeals (DHA). Wisconsin Statutes allow nursing homes and assisted living facilities ten days to file an appeal with DHA after receiving a statement of deficiency or a forfeiture assessment.

A majority of appeals are closed before formal hearings are held. From FY 1998-99 through FY 2000-01, 79.1 percent of appeals filed were closed before hearings were held. Many providers indicate that they file appeals in order to preserve their right to do so while the matter is also examined through the informal dispute resolution process. Since the majority of existing appeals are closed before they are heard but entail administrative costs for providers, the Department, and DHA, we include a recommendation that the Legislature modify statutes to allow providers 60 days to file an appeal of state citations and forfeitures.

Introduction

The Department of Health and Family Services regulates nursing homes and assisted living facilities.

In fiscal year (FY) 2000-01, 462 nursing homes and 2,114 residential assisted living facilities had the capacity to serve more than 80,000 Wisconsin residents whose physical or mental capacities were limited by illness, disability, or age. Nursing homes provide care for people who need round-the-clock nursing services, and they require a physician's order for admission. Assisted living facilities provide more limited medical care in residential settings. To protect the safety and well-being of nursing home and assisted living facility residents who cannot independently ensure that they are receiving adequate care, and to ensure that public funds are spent appropriately, the Department of Health and Family Services regulates both types of long-term care facilities.

Inspections are the Department's principal regulatory tool.

Inspections are the Department's principal regulatory tool. To ensure compliance with the federal standards that apply to nursing homes, as well as with state regulatory standards, the Department's Bureau of Quality Assurance is responsible for conducting routine but unannounced inspections. Although there are some significant differences in the processes by which nursing homes and assisted living facilities are inspected, as well as in inspection frequency, both types of inspections include direct observation of care; interviews with residents, their families, and caregivers; and record reviews. Inspectors also investigate complaints against nursing homes and assisted living facilities as they are received by the Department. If inspections or investigations indicate that applicable regulations have been violated, the Department takes enforcement action that can result in fines and forfeitures or, less commonly, restrictions on new admissions, licensure constraints, restrictions on management, or criminal penalties. The Department's monitoring process is designed to allow provider comment before citations are issued, and it includes appeals mechanisms.

In recent years, concerns have been raised about the degree to which the regulatory process ensures quality care in both nursing homes and assisted living facilities. For example, resident advocates and others are concerned about:

- the adequacy of state and federal regulations;
- the role of inspection and enforcement activities in identifying unsatisfactory conditions and achieving immediate correction; and

- the extent to which financial penalties deter long-term care facilities from allowing unsatisfactory conditions to develop or continue.

Additionally, those in the long-term care industry are concerned about:

- the consistency of enforcement activities among the Department's regional offices;
- whether current regulatory procedures appropriately target troubled long-term care facilities; and
- the best practices or modified enforcement procedures used in other states to ensure resident safety and quality of care.

In response to these concerns and at the request of the Joint Legislative Audit Committee, we examined:

- state and federal regulations governing the inspection processes;
- the processes for regulating and enforcing care standards in nursing homes and assisted living facilities;
- the Department's use of various enforcement mechanisms as a means of compelling compliance with regulations; and
- the processes for resolving regulatory disputes with nursing homes and assisted living facilities.

In conducting this evaluation, we analyzed data on citations and penalties issued against nursing homes and assisted living facilities; interviewed administrators and inspectors in the Department and staff of the Board on Aging and Long-Term Care, which serves as an advocate for residents and is responsible for monitoring providers and regulators; and discussed concerns about the regulatory process with providers at professional association meetings and during site visits to facilities. In addition, we contacted officials in Illinois, Indiana, Iowa, Michigan, Minnesota, and Ohio to learn about their practices in regulating nursing homes and assisted living facilities.

Nursing Homes

Chapter 50, Wis. Stats., defines a nursing home as a place where five or more persons who are not related to the operator or administrator reside, receive care or treatment, and require access to 24-hour limited, intermediate, or skilled nursing services because of their mental or physical condition. Because the majority of residents' care is funded, at least in part, through the federal Medical Assistance (Medicaid) or Medicare programs, nursing homes are subject to federal program rules as well as state regulations.

Most nursing homes in Wisconsin are skilled or intermediate care facilities.

Several types of nursing homes are identified in state law and serve different populations, but 418 of the 462 nursing homes in Wisconsin on June 30, 2001, were either skilled or intermediate care facilities, as defined by s. HFS 132, Wis. Adm. Code. As shown in Table 1, these two types of nursing homes accounted for 95.0 percent of licensed nursing home capacity in FY 2000-01.

Table 1

Types of Nursing Homes in Wisconsin June 30, 2001

Type of Nursing Home	Number of Homes	Capacity ¹	Percentage of Total Capacity
Skilled and intermediate care facilities	418	45,668	95.0%
Facilities for the developmentally disabled	40	2,096	4.4
Institutes for mental disease	4	310	0.6
Total	462	48,074	100.0%

¹ Licensed capacity as of December 31, 2000. Actual occupancy was less.

Skilled nursing facilities serve individuals whose medical needs, as prescribed by a physician, require either direct professional nursing services or care provided under the supervision of professional nursing personnel, such as registered or licensed practical nurses. Intermediate care facilities serve individuals under periodic medical supervision, whose long-term illnesses or disabilities have typically stabilized and whose nursing needs are met by registered nurses. We limited our analysis to skilled and intermediate care nursing homes that were certified to participate in either Medicaid or Medicare, because they are

subject to the same regulatory standards and the same inspection process. These nursing homes include 411 of the 418 facilities shown in Table 1 and represent 89.0 percent of all nursing homes open on June 30, 2001.

Except with respect to the imposition of certain penalties, our analysis does not include facilities for the developmentally disabled, which provide specialized care to persons with mental retardation or a related condition, or institutes for mental disease, which provide diagnosis, treatment, or care for persons with mental illnesses, such as schizophrenia.

Assisted Living Facilities

Three types of residential assisted living facilities in Wisconsin are subject to state regulation.

Our analysis of assisted living facilities includes only the three types of residential assisted living facilities that are subject to state regulation. The nursing care available in assisted living facilities is limited by statute. As shown in Table 2, these facilities had an estimated capacity of 32,500 at the end of FY 2000-01.

Table 2

**Residential Assisted Living Facilities in Wisconsin
June 30, 2001**

Type of Facility	Number of Facilities	Estimated Capacity	Percentage of Estimated Capacity
Community-based residential facilities	1,334	21,200	65.2%
Adult family homes ¹	662	2,600	8.0
Residential care apartment complexes	118	8,700	26.8
Total	2,114	32,500	100.0%

¹ Does not include one- and two-bed adult family homes, which are regulated by counties.

Community-based residential facilities, which were 63.1 percent of all residential assisted living facilities and accounted for 65.2 percent of capacity at the end of FY 2000-01, serve five or more adults, typically in a large house or an institutional setting. Community-based residential facilities are permitted by statute to provide each resident with up to three hours of nursing care per week. This limit does not pertain to personal care services, such as assistance with eating, dressing, bathing, and movement from place to place. Community-based residential facilities serve a variety of populations, including the elderly, the physically and developmentally disabled, and Alzheimer's residents.

Adult family homes, which were 31.3 percent of all residential assisted living facilities and accounted for 8.0 percent of capacity at the end of FY 2000-01, serve three or four adults, often in the provider's home. Statutes limit the amount of nursing care a resident may receive to seven hours per week, but this limit does not pertain to personal care services. Like community-based residential facilities, adult family homes serve a variety of populations, including the elderly, the physically and developmentally disabled, and Alzheimer's residents.

Residential care apartment complexes, which were 5.6 percent of all residential assisted living facilities and accounted for 26.8 percent of capacity at the end of FY 2000-01, serve five or more adults in independent apartments. Statutes do not enumerate the amount of nursing care these facilities may provide, but they limit combined nursing and personal care services provided by these facilities to 28 hours per week per resident.

The number of residential care apartment complexes increased 293.3 percent over three years.

