

State of Wisconsin
Department of Health and Family Services

Jim Doyle, Governor
Helene Nelson, Secretary

February 28, 2002

The Honorable Carol Roessler, Senator, Co-Chair
The Honorable Suzanne Jeskewitz, Representative, Co-Chair
Joint Legislative Audit Committee
Wisconsin State Legislature
Madison, WI 53702

Dear Senator Roessler:

I am pleased to submit the first report to the Joint Legislative Audit Committee in response to the audit of the Department's regulation of nursing home and assisted living facilities, as well as respond to questions raised during the Committee's hearing on February 5, 2003. The Legislative Audit Bureau requested that the Department notify the Committee on:

- The number and percentage of FY 2000-2001 and FY 2001-2002 state nursing home citations eligible for forfeitures 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.

Additionally, during the February 5, 2003 hearing, and the Committee's recent correspondence to the Department, members of the committee requested responses from the Department on:

- New protocols BQA will implement for assessing assisted living forfeitures;
- A clarification on the number of full-time equivalent positions in the Bureau of Quality Assurance central office that have oversight responsibilities for nursing homes and assisted living facilities; and
- A summary of the total amount of revenue the Department has received from federal Civil Money Penalty in FY 2000-01 and FY 2001-02; and the purposes for which these funds were used in each fiscal year.

FY 2001 and FY 2002 Forfeiture Update

The audit reported that at the time of the audit, 217, or 64% of FY 2000-01 citations were awaiting a review. A total of 375 forfeitures were awaiting assessment. BQA staff, in concert with the Department's legal staff, have substantially reduced the number of outstanding FY 2001 and FY 2002 forfeitures. On December 31, 2002, there were zero

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outstanding forfeitures from FY 2000-01 and a total of 275 forfeitures were awaiting an assessment, including 166 from FY 2001-02. BQA staff addressed both the existing backlog, as outlined below, as well as addressing those newly submitted for review and assessment.

BQA staff accomplished the reduction through a combination of efforts including simultaneously evaluating similar noncompliance citations; streamlining the nursing home forfeiture review process; and the temporary reassignment of staff within BQA with knowledge and expertise in assessing forfeitures. We will continue these efforts to the best of our ability and resources until all forfeitures are current and up-to-date.

Administrative Ratios for Forfeiture Assessment

The following table is a breakdown of forfeiture assessments, collections, and forfeiture-related administrative costs incurred by BQA for the calendar years 2000, 2001 and 2002.

Table 1

Calendar Year	# of Forfeitures Invoiced	Amount Due	Amount Paid	Admin Costs	Admin Ratio
2002	350	\$2,226,046	\$1,065,467	\$ 95,804	8.99%
2001	126	1,566,003	504,295	48,898	9.70%
2000	238	1,266,548	836,538	60,225	7.20%
Total	714	\$ 5,058,597	\$ 2,406,300	\$ 204,927	8.52%

The 2003-2005 Executive Budget proposes a 6.0% surcharge for all forfeitures assessed by BQA. Although information in Table 1 reflects a higher level of administrative costs, recent changes to the forfeiture process, as outlined previously, would allow the Department to fund administrative costs with the 6% surcharge. The Department has established the policy of completing forfeiture assessments, including notifying the provider of serious non-compliance, within 120 days from the date BQA staff exited the nursing facility. The Department will continue to implement process efficiency measures to ensure we meet this goal.

New Assisted Living Forfeiture Procedures

The audit recommended that "the Department of Health and Family Services establish a written procedure to guide the assessment of forfeitures for assisted living facility." In response to this recommendation, BQA staff have established and will immediately

implement the new protocols found in Exhibit 2 of this report. BQA staff will provide ongoing monitoring to amend these guidelines, as necessary.

BQA Central Office Staff Resources

Table 4 on page 15 of the audit summarized the number of BQA staff resources in both the central and regional office specific to nursing home and assisted living programs. The period highlighted in the audit report was from FY 2000-01. Since this time, the long-term care industry has undergone a reduction in the number of licensed nursing facilities (nursing homes and facilities for persons with developmental disabilities), primarily related to facility closures in the southeast region of the state. A further impact to BQA resources was a federal fiscal year 2002 change in how the Centers for Medicare and Medicaid Services (CMS) funded nursing home activities. Both changes have resulted in the reduction of nearly 19 positions and a reallocation of bureau resources in the central office as well as in the regional offices.

In 2002, the Department created the Assisted Living Section within BQA to provide dedicated and focussed resources for the oversight of assisted living providers. Whereas these functions, along with the oversight of nursing facilities, were previously in one section, we have now separated these programs. Exhibit 1 included in this report is a summary of current resources allocated for assisted living and nursing facilities within BQA.