As shown in Table 3, the number of residential assisted living facilities increased by 15.9 percent over a three-year period that ended at the close of FY 2000-01. Residential care apartment complexes were the fastest-growing facility type, increasing from 30 to 118 facilities, or by 293.3 percent. In contrast, the number of skilled and intermediate care nursing homes certified to participate in either Medicaid or Medicare declined from 420 at the close of FY 1997-98 to 411 at the close of FY 2000-01, or by 2.1 percent. While the estimated capacity of assisted living facilities increased by 35.4 percent over this three-year period, the capacity of nursing homes decreased by 4.3 percent.

Table 3
Change in the Number of Nursing Homes and Residential Assisted Living Facilities

As of June 30

<u>Type of Long-Term Care Facility</u>	<u>1998</u>	<u>2001</u>	<u>Percentage Change</u>
Nursing Homes			
Skilled and intermediate care facilities ¹	420	411	-2.1%
Residential Assisted Living Facilities			
Adult family homes ²	485	662	36.5
Community-based residential facilities	1,309	1,334	1.9
Residential care apartment complexes	30	118	293.3
Total	1,824	2,114	15.9

¹ Includes only facilities certified to participate in Medicaid or Medicare.

² Does not include one- and two-bed adult family homes, which are regulated by counties.

A 2002 report by the National Conference of State Legislatures on long-term care in the 50 states attributes growth in assisted living facilities relative to growth in nursing homes to factors that include:

- more people needing assistance in the activities of daily living;
- individuals and families increasingly seeking care in home- and community-based settings;
- states and the federal government having sought to curb the growing costs of institutional care supported with Medicaid; and
- a United States Supreme Court ruling to provide care in the least-restrictive setting possible, which has served as a market stimulus for the development of alternatives to care in nursing homes.

State Regulatory Resources

As noted, the Department's principal means of regulating both nursing homes and assisted living facilities is the routine, unannounced inspection, which is conducted by its Bureau of Quality Assurance. The

Bureau, which is part of the Division of Supportive Living, also regulates more than 40 other types of health care providers by developing administrative rules, administering a nurse aide registry to track qualifications and safeguard against abusive workers, conducting caregiver background checks to safeguard against abusive workers, and certifying Medicaid and Medicare providers. In FY 2000-01, it had 283.0 FTE staff, including 215.7 who were involved in the regulation of nursing homes and assisted living facilities.

Most of the Bureau's staff with regulatory responsibility for long-term care are regional staff responsible for nursing homes. As shown in Table 4, nursing home regional staff accounted for 68.1 percent of regulatory staff in FY 2000-01, and assisted living facility regional staff accounted for 12.1 percent. Significantly more staff are assigned to regulate nursing homes because of federal requirements for nursing home regulation.

**In FY 2000-01,
80.2 percent of regulatory
staff worked in regional
offices.**

Regional staff responsible for the regulation of nursing homes and assisted living facilities conduct on-site inspections and investigate complaints. The central office staff, who accounted for 19.8 percent of regulatory positions in FY 2000-01, are management staff, support staff, and technical experts who provide support and training to regional staff and collect data required by the federal government.

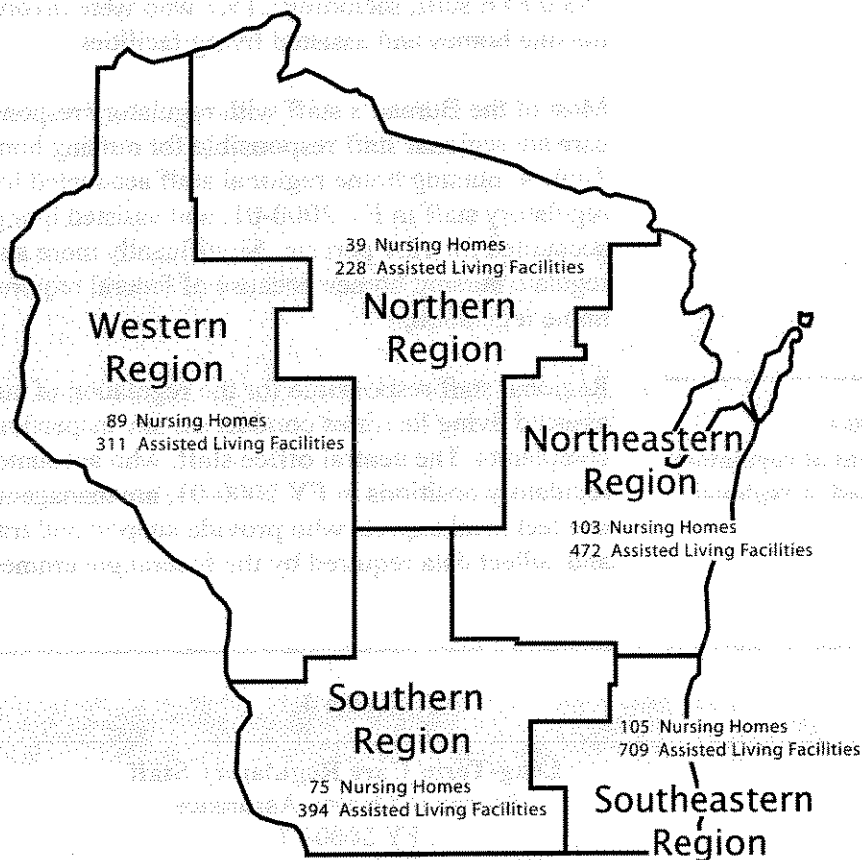
Table 4

Long-Term Care Regulatory Staff
Bureau of Quality Assurance
FY 2000-01

<u>Type of Staff</u>	<u>FTE Positions</u>	<u>Percentage of Total</u>
Nursing home regional staff	146.9	68.1%
Assisted living facility regional staff	<u>26.0</u>	<u>12.1</u>
Subtotal	172.9	80.2
Central office staff	<u>42.8</u>	<u>19.8</u>
Total	215.7	100.0%

The Bureau's five regulatory regions and the number of long-term care facilities for which each had regulatory responsibility on June 30, 2001, are shown in Figure 1.

Figure 1
Regulatory Regions and Long-Term Care Facilities¹
 June 30, 2001



¹ Includes only nursing homes certified to participate in Medicaid and Medicare.

Although the Department periodically submits detailed time reports to the federal government, we were not able to use these data to determine total state and federal expenditures for long-term care regulation, including all expenditures for central office staff. However, in FY 2000-01 the Department spent \$12.5 million on regional regulatory staff. From FY 1997-98 to FY 2000-01, federal funding to support regional nursing home regulatory staff increased at a significantly lower rate, 1.6 percent, than did general purpose revenue (GPR) and licensure fee funding, which increased 34.3 percent, as shown in Table 5. As a result, federal funding supported 63.5 percent of the \$9.6 million spent on regional nursing home regulatory staff in FY 1997-98, but declined to 56.9 percent of the \$10.9 million spent for the same purpose in

FY 2000-01. Department staff attribute the limited increase in federal funding during this period to a decline in the number of nursing homes in operation.

Table 5

Regional Staff Expenditures for Long-Term Care Regulation¹
 FY 1997-98 and FY 2000-01
 (in millions)

<u>Funding Source</u>	<u>FY 1997-98</u>	<u>FY 2000-01</u>	<u>Percentage Change</u>
Nursing Homes			
GPR	\$3.3	\$4.2	27.3%
Licensure fees	0.2	0.5	150.0
State subtotal	3.5	4.7	34.3
Federal	6.1	6.2	1.6
Total	\$9.6	\$10.9	13.5
Assisted Living Facilities			
GPR	0.3	0.2	-33.3
Licensure fees	0.4	0.9	125.0
State subtotal	0.7	1.1	57.1
Federal ²	0.3	0.5	66.7
Total	\$1.0	\$1.6	60.0

¹ Excludes expenditures for central office staff.

² Includes funds from Medicaid and the Social Services Block Grant.

Regional staffing costs have been significantly lower for assisted living facility regulation than for nursing home regulation, but expenditures for assisted living facility regional regulatory staff increased 60.0 percent from FY 1997-98 to FY 2000-01, compared to a 13.5 percent increase for nursing home regional regulatory staff. Most of this increase was supplied by an increase in the licensure fees paid by assisted living facilities. Table 6 shows the licensure fees paid in FY 2000-01.

Table 6

Annualized Long-Term Care Facility Licensure Fees¹
FY 2000-01

<u>Type of Facility</u>	<u>Base Fee</u>	<u>Per Resident Fee</u>	<u>Fee Revenue</u>
Nursing Homes	\$ 0.00	\$ 6.00 ²	\$286,704 ³
Assisted Living Facilities			
Residential care apartment complexes	350.00	6.00 ⁴	25,824
Community-based residential facilities	153.00	19.80	616,299
Adult family homes	67.50	N/A	49,545

- ¹ Annual amounts. Community-based residential facilities and adult family homes are assessed fees biennially.
- ² Per licensed bed.
- ³ Estimate.
- ⁴ Per apartment.

Licensure fees for nursing homes have not changed since 1983.

Nursing homes were first subject to licensure fees in 1973, and they have been subject to an annual fee of \$6 per licensed bed since 1983. Licensure fees for residential care apartment complexes were first established in 1995 and have not increased since then. However, fees for community-based residential facilities and adult family homes increased by 80.0 percent under 1999 Wisconsin Act 9, the 1999-2001 Biennial Budget Act, and the Department requested another 60.0 percent increase in licensure fees for community-based residential facilities and adult family homes, and the same increase for adult day care facilities, during the 2001-03 biennial budget process. Such an increase would have provided an estimated \$685,700 to fund an additional 9.0 FTE inspectors. However, this request was not included in the Governor's 2001-03 executive budget.

Inspecting Long-Term Care Facilities

Both nursing homes and assisted living facilities are inspected by state staff who observe care; interview residents, their families, and caregivers; and review medical and facility records, but there are significant differences in the oversight provided. Nursing home inspections typically involve a greater number of staff, with more education and prior long-term care experience, who are on-site for a longer period of time. Nursing homes are also inspected more frequently than assisted living facilities. However, assisted living facilities have experienced a greater increase in citations for deficient practices and have a higher percentage of complaints substantiated. Consequently, the Legislature may wish to consider a number of options to improve regulatory oversight of assisted living facilities.

The Inspection Process

Nursing home inspections follow a federally mandated process.

Under federal Medicaid and Medicare program rules, nursing homes are subject to routine, unannounced inspections by teams of inspectors that must include at least one registered nurse. Teams typically are on-site for four to five days, during which time the inspectors follow a federally mandated inspection process for evaluating compliance with applicable regulations in 15 areas of operation, including nursing and physician services, physical environment, quality of life, and resident rights. They also evaluate compliance with state regulations that are the basis for state licensure and address some areas not regulated by the federal government, such as the adequacy of medical records.

Inspections of assisted living facilities follow a state-defined process that varies by facility type.

Since there are no federal requirements regarding the processes by which assisted living facilities are to be evaluated, inspections of these facilities follow a process that is set forth in Wisconsin Statutes and administrative code. Requirements vary according to the type of assisted living facility inspected, but each inspection generally focuses on resident rights, services provided, food services, environment, safety, and staff training. In contrast to nursing home inspections, inspections of assisted living facilities are typically performed by a single inspector in one day.

Nearly all nursing home inspections are of nursing homes that have been previously inspected. Because of the continued growth in the number of assisted living facilities, a greater proportion of assisted living facility inspections are performed in new facilities that have not yet begun to provide services. Additionally, assisted living facilities often receive technical assistance to help them comply with state

regulations. For example, during inspections that we observed, inspectors:

- provided advice on alternatives to using side rails to keep residents from falling out of bed;
- gave specific recommendations for making the facility more accessible to residents with limited mobility; and
- assisted staff in understanding the documentation necessary to complete resident files.

A pilot project offers technical assistance to some nursing homes in Milwaukee County.

In contrast, federal requirements limit the amount of technical assistance inspectors can provide to nursing homes. However, in July 2002, the Department introduced a pilot project that offers limited technical assistance to those nursing homes in Milwaukee County that have at least 90.0 percent of their residents funded by the Medicaid program. The assistance available varies according to the nursing homes' needs, but it may include individualized on-site training or group training at the Department's offices. The pilot project was established to address concerns about the closure of facilities with a large number of Medicaid-funded residents in Milwaukee, and the resulting reduction in the number of available nursing home beds for these residents. All technical assistance will be provided outside of the nursing home inspection process.

Both nursing home and assisted living facility inspections are to conclude with a meeting at which inspection findings and potential citations for deficient practices may be discussed. At that time, providers have an opportunity to offer any additional information they believe should be considered before inspectors determine whether applicable regulations have been violated and citations should be issued. After the visit, inspectors review their findings to determine whether the documentation they gathered provides sufficient evidence to support the issuance of citations. Following management review of the findings, the Department issues a statement of deficiency to the provider that either details each citation and the applicable regulation that was violated or, in some cases, indicates that no deficiencies were found.

The Inspection Team

At least one registered nurse serves on each nursing home inspection team.

In addition to requiring that at least one registered nurse serve on each nursing home inspection team, federal Medicaid and Medicare program rules suggest including as team members persons with other training, such as physicians, speech and occupational therapists, dieticians, social workers, and engineers. In contrast, there are no federal requirements governing the inspection of assisted living facilities or prescribing the qualifications of inspectors. As noted, while routine inspections in nursing homes typically involve a team of inspectors, routine inspections in assisted living facilities typically are conducted by a single inspector.

Only 1 of the 21 assisted living facility inspectors reported licensure as a registered nurse, although 18 had post-secondary degrees.

To determine the qualifications of nursing home and assisted living facility inspectors, we surveyed each of the five regional offices and obtained information on 112 inspectors employed on April 15, 2002. We found that nursing home inspectors generally had more education than assisted living facility inspectors. Specifically:

- of the 91 nursing home inspectors, 59, or 64.8 percent, reported licensure as a registered nurse, while only 1 of the 21 assisted living facility inspectors reported licensure as a registered nurse; and
- all nursing home inspectors reported having a post-secondary degree, although 18 of the 21 assisted living facility inspectors reported having post-secondary degrees in fields such as social work, education, or psychology.

Nursing home inspectors reported more years of prior work experience in long-term care than did assisted living facility inspectors.

We also found that nursing home inspectors had more prior work experience in long-term care than assisted living inspectors did. Specifically:

- 65 of the 91 nursing home inspectors, or 71.4 percent, reported six or more years of prior work experience in long-term care, whereas 5 of the 21 assisted living facility inspectors, or 23.8 percent, reported six or more years of prior work experience in long-term care; and
- at least 60.0 percent of the nursing home inspectors in all five regions reported six or more years of prior work experience in long-term care, while only the Western Region reported at least 60.0 percent of its assisted living inspectors possessed six or more years of prior work experience in long-term care.

Outcomes of Inspections

A citation is a formal finding of deficient practice.

When inspectors determine that nursing homes or assisted living facilities have violated applicable regulations, the Department issues citations, which are formal findings of deficient practice. Both nursing homes and assisted living facilities received more citations in FY 2000-01 than they had in FY 1997-98; however, the increase has been much greater in assisted living facilities, in part because of the implementation of new state regulations.