BQA central office staff provide direct oversight of regional staff, reflected in "Administrative Support" lines on Exhibit 1. BQA allocates additional resources independent of the regional survey activities to: provider training; direct federal activities, such as federal health information data base, federal enforcement, and direct federal certification; state enforcement; technical assistance; and resident relocation, among other functions. These resources are highlighted in the "Independent Activities" rows also found on Exhibit 1. Specific regional oversight of both assisted living and nursing home staff comprises only 14 percent of the overall BQA resources dedicated to nursing facilities and assisted living. Table 4 on page 15 of the audit showed nearly a 20 percent ratio.

Collection and Use of Federal Civil Money Penalty Funds in FY 2000-01 and FY 2001-02

The committee requested from the Department a summary of the use of these revenues. A Civil Money Penalty assessment is one of the various federal enforcement remedies available for the federal government to impose upon nursing homes that violate federal law. Other remedies include denial of payment for new admissions (DOPNA), temporary managers, and termination from the Medicare/Medicaid program. The portion of a Civil Money Penalty returned to the Department is based on the Medical Assistant percentage of publicly supported recipients (Medicare and Medicaid) residing in a federally certified nursing home when substantial non-compliance was confirmed.

Implemented in 1994, the use of Civil Money Penalty funds must be for the benefit of residents residing in nursing homes that have had non-compliance through out its certification history. Such uses include monitoring; resident relocation efforts; reimbursing residents for lost/stolen articles that are deemed to be the fault of the facility; and quality improvement projects. CMS only allows these funds to be used for nursing home related projects. Wisconsin was unable to use these funds for receivership activities at intermediate care facilities for persons with mental retardation (state FDDs). A CMS approval is not necessary for a specific project. However, we must keep CMS informed about our intended use of Civil Money Penalty funds.

Table 2 and Table 3 provide information on the amount of Civil Money Penalty funds the Department has received and the use of those funds during FY 2000-01 and FY 2001-02.

Table 2
Civil Money Penalty Collections

Fiscal Period	Amount
FY 2000 – 2001	\$ 441,664.20
FY 2001 – 2002	
	<u>1,372,096.81</u>
Total	\$1,813,761.01

The Department has achieved success in obtaining federal approval for the use of Civil Money Penalty funds on a number of projects. Table 3 below is a summary of projects funded by Civil Money Penalty funds during FY 2000-01 and FY 2001-02, as requested by the Committee.

In addition to using Civil Money Penalty funds for the above projects or activities, the Department has funded or proposes to use Civil Money Penalty funds on the following projects:

- Nursing home monitoring
- Nursing home receivership activities
- Nursing home resident relocation
- Investigation of deaths that may be the result of transfer trauma
- Nursing home family councils
- We are awaiting approval for use of Civil Money Penalty funds for workforce development related to high school CNA student testing.
- Value-added technical assistance project in Milwaukee County

Besides limiting the use of Civil Money Penalty funds for specific short-term projects, CMS requires the State to maintain a separate accounting of the balance and periodically requests updates on the balance in the account. As of December 31, 2002, the Department maintains a balance in the account of approximately \$1.2 million.

In order to ensure the most beneficial use of these restricted dollars, the Department has established guidelines for the use of Civil Money Penalty funds. Please see Exhibit 3. Due to the continued closures of nursing homes and the increasing potential for financial distress forcing closures, the Department's top priorities in using these funds is for nursing home receiverships, monitoring, resident relocation, and technical assistance.

Table 3
Uses of Civil Money Penalty Collections
FY 2000-01 and FY 2001-02

Fiscal Year	Project	Expenditure Amount
FY 2000-01	Departmental Overhead Costs	\$ 9,653.24
	Milwaukee County Relocation Worker	33,432.00
	Audubon Health Care Facility Monitoring	103,571.90
	Perennial Care Monitoring	28,094.18
	Family Heritage Monitoring	246,750.01
	Lincoln Lutheran Monitoring	11,346.47
	Barron-Riverside Monitoring	108,748.20
	Beverly Health and Rehab Monitoring	146,997.87
	LaCrosse Nursing Home Monitoring	<u>1,993.50</u>
	Total 2001	<u>\$690,587.37</u>
FY 2001-02	Departmental Overhead Costs	\$ 261.73
	Milwaukee County Relocation Worker	57,084.00
	Audubon Health Care Facility Monitoring	96,014.66
	BQA Value Added/Technical Assistant Proj	<u>275.13</u>
	FY 2002 Total	<u>\$153,635.52</u>
	Grand Total	\$ <u>844,222.89</u>

The audit also recommended another report to the legislature regarding the effectiveness and efficiency of the informal dispute resolution changes we have made. The Committee

requested further follow up on a number of items. We will submit that information according to the timeline recommended by the Legislative Audit Bureau and the Committee in preparation for the August 2003 Joint Audit Committee meeting.