Citations Issued

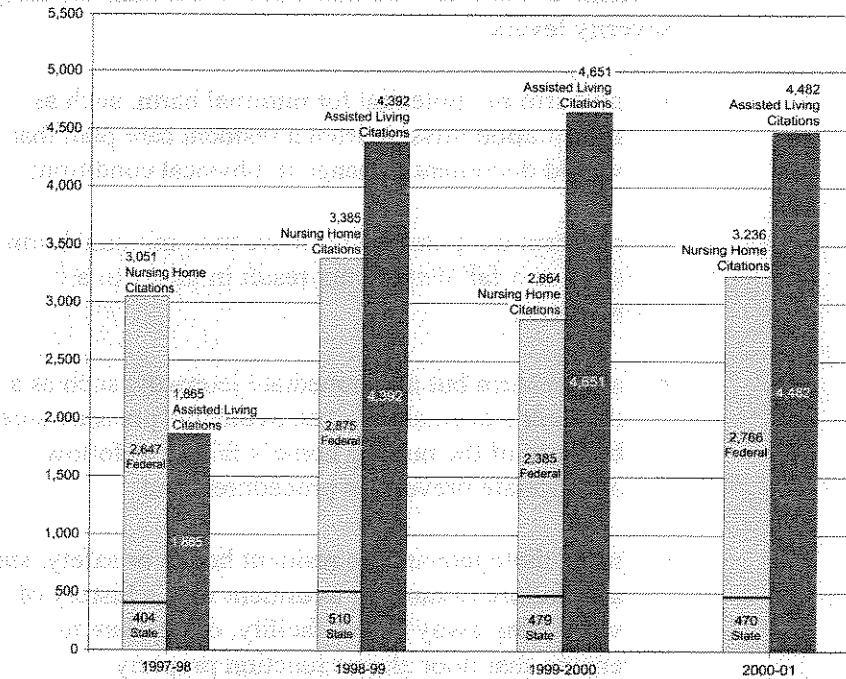
As shown in Figure 2, the number of citations issued to assisted living facilities increased from less than 2,000 in FY 1997-98 to more than 4,000 in each of the next three years. From FY 1997-98 through FY 2000-01, the increase in citations was 140.3 percent, which is nearly nine times greater than the 15.9 percent increase in the number of assisted living facilities providing care during this period. In contrast, the number of citations issued to nursing homes increased from 3,051 in FY 1997-98 to 3,236 in FY 2000-01, or by 6.1 percent. Most nursing home citations were for violations of federal regulations.

The number of assisted living facility citations increased after administrative code was amended.

The Department attributes the significant increase in assisted living facility citations from FY 1997-98 to FY 1998-99 to two factors: a shift in oversight of these facilities from its Division of Community Services to its Bureau of Quality Assurance, and the amendment and implementation of administrative code governing community-based residential facilities. As the amount of oversight provided by the Bureau of Quality Assurance increased, and after the code was amended, many facilities were found in noncompliance and were cited accordingly. The number of citations issued to assisted living facilities has remained relatively stable in subsequent years.

Figure 2

**Nursing Home and Assisted Living Facility¹ Citations
FY 1997-98 through FY 2000-01**



¹ Includes adult family homes and community-based residential facilities.

Another increase in the number of assisted living facility citations may occur for FY 2001-02 and FY 2002-03, based on the Department's implementation of a more formal survey process for residential care apartment complexes in January 2002. As originally proposed in 1995 Assembly Bill 150, the 1995-97 biennial budget bill, the regulation of residential care apartment complexes was to be limited. The Legislature increased the extent of regulation when it passed the biennial budget, and administrative rules implemented in March 1997 gave the Department authority to issue citations to these facilities. At that time, the Department conducted periodic inspections and offered technical assistance to providers. In response to increases in the number of these facilities and concerns about the quality of care they provided, the Department began in May 2000 to develop a more formal survey process that included the issuance of citations. The process was implemented in January 2002.

Severity Levels for Nursing Home Citations

The severity of both state and federal nursing home citations is ranked in terms of harm to residents. Federal citations are assigned one of four severity levels:

- no harm but potential for minimal harm, such as information missing from a resident care plan that would document a change in physical condition;
- no harm but potential for more than minimal harm, such as a fall that did not result in injury to a resident;
- actual harm but not immediate jeopardy, such as a resident's acquisition of an avoidable pressure sore because of the nursing home's failure to follow appropriate prevention procedures; and
- immediate jeopardy to resident health or safety, such as a failure to monitor a resident with a history of wandering away from a facility, or a failure to ensure that door alarms function properly.

Most federal nursing home citations identified potential, not actual, harm to residents.

As shown in Table 7, most citations for federal violations from FY 1997-98 through FY 2000-01 indicate no actual harm occurred to nursing home residents. In 92.7 percent of federal citations issued, the Department identified a potentially harmful situation before any residents were harmed. However, in 7.1 percent of federal citations issued, the Department identified instances of actual harm or immediate jeopardy to resident health or safety. An additional explanation of the severity levels for federal nursing home citations, along with additional data, can be found in Appendix 1.

Table 7

Federal Nursing Home Citations by Level of Severity
 FY 1997-98 through FY 2000-01

<u>Level of Severity</u>	<u>Citations</u>	<u>Percentage</u>
No harm but potential for minimal harm	1,457	13.6%
No harm but potential for more than minimal harm	<u>8,439</u>	<u>79.1</u>
Subtotal	9,896	92.7
Actual harm but not immediate jeopardy	697	6.5
Immediate jeopardy to resident health or safety	<u>61</u>	<u>0.6</u>
Subtotal	758	7.1
Severity level not available	<u>19</u>	<u>0.2</u>
Total	10,673	100.0%

State nursing home citations addressed harmful practices and practices that did not directly threaten resident safety.

Violations of state nursing home regulations are also assigned severity levels, but these severity levels differ from those defined by federal regulations. As shown in Table 8, the Department issued nearly an equal number of citations to correct practices that posed no direct threat as it did citations for violations that directly threatened resident safety. An explanation of the severity levels for state nursing home citations, along with additional data, can be found in Appendix 2.

Table 8

State Nursing Home Citations by Level of Severity
 FY 1997-98 through FY 2000-01

<u>Level of Severity</u>	<u>Citations</u>	<u>Percentage</u>
Correction orders for no direct threat to resident health, safety, or welfare	818	43.9%
No direct threat to resident health, safety, or welfare	75	4.0
Subtotal	893	47.9
Directly threatens resident health, safety, or welfare	885	47.5
Substantial probability for death or serious harm	69	3.7
Subtotal	954	51.2
Severity level not available	16	0.9
Total	1,863	100.0%

Because levels of severity are not specified for assisted living facility citations, we could not determine whether the majority of assisted living facility citations were for violations with the potential to result in harm to residents. However, 37.3 percent of citations issued in community-based residential facilities and 43.4 percent of citations issued in adult family homes pertained to physical environment and safety, such as the presence and functionality of fire alarms, accessibility for disabled residents, and proper sanitation practices. These types of citations typically do not involve direct harm to residents, but rather help prevent situations in which harm may occur. The Department indicates that its managers determine the relative severity of assisted living facility citations and whether penalties should be imposed based on past decisions about similar citations.

Regional Variations in Citations Issued

The number of citations issued to nursing homes and assisted living facilities varied by region.

In our 1998 evaluation, we suggested it would be reasonable to expect the rate at which long-term care facilities are cited to be similar across the state. However, as shown in Table 9, we found significant regional variation in the number of citations issued in FY 2000-01. For example, three times as many federal nursing home citations were issued in the Southeastern Region as in the Northeastern Region. Likewise, nearly

five times the number of state nursing home citations were issued in the Western Region as in the Southern Region. Reasons for these differences may include:

- the number of facilities in a region;
- the number of beds within each facility in a region;
- the number of inspections completed in a region;
- variations in facility performance; and
- variations in inspector performance.

Table 9

Number of Citations Issued by Region

FY 2000-01

Region	Federal Nursing Home Citations		State Nursing Home Citations		State Assisted Living Facility Citations	
	Number	Percentage	Number	Percentage	Number	Percentage
Northeastern	301	10.9%	58	12.3%	582	13.0%
Northern	337	12.2	61	13.0	1,291	28.8
Southeastern	938	33.9	155	33.0	1,517	33.8
Southern	650	23.5	33	7.0	666	14.9
Western	540	19.5	163	34.7	426	9.5
Total	2,766	100.0%	470	100.0%	4,482	100.0%

33.9% of state licensed beds

with

We also compared the number of citations issued per routine nursing home inspection in each region. As shown in Table 10, the average number of federal citations issued to nursing homes during routine inspections in FY 2000-01 ranged from 1.4 in the Northeastern Region to 4.6 in the Southern Region. Statewide, the average was 2.9. The number of state citations issued during routine nursing home inspections ranged from 0.2 in the Southern Region to 0.6 in the Northern Region. Additional information on citations by region can be found in Appendix 3.

Table 10

**Average Number of Federal Nursing Homes Citations Issued During Routine Inspections
FY 1997-98 through FY 2000-01**

<u>Region</u>	<u>1997-98</u>	<u>1998-99</u>	<u>1999-2000</u>	<u>2000-01</u>
Northeastern	2.0	1.3	1.1	1.4
Northern	2.7	3.2	3.0	3.5
Southeastern	3.3	3.5	3.2	3.6
Southern	2.2	3.1	2.9	4.6
Western	2.8	3.4	2.3	2.4
Statewide average	2.6	2.9	2.4	2.9

More nursing home citations were issued when federal staff accompanied state inspectors.

While some of this regional variation is evidence of different levels of facility performance, some appears to be the result of inconsistent application of regulations. Some providers have asserted that inspectors apply regulations inconsistently and that the likelihood of citations increases when federal staff accompany state inspectors to evaluate their performance. Although this process has recently changed, we analyzed the number of citations received by 23 nursing homes over a three-year period. We found that citation patterns do appear to be affected by the presence of federal staff. For example:

- In FY 1999-2000, the Department issued 102 federal citations to 11 nursing homes at which state inspectors were accompanied by federal staff, an increase of 54.5 percent over the 66 federal citations that had been issued to these same nursing homes in FY 1998-99, when state inspectors were unaccompanied. From FY 1998-99 to FY 1999-2000, there was a 17.0 percent decrease in federal citations issued statewide.
- In FY 2000-01, the Department issued 153 federal citations to 12 nursing homes at which state inspectors were accompanied by federal staff, an increase of 139.1 percent over the 64 federal citations that had been issued to these nursing homes in FY 1999-2000, when state inspectors were unaccompanied. From FY 1999-2000 to FY 2000-01, there was a 16.0 percent increase in federal citations issued statewide.

The Department has taken a number of steps to address concerns that regional differences in nursing home citation patterns may be caused by inspectors applying regulations inconsistently. For example, the Department:

- reviews all potential federal citations alleging widespread potential for harm, actual harm, or immediate jeopardy through a statewide teleconference involving regional and central office staff, who ensure that citations contain sufficient evidence and that appropriate severity levels have been assigned to the violations;
- created ten new supervisory positions, beginning in March 1997, to help ensure consistent enforcement of regulations within each region;
- incorporated the use of a citation review tool, which requires the inspection team to review its documentation and decision-making process for completeness; and
- increased emphasis on the 18-month probationary period for all inspectors, to ensure their level of training and competence.

The federal government has suggested performance improvements for state inspectors.

Although the federal government does not review regional trends in the issuance of nursing home citations, it does examine the timeliness of the State's evaluation activities, the sufficiency of support for federal citations, documentation of deficient practices, expenditures of federal funds, and the integrity of the State's data management system. In addition to observing state staff during 23 inspections in FY 1998-99 and FY 1999-2000, the federal government conducted five comparative inspections after state inspectors had completed their work at nursing homes. In the majority of the reviews in which they were observers, federal staff noted that state inspectors worked well together and worked well with facility staff. Federal staff also suggested in a majority of reviews that state inspectors improve either their documentation of how nursing homes failed to comply with regulations or the accuracy of their decisions regarding nursing home compliance.

As shown in Table 11, the number of citations issued to assisted living facilities during routine inspections also varied significantly by region. In FY 2000-01, the average ranged from 2.9 in the Western Region to 6.6 in the Northern Region. Statewide, the number of citations issued during routine assisted living facility inspections decreased, on average, from 5.2 in FY 1997-98 to 4.0 in FY 1999-00, before it increased to 4.9 in FY 2000-01.

Table 11

Average Number of Assisted Living Facility Citations Issued During Routine Inspections¹
 FY 1997-98 through 2000-01

<u>Region</u>	<u>1997-98</u>	<u>1998-99</u>	<u>1999-2000</u>	<u>2000-01</u>
Northeastern	1.3	2.7	4.1	3.6
Northern	0.0	2.6	1.8	6.6
Southeastern	3.7	3.7	3.2	5.4
Southern	8.8	4.8	5.9	5.0
Western	5.7	7.4	4.5	2.9
Statewide average	5.2	4.2	4.0	4.9

¹ Does not include initial licensure inspections for new facilities.

The cause of regional differences in assisted living facility citations cannot be determined.

It is unclear whether differences in regional citation patterns among assisted living facilities indicate differences in the quality of the facilities inspected or variations in inspector performance. Unlike the inspection process for nursing homes, there is no federal oversight or evaluation of the inspection of assisted living facilities.

Complaint Investigation

Complaint investigation is another means by which the State can assess compliance with regulations. The Department maintains data on both the number of complaints it receives for nursing homes and assisted living facilities and the number of complaints it substantiates. Like inspections, complaint investigations follow a federally prescribed process for nursing homes, and the Department's own policies for assisted living facilities.

The Department receives complaints from a variety of sources, including residents and their families, facility staff, ombudsmen from the Board on Aging and Long-Term Care, and other groups interested in the welfare of residents. Department staff report that all complaints are generally investigated, unless:

- the complaint is for an incident that occurred more than one year ago;

- the complainant provided insufficient information for the Department to determine whether the complaint should be investigated, and left no contact information; or
- the complaint is unrelated to resident well-being, such as a complaint about staff salary levels.

In these instances, the Department determines on a case-by-case basis whether the complaint should be investigated. When investigations are completed, the Department notifies the complainant of whether the complaint was fully substantiated, partially substantiated, or not substantiated.

Complaints against assisted living facilities increased 82.1 percent, while capacity increased 35.4 percent.

Table 12 shows the number of complaints filed against nursing homes and assisted living facilities in both FY 1997-98 and FY 2000-01. During this period, nursing home complaints decreased 3.0 percent and the capacity of nursing homes decreased by a similar rate, 4.3 percent. Assisted living facility complaints increased 82.1 percent, whereas the estimated capacity of assisted living facilities increased 35.4 percent. While some increase in complaints would be expected because of an increase in capacity, staff in the Department attribute the increase in assisted living facility complaints to increased awareness of the complaint process by residents and family members, as well as to an increase in the level of care required by residents.

Table 12

**Nursing Home and Assisted Living Facility Complaints Received
FY 1997-98 and FY 2000-01**

<u>Type of Facility</u>	<u>FY 1997-98</u>	<u>FY 2000-01</u>	<u>Percentage Change</u>
Nursing homes	1,355	1,314	-3.0%
Assisted living facilities	408	743	82.1

From FY 1997-98 through FY 2000-01, 74.3 percent of complaints against assisted living facilities were at least partially substantiated.

The Department considers a complaint partially substantiated if it identifies a deficient practice related to at least a portion of the complaint. From FY 1997-98 through FY 2000-01, the Department partially substantiated 1,531 assisted living facility complaints, or 74.3 percent of the 2,061 assisted living facility complaints investigated. During the same period, it partially substantiated 1,248 nursing home complaints, or 32.9 percent of the 3,792 nursing home complaints investigated and for which complete data were available. Data related to an additional 1,346 nursing home complaints were not complete.

Because some complaints may include a number of concerns, regional staff divide each complaint into multiple subject areas in order to investigate all areas in which violations may be present. Nursing home complaints are divided into subject areas based on federal regulations; assisted living facility complaint subject areas were created by the Department.

Table 13 shows the subject areas for substantiated complaints in nursing homes and assisted living facilities. From FY 1997-98 through FY 2000-01, the most common areas for which complaints were substantiated in nursing homes include quality of care and nursing services. Quality of care complaints address many areas relating to the well-being of residents, such as activities of daily living and medication errors. Nursing services complaints include concerns about the sufficiency of nursing staff.

The most common areas for which complaints were substantiated in assisted living facilities are resident rights and resident abuse. Complaints concerning resident rights include issues related to privacy, prompt and adequate treatment, and maintenance of a safe environment. Resident abuse complaints include physical and mental abuse, neglect, and the misappropriation of resident property.