We look forward to continued collaboration with the Committee in implementing effective changes that will strengthen and improve the Department oversight of nursing home and assisted living facilities.

Sincerely,

A handwritten signature in cursive script, appearing to read "Helene Nelson", written in black ink.

Helene Nelson
Secretary

Enclosures

EXHIBIT 1

Exhibit 1

Revised Long Term Care Regulatory Staff

Bureau of Quality Assurance

FY 2002-03

<u>Type of Staff</u>	<u>FTE Positions</u>	<u>Percentage of Total</u>	<u>Funding Ratios</u>		
			State GPR	Program Fees	Federal (Medicare and Medicaid)
Nursing facility regional staff	114.50	52.96%	21%	8%	71%
Assisted living regional staff	40.50	18.73%	24%	38%	38%
Subtotal	155.00	71.69%			
Central Office Staff					
Assisted living					
Administrative Support	6.32	3.24%	62%		38%
(Director, supervisors, clerical support, staff training, personnel, operations management)					
Independent Activities	0.50	0.23%	62%		38%
(enforcement activities)					
Nursing Facility					
Administrative Support	23.51	10.87%	29%		71%
(Director, supervisors, clerical support, IT, Personnel, Operations management, staff training, program specialists)					
Independent Functions	9.12	4.22%	33%	52%	15%
(licensure, enforcement, Federal certification, Industry Training)					
Subtotal	39.45	18.57%			
MDS (federal IT Prog)	4.25	1.97%	13%		87%
Caregiver Program	17.50	8.09%	30%	6%	64%
Total	216.20	100.00%	30%	12%	58%

EXHIBIT 2

DRAFT

**DEPARTMENT OF HEALTH AND FAMILY SERVICES
BUREAU OF QUALITY ASSURANCE**

ASSISTED LIVING SECTION

ENFORCEMENT PROCEDURES AND GUIDELINES

February 19, 2003

Assisted Living Section
Enforcement Procedures and Guidelines

DRAFT

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**STATUTORY AUTHORITY/
ADMINISTRATIVE RULES**

Assisted Living Enforcement Table

Enforcement Action	CBRF	AFH	RCAC (certified)	RCAC (registered)	ADC
License/Certification/Registration Denial	*	*	*	*	
License/Certification/Registration revocation	*	*	*	*	*
License/Certification non-renewal	*				
License/Certification Suspension	*	*	*		
Forfeiture	*		*		
Stop operating without a license/certification	*	*	*		
Accept no new admissions	*	*	*		
Submit a plan of correction (POC)	*	*	*		
Stop violating a provision	*	*	*		
Implement and comply with a POC correction approved by the department	*	*	*		
Implement and comply with a POC developed by the department	*	*	*		
Provide training in specific areas	*	*	*		
Placing limits on client groups	*	*			
Placing conditions on the license	*	*			
Injunction		*			
Disallowance of WA or waiver			*		*

Assisted Living Enforcement Options

Community Based Residential Facilities (CBRF)

Wisconsin State Statutes, Chapter 50

50.03(5g)(a) In this subsection, "licensee" means a community-based residential facility that is licensed under.

50.03(5g)(b) If, based on an investigation made by the department, the department provides to a community-based residential facility written notice of the grounds for a sanction, an explanation of the types of sanctions that the department may impose under this subsection and an explanation of the process for appealing a sanction imposed under this subsection, the department may order any of the following sanctions:

50.03(5g)(b)1. That a person stop conducting, maintaining or operating the community-based residential facility if the community-based residential facility is without a valid license or probationary license in violation of sub. (1).

50.03(5g)(b)2. That, within 30 days after the date of the order, the community-based residential facility terminate the employment of any employed person who conducted, maintained, operated or permitted to be maintained or operated a community-based residential facility for which licensure was revoked before issuance of the department's order. This subdivision includes employment of a person in any capacity, whether as an officer, director, agent or employee of the community-based residential facility.

50.03(5g)(b)3. That a licensee stop violating any provision of licensure applicable to a community-based residential facility under sub. (4) or (4m) or of rules relating to community-based residential facilities promulgated by the department under sub. (4) or (4m).

50.03(5g)(b)4. That a licensee submit a plan of correction for violation of any provision of licensure applicable to a community-based residential facility under sub. (4) or (4m) or of a rule relating to community-based residential facilities promulgated by the department under sub. (4) or (4m).

50.03(5g)(b)5. That a licensee implement and comply with a plan of correction previously submitted by the licensee and approved by the department.

50.03(5g)(b)6. That a licensee implement and comply with a plan of correction that is developed by the department.

50.03(5g)(b)7. That a licensee accept no additional residents until all violations are corrected.

50.03(5g)(b)8. That a licensee provide training in one or more specific areas for all of the licensee's staff or for specific staff members.