Table 13

Substantiated Complaint Subject Areas
 FY 1997-98 through FY 2000-01

Nursing Homes		Assisted Living Facilities	
Subject Area	Percentage	Subject Area	Percentage
Quality of care	38.5%	Resident rights	11.9 %
Nursing services	15.6	Resident abuse	10.8
Resident behavior and facility practices	15.5	Medication use	8.6
Resident abuse	8.0	Nutrition and food services	7.8
Physical environment	5.7	Resident supervision	7.8
Resident rights	5.1	Staff adequacy	7.7
Quality of life	3.4	Administration	7.5
Dietary services	2.4	Program services provided	6.6
Administration	1.5	Staff training	6.3
Assessment of resident needs	1.4	Staff treatment of residents	5.5
Admissions, transfers, discharges	1.2	Physical plant and safety	5.2
Infection control	0.7	Home-like environment	4.5
Pharmacy services	0.6	Other	4.1
Rehabilitation services	0.2	Quality of life	2.7
Physician services	0.1	Admission procedures	1.8
Other	<u>0.1</u>	Licensed capacity	0.7
		Restraints	<u>0.5</u>
Total	100.0%	Total	100.0%

Inspection Frequency

Nursing homes are inspected more frequently than assisted living facilities.

Although both nursing homes and assisted living facilities are subject to routine inspections, nursing homes are inspected more frequently. For federal fiscal years 1999-2000 and 2000-01, or from October 1999 through September 2001, federal data indicate that the Department complied with federal requirements to conduct one routine inspection of each nursing home participating in the Medicaid or Medicare programs between 9 months and 15 months after the last inspection, and the Department inspected all of these facilities an average of once every 12 months.

Nursing home inspectors visited each nursing home an average of 4.4 times in FY 2000-01.

When routine inspections and complaint investigations are both considered, nursing home inspectors have an even greater regulatory presence. Each nursing home was visited an average of 4.4 times in FY 2000-01, although the number of times inspectors visit individual nursing homes varied. For example:

- 2.6 percent of nursing homes were not visited, most likely because the time elapsed between routine inspections was greater than the 12 months of the fiscal year, but still within the federally prescribed maximum of 15 months;
- 46.4 percent of homes were visited between 1 and 3 times;
- 45.0 percent of homes were visited between 4 and 9 times; and
- 6.0 percent of homes were visited between 10 and 25 times.

Only 52.6 percent of routine assisted living facility inspections met the Department's standard for timeliness.

Wisconsin administrative code provides that residential care apartment complexes are to be inspected at least once every three years, but there are no formal requirements in statutes or administrative code concerning the frequency of inspections of community-based residential facilities or adult family homes. The Department indicates that it has established a practice of conducting routine inspections of all assisted living facilities biennially. As shown in Table 14, from FY 1997-98 through FY 2000-01, the Department met the two-year standard for only 52.6 percent of the routine inspections.

Even when both routine inspections and complaint investigations are considered, inspectors visited each assisted living facility an average of less than once per year in FY 2000-01. Furthermore, as of June 30, 2001, 47.1 percent of assisted living facilities had not been visited by inspectors for any reason for at least one year, and 13.3 percent had not been visited for more than two years.

Table 14

Time between Routine Inspections for Assisted Living Facilities

FY 1997-98 through FY 2000-01

<u>Time</u>	<u>Number of Inspections</u>	<u>Percentage</u>
Two Years or Less		
One year or less	672	25.7%
One to two years	704	26.9
Subtotal	1,376	52.6
More than Two Years		
Two to three years	918	35.1
Three to four years	233	8.9
Four years or more	88	3.4
Total	2,615	100.0%

As noted, the number of assisted living facilities increased from 1,824 in FY 1997-98 to 2,114 in FY 2000-01, or by 15.9 percent. As the number of assisted living facilities increases, the likelihood that the Department can conduct more frequent inspections and achieve its own two-year standard diminishes. The Department places a higher priority on complaint investigations because the concern is known, and on initial licensure inspections because administrative code requires it to conduct such inspections within 70 days after receiving a facility's application for a license. However, staff in the Department indicate that routine inspections are the most effective way to determine compliance, especially through the discovery of previously unreported problems. Staff also indicate that reducing the time spent on-site for routine inspections so that more facilities can be visited in a more timely manner could limit the ability of inspectors to uncover deficient practices, thereby reducing overall effectiveness of the inspections.

To improve the timeliness of its inspections, the Department is attempting to secure additional federal Medicaid funds to support additional assisted living facility inspectors, based on the premise that Medicaid funds are used to pay for the care of residents in 86.8 percent of assisted living facilities the Department regulates. If it is successful in capturing the \$361,800 in additional funds, the Department intends to request up to 9.0 additional FTE assisted living facility inspectors. The

Operators of assisted living facilities oppose a regulatory system like that for nursing homes.

No citations were issued in 49.6 percent of nursing home inspections and complaint investigations.

Department indicates that receipt of this federal funding would not require the commitment of additional GPR, because current licensure fee revenue could be used to meet federal matching requirements.

Assisted living facility providers indicate a strong desire that the regulatory system for assisted living facilities not become like that for nursing homes. For example, they believe that a more frequent and prescriptive inspection process would be inappropriate for assisted living facilities because residents generally have less-intensive medical needs and more choices about the amount and type of care they receive. In addition, assisted living facility providers are concerned that a more prescriptive process would lead to an environment like that of nursing homes, which they contend would conflict with the intent of assisted living facilities to provide care in a more home-like setting.

The Department, nursing home providers, and resident advocates also have concerns that the nursing home inspection process, as prescribed by the federal government, limits the State's ability to focus resources on nursing homes that have histories of noncompliance with regulations or high rates of complaints. From FY 1997-98 through FY 2000-01, 49.6 percent of nursing home inspections and complaint investigations in Wisconsin resulted in no citations. Under current federal inspection requirements, states are to allocate the same resources to compliant nursing homes as they allocate to nursing homes with long histories of noncompliance. Therefore, in April 2002, the Department submitted a proposal to the federal government requesting permission to conduct a three-year pilot project in the Western Region that would target inspection and enforcement resources to the most noncompliant nursing homes. Although all nursing homes would continue to be inspected regularly, the additional resources directed to the most noncompliant nursing homes would include additional time for on-site inspections, technical assistance, and sharing of best practices. The Department indicates that there are many obstacles to overcome before the federal government would approve such a pilot, which is not expected before 2003.

Future Considerations

The regulation of nursing homes follows a well-established inspection process that occurs frequently, is designed to ensure quality, and employs teams of inspectors that include registered nurses and engineers to evaluate both resident care and the physical plant. In contrast, the inspection process for assisted living facilities is less established, occurs with less frequency, and typically employs a single inspector. Increases in the number of complaints against assisted living facilities, the rate at which complaints are substantiated, and the relative infrequency of assisted living facility inspections suggest that the regulatory system for assisted living facilities has reached a critical juncture.

The assisted living facility industry is experiencing rapid growth, but minimal data are collected about the medical needs, conditions, or acuity levels of assisted living facility residents statewide. On June 30, 2001, 86.8 percent of assisted living facilities received Medicaid funds and, in calendar year 2001, \$148.3 million in Medicaid funds was provided for residents in these facilities. Given the amount of public funding provided, some suggest that the regulatory oversight of assisted living facilities should be increased. However, assisted living facility providers contend that the level of care required by residents in their facilities does not warrant increased regulatory oversight.

The Legislature could consider options to improve regulatory oversight.

If the Legislature is not satisfied with the current regulatory process for assisted living facilities, a number of options are available. For example, if it wishes to comprehensively review assisted living facility regulations, the Legislature could request the Joint Legislative Council to study the issue and make recommendations to improve regulatory oversight that could better ensure quality care. Alternatively, the Legislature could:

- establish standards for the frequency with which assisted living facilities should be inspected;
- establish minimum qualifications for assisted living facility inspectors;
- increase the number of staff assigned to inspect assisted living facilities by seeking additional federal funds, increasing facility licensure fees, or directing the Department to reallocate its existing resources; or
- direct the Department to develop technical assistance training programs to better enable assisted living facilities to comply with regulations.

While the nursing home regulatory system is well-established, the consistency with which regulations are applied continues to be of concern. Furthermore, given that 49.6 percent of nursing home inspections and complaint investigations conducted from FY 1997-98 through FY 2000-01 resulted in no citations, the current approach to nursing home regulation, which treats all nursing homes equally regardless of their compliance history, is of concern to providers. Other issues, such as financial viability, increased resident medical needs, and staff turnover, affect the ability of the nursing home industry to provide quality care. For example, from January 1999 through August 2002, 47 nursing homes in Wisconsin have entered into bankruptcy.

In FY 2000-01, \$916.1 million in Medicaid funds was provided for residents in nursing homes. As financial concerns increase, some providers and advocates have suggested that the percentage of allowable Medicaid costs reimbursed is an indicator of the ability of a nursing home to provide quality care. We reviewed the statistical relationship between compliance with federal regulations, the number of facility complaints investigated by the Department, staff turnover, and the percentage of allowable costs reimbursed in FY 2000-01. Our calculation of allowable costs was based on the technique used in a June 2001 analysis conducted by the Legislative Fiscal Bureau. We found homes with a higher estimated percentage of allowable costs reimbursed tended also to have a relatively smaller number of licensed beds, and a relatively smaller number of total patient days. However, we found little statistical relationship between a number of factors suggested as indicators of a nursing home's ability to provide quality care and the percentage of costs reimbursed. Additional information on these analyses is provided in Appendix 4.

The federal government has recently taken steps to better assess the quality of care provided in nursing homes. For example, the Centers for Medicare and Medicaid Services established a new set of quality measures intended to provide consumers with information that can assist them in selecting a nursing home. The measures are drawn from data collected during routine resident assessments and address residents' physical and clinical conditions and abilities, as well as their preferences. They include, for example, incidence of infections, pain management, and daily use of physical restraints. Since April 2002, these quality measures have been reported on a pilot basis for six states. Measures for all 50 states became available on the Centers for Medicare and Medicaid Services' Web site in November 2002.

In Wisconsin, a group of facility operators has studied staffing techniques and noted improved quality of care, as measured through the inspection process, when staff turnover is reduced. This voluntary coalition of 11 nonprofit nursing homes has reported that an emphasis on sharing successful staff training and improvement methods among participating facilities has enhanced the quality of care at no extra cost. These facilities noted that one-third of their membership was in full compliance with the federal regulations in 1995, when they began to use the model, and cited an improvement in care by 1999, as measured by a near doubling of the facilities in full compliance with the federal regulations. These facilities and their evaluators also reported that declines in staff turnover rates were tied to increased quality and may have a positive effect on facility costs.

Enforcement Options

Nursing homes and assisted living facilities that are cited by the Department are subject to an enforcement process that can result in financial penalties, restrictions on their ability to admit new residents, licensure constraints, additional management oversight or control by the State, and criminal charges. The most frequently imposed penalty is a state forfeiture, or fine. The Department has a well-documented process for determining nursing home forfeiture amounts; in contrast, there are no criteria in statutes or administrative code for determining assisted living facility forfeitures.

A 1998 statutory change raised maximum forfeiture amounts for nursing home citations, but both the number of citations issued and the total dollar value of all forfeitures have recently declined. Furthermore, although prompt imposition of penalties is considered the most effective method of compelling compliance, most state nursing home forfeitures are not assessed or paid in a timely manner, and only a portion of the forfeiture amount is collected because of statutory discounts. Other available enforcement options for nursing homes and assisted living facilities have rarely been used by the Department.

The Enforcement Process

Deficient practices must be corrected according to a plan approved by the Department.

To ensure that deficient practices that have been cited by inspectors are corrected, providers are required to submit plans of correction, which are reviewed by the Department. In some cases, the Department develops its own plan of correction for the provider to implement. Additionally, the Department may require specific training for facility staff. After the Department approves a plan of correction, the facility is required to make changes as specified in the plan, which the Department verifies. Inspectors may return to a facility for verification purposes only, or they may incorporate this effort into subsequent routine inspections or complaint investigations.

Penalties are used to compel compliance.

The Department also may issue penalties against facilities that have been cited for deficient practices or that are slow in achieving compliance. Penalties can be imposed for single occurrences of serious violations, as well as for less-serious violations that have been cited repeatedly. Nursing homes and assisted living facilities are subject to state penalties, while only nursing homes are subject to federal penalties. State penalties for assisted living facilities vary by facility

type. From FY 1997-98 through FY 2000-01, all of the penalties imposed on assisted living facilities were imposed on community-based residential facilities and adult family homes.

Financial Penalties for Nursing Homes

A total of \$6.5 million was assessed for 855 nursing home forfeitures.

The State has a well-documented process for determining forfeiture amounts it assesses nursing homes that have been cited for violations of state regulations. Nursing homes are also subject to federal fines, called civil money penalties, for violations of federal regulations. From FY 1997-98 through FY 2000-01, the Department imposed a total of 864 forfeitures on nursing homes that violated state regulations. Complete data are available for 855 of these forfeitures, which had a total value of \$6.5 million.

Although the maximum state forfeiture amount increased in response to legislation that took effect in 1998, there was a decline in the number of forfeitures assessed in FY 2000-01, and the total dollar value of forfeiture assessments for that year also declined. Furthermore, most state nursing home forfeitures have not been assessed or paid in a timely manner, and only a portion of the amount assessed is collected because of discounts.

State Forfeiture Assessments

Two forfeiture specialists in the Department's central office determine nursing home forfeiture amounts, subject to maximum amounts specified in statute. Section 50.04(5)(b), Wis. Stats., also provides guidance in the determination, by specifying four factors to be considered:

- the gravity of the violation;
- "good faith" exercised by the provider, including reasonable diligence in complying with requirements, prior accomplishments showing a desire to comply with requirements, and efforts to correct violations, such as facility staff identifying and attempting to remedy the deficient practice;
- any previous violations committed by the provider; and
- the financial benefit to the provider of committing or continuing the violation.

The Department developed guidelines for calculating nursing home forfeiture amounts.

In addition to the four factors outlined in statute, other factors, including the number of days the violation occurred, are influential in determining the amount of the forfeiture. In response to our 1998 recommendation that it establish policies and provide staff training to improve the process for setting forfeiture amounts, the Department developed a document to guide staff in determining nursing home forfeitures. It involves reviewing each of the four statutory factors; considering other factors, such as whether the violation was corrected when inspectors revisited the nursing home and whether the incident was self-reported; and using tables of forfeitures ranges, which are shown in Appendix 5, to help forfeiture specialists calculate final forfeiture amounts. Managers at the central office review forfeiture specialists' work before forfeiture notices are sent. A forfeiture notice is sent after a statement of deficiency has been received by the nursing home.

As shown in Table 15, the average state forfeiture amount per citation increased by more than 300.0 percent over a four-year period, from \$2,597 in FY 1997-98 to \$11,246 in FY 2000-01. However, both the number of citations for which forfeitures were assessed and the total dollar value assessed for all citations declined significantly in the last year of this period, when forfeiture specialist positions were vacant.

Table 15

Nursing Home State Forfeiture Assessments¹
 FY 1997-98 through FY 2000-01

	<u>1997-98</u>	<u>1998-99</u>	<u>1999-2000</u>	<u>2000-01</u>
Number assessed	210	174	355	116
Average assessment	\$2,597	\$6,168	\$10,204	\$11,246
Total assessment	\$545,380	\$1,073,178	\$3,622,252	\$1,304,498
Maximum assessment	\$40,500	\$170,500	\$270,750	\$89,250
Minimum assessment	\$100	\$100	\$187	\$100

¹ Assessed by citation.

The sizable increase in average forfeiture amounts per citation can be attributed to a statutory change that took effect in 1998. 1997 Wisconsin Act 237 increased the maximum state nursing home forfeiture from \$5,000 to \$10,000 for the most serious citations, and from \$1,000 to \$5,000 for citations directly threatening resident health, safety, and welfare.

Like the average assessment per citation, total annual assessments for all citations also increased in FY 1998-99 and FY 1999-2000. Department staff attribute this increase to the statutory increase in maximum forfeiture amounts; nursing homes being assessed for an increased number of days of violations; and the Department filling vacant forfeiture specialist positions, which allowed more forfeiture assessments to be completed. After reaching a high of \$3,622,252 in FY 1999-2000, total annual assessments dropped 64.0 percent, to \$1,304,498, in FY 2000-01. According to staff, this decline is due, in part, to vacancies in forfeiture specialist positions.

While s. 50.04(5)(c), Wis. Stats., requires the Department to notify a nursing home if it determines that a forfeiture should be assessed for a violation, or for failure to correct a violation, statutes do not specify when the notice must be sent. The Department's internal standard is to assess forfeitures within four months, or 120 days, of the date a citation was issued. Staff indicated that once a forfeiture specialist begins the task, a forfeiture can take between a few hours and several days to calculate, depending on:

- the number of statutes and codes cited;
- the complexity of the issues involved in the violations;
- whether the statement of deficiency clearly and completely explains how the deficient practice violates a regulation;
- the availability of resources for research capabilities; and
- the number of days the facility was in violation.

Although the amount of time required to calculate a forfeiture varies, the Department has not met its standard of 120 days from citation issuance to forfeiture assessment. In our 1998 report, we found that the Department's timeliness in assessing nursing home forfeitures had improved from FY 1993-94 through FY 1996-97. However, we found that only 26.0 percent of the 855 forfeitures assessed from FY 1997-98 through FY 2000-01 met the 120-day standard. The average time between the nursing home's receipt of the statement of deficiency and receipt of the forfeiture assessment ranged from a low of 147 days in FY 1997-98 to a high of 208 days in FY 2000-01. Additionally, the Department reported in February 2002 that 217, or 64.6 percent, of FY 2000-01 state citations for which forfeitures could be assessed were awaiting review.

Nursing home forfeitures are not assessed in a timely manner.

Staff vacancies and time spent in training have led to a backlog in nursing home forfeiture assessments.

Although staff in 2.0 FTE positions determine state forfeitures, these staff have other responsibilities, such as determining forfeitures for other types of facilities and preparing for and participating in forfeiture appeal hearings. For example, the forfeiture specialists reported spending 730 hours in 2000 on forfeitures and subsequent appeals for only five nursing homes. Additionally, these positions were vacant from September 2000 to January 2001, during which time few forfeitures were assessed and a backlog developed. The Department notes that an extensive training program provided to the staff hired in January 2001 led to an increase in the backlog, because few forfeitures were assessed during the training period. Department staff further attribute the delay in assessing nursing home forfeitures to an increase in the number and the duration of state violations, as measured by the number of days nursing homes are found to be noncompliant.

Statutes do not provide specific penalties for nursing homes that do not pay forfeitures.

In addition to concerns about the timeliness of forfeiture assessment, the promptness with which facilities make their forfeiture payments is also of concern. As required by s. 50.04(5)(f), Wis. Stats., nursing homes must pay forfeitures within ten days of receipt of the assessment, unless they contest the forfeiture amount and file an appeal. If a nursing home does not appeal and does not pay within the required ten days, the Department's legal counsel refers the case to the Department of Justice for collection. Statutes do not provide for any penalty if homes do not pay forfeitures, and many forfeitures are appealed. For example, among the 855 nursing home forfeitures issued from FY 1997-98 through FY 2000-01 for which complete data were available, 371 were appealed. Of the remaining 484, 143 were paid within the required 10 days.

Most nursing homes that pay forfeitures pay the full amount assessed or pay a reduced amount, which is permitted by statute to encourage timely payment. Section 50.04(5)(fm), Wis. Stats., allows a 35.0 percent reduction in the total forfeiture assessment when facilities pay within ten days and waive their right to appeal, and many nursing homes are taking advantage of the discount. As shown in Table 16, 70.7 percent of the 116 state forfeitures assessed in FY 2000-01 were reduced by 35.0 percent; in FY 1998-99, when this discount was first allowed, only 27.6 percent of forfeitures were reduced.

Table 16

Reductions in Nursing Home State Forfeiture Assessments

FY 1997-98 through FY 2000-01

<u>Percentage Reduced</u>	<u>1997-98</u>	<u>1998-99</u>	<u>1999-2000</u>	<u>2000-01</u>
0.0 percent (forfeiture not reduced)	71.9%	47.1%	33.5%	22.4%
35.0 percent	0.0	27.6	57.5	70.7
100.0 percent (forfeiture deleted)	3.3	1.2	0.6	2.6
Other amount	24.8	24.1	8.4	4.3
Total	100.0%	100.0%	100.0%	100.0%

Nearly half the forfeiture amounts due from nursing homes in FY 1999-2000 and FY 2000-01 have not been paid.

Nevertheless, not all nursing home forfeitures have been paid. Although all amounts due in FY 1997-98 have been paid, as of May 7, 2002:

- less than 10.0 percent of the amounts due in FY 1998-99 had not been paid;
- 48.5 percent of forfeiture amounts due in FY 1999-2000, or \$1.3 million, had not been paid; and
- 48.9 percent of forfeitures amounts due in FY 2000-01, or \$0.4 million, had not been paid.

Department records show that these forfeitures are unpaid for several reasons. For example:

- \$1.3 million is due from nursing homes that have filed for bankruptcy;
- \$355,000 is due from nursing homes that have appealed forfeitures; and
- \$303,000 is due from nursing homes that have not paid for unknown reasons and have been referred to the Department's own legal counsel or to the Department of Justice for collection.

As required by Article X, Section 2 of the Wisconsin Constitution and prescribed in ch. 50, Wis. Stats., forfeitures paid by nursing homes are deposited into the Common School Fund, which is used to make loans to local governments and to fund the purchase of instructional materials and library books by school districts. Nursing home providers note that the payment of forfeitures limits their ability to direct resources to improve care, and the Department acknowledges the current payments do not benefit the nursing home industry.

Although the constitutional requirement that forfeitures be deposited into the Common School Fund eliminates any incentive for the Department to artificially increase forfeiture assessments, statutes permit some agencies that assess forfeitures to retain a percentage of amounts received to cover their administrative costs. For example:

- 50.0 percent of forfeitures received for violations of state pari-mutuel racing laws are deposited into two racing-related appropriations;
- 40.0 percent of forfeitures received for violations of vehicle size, weight, and load laws are deposited into the Transportation Fund; and
- a "deduction of the expenses of collection" for violations of certain insurance regulation laws can be retained before deposit into the Common School Fund.

In 2001, the Joint Legislative Council identified a number of limitations, based on judicial rulings, that restrict the Legislature's ability to direct forfeitures away from the Common School Fund. Specifically, any amounts retained by the assessing agency:

- should represent the actual costs, or at least a reasonably accurate estimate of the costs, of prosecuting the offense;
- cannot be used for future enforcement unrelated to the cost incurred for enforcing present law;
- cannot be so large as to leave only a nominal amount for the Common School Fund; and
- are subject to judicial standards of reasonableness.

The Legislature may wish to consider amending statutes so that a portion of the nursing home and assisted living facility forfeitures assessed is directed to the Department, rather than the Common School Fund, and resources that currently support forfeiture assessment functions can be redirected to the regulation of long-term care. To ensure that the Legislature is able to consider statutory changes, we recommend the Department of Health and Family Services report to the Joint Legislative Audit Committee by March 1, 2003, on:

- the number and percentage of FY 2000-01 and FY 2001-02 state nursing home citations eligible for forfeiture and awaiting review; and
- the percentage of a forfeiture that represents a reasonable estimate of the Department's administrative costs related to assessing a forfeiture.

Federal Civil Money Penalties

In addition to state forfeitures, nursing homes are also subject to federal fines, called civil money penalties, for violations of federal regulations. Because federal policies allow nursing homes to correct many federal violations before penalties are imposed, nursing homes are assessed fewer federal civil money penalties than state forfeitures. Like state forfeitures, civil money penalties may be reduced by 35.0 percent if a nursing home waives its right to appeal. Revenue from federal civil money penalties is shared between the federal government and the Department, depending on whether the nursing home is certified to receive funding through Medicaid, Medicare, or both. The Department may use funds from civil money penalties:

- to operate a nursing home while either correction of deficiencies or closure is pending;
- to relocate residents to other facilities; or
- to reimburse residents for personal funds or property lost at a nursing home as a result of actions by the nursing home or its employees.

With permission from the federal government, the Department may also use a portion of these funds on pilot projects, such as the technical assistance pilot project in Milwaukee County.