50.03(5g)(c) If the department provides to a community-based residential facility written notice of the grounds for a sanction or penalty, an explanation of the types of sanctions or penalties that the department may impose under this subsection and an explanation of the process for appealing a sanction or penalty imposed under this subsection, the department may impose any of the following against a licensee or other person who violates the applicable provisions of this section or rules promulgated under the applicable provisions of this section or who fails to comply with an order issued under par. (b) by the time specified in the order:

50.03(5g)(c)1. A daily forfeiture amount per violation of not less than \$10 nor more than \$1,000 for each violation, with each day of violation constituting a separate offense. All of the following apply to a forfeiture under this subdivision:

50.03(5g)(c)1.a. Within the limits specified in this subdivision, the department may, by rule, set daily forfeiture amounts and payment deadlines based on the size and type of community-based residential facility and the seriousness of the violation. The department may set daily forfeiture amounts that increase periodically within the statutory limits if there is continued failure to comply with an order issued under par. (b).

50.03(5g)(c)1.b. The department may directly assess a forfeiture imposed under this subdivision by specifying the amount of that forfeiture in the notice provided under this paragraph.

50.03(5g)(c)1.c. All forfeitures shall be paid to the department within 10 days after receipt of notice of assessment or, if the forfeiture is contested under par. (f), within 10 days after receipt of the final decision after exhaustion of administrative review, unless the final decision is appealed and the order is stayed by court order under s. 50.03 (11). The department shall remit all forfeitures paid under this subdivision to the state treasurer for deposit in the school fund.

50.03(5g)(c)1.d. The attorney general may bring an action in the name of the state to collect any forfeiture imposed under this subdivision if the forfeiture has not been paid following the exhaustion of all administrative and judicial reviews. The only issue to be contested in any such action shall be whether the forfeiture has been paid.

50.03(5g)(c)2. Suspension of licensure for the community-based residential facility for 14 days.

50.03(5g)(c)3. Revocation of licensure, as specified in pars. (d) to (g).

50.03(5g)(d) Under the procedure specified in par. (e), the department may revoke a license for a licensee for any of the following reasons:

50.03(5g)(d)1. The department has imposed a sanction or penalty on the licensee under par. (c) and the licensee continues to violate or resumes violation of a provision of licensure under sub. (4) or (4m), a rule promulgated under this subchapter or an order issued under par. (b) that forms any part of the basis for the penalty.

50.03(5g)(d)2. The licensee or a person under the supervision of the licensee has substantially violated a provision of licensure applicable to a community-based residential facility under sub. (4) or (4m), a rule relating to community-based residential facilities promulgated under this subchapter or an order issued under par. (b).

50.03(5g)(d)3. The licensee or a person under the supervision of the licensee has acted in relation to or has created a condition relating to the operation or maintenance of the community-based residential facility that directly threatens the health, safety or welfare of a resident of the community-based residential facility.

50.03(5g)(d)4. The licensee or a person under the supervision of the licensee has repeatedly violated the same or similar provisions of licensure under sub. (4) or (4m), rules promulgated under this subchapter or orders issued under par. (b).

50.03(5g)(e)1. The department may revoke a license for a licensee for the reason specified in par. (d) 1., 2., 3. or 4. if the department provides the licensee with written notice of revocation, the grounds for the revocation and an explanation of the process for appealing the revocation, at least 30 days before the date of revocation. The department may revoke the license only if the violation remains substantially uncorrected on the date of revocation or license expiration.

50.03(5g)(e)2. The department may revoke a license for a licensee for the reason specified in par. (d) 2. or 3. immediately if the department provides the licensee with written notice of revocation, the grounds for the revocation and an explanation of the process for appealing the revocation.

50.03(5g)(e)3. The department may deny a license for a licensee whose license was revoked under this paragraph.

50.03(5g)(f) If a community-based residential facility desires to contest the revocation of a license or to contest the imposing of a sanction under this subsection, the community-based residential facility shall, within 10 days after receipt of notice under par. (e), notify the department in writing of its request for a hearing under s. 227.44. The department shall hold the hearing within 30 days after receipt of such notice and shall send notice to the community-based residential facility of the hearing as provided under s. 227.44 (2).

50.03(5g)(g)1. Subject to s. 227.51 (3), revocation shall become effective on the date set by the department in the notice of revocation, or upon final action after hearing under ch. 227, or after court action if a stay is granted under sub. (11), whichever is later.

50.03(5g)(g)3. The department may extend the effective date of license revocation in any case in order to permit orderly removal and relocation of residents.

Wisconsin Administrative Code, HFS 83

HFS 88.03(3)(a) *Action by licensing agency.* The licensing agency shall review the application form and program statement and any supporting documents, including criminal records checks, and shall interview the applicant and conduct an on-site visit of the home to determine if the requirements for a license set out in this chapter are met. If the requirements for a license are met and the applicant has paid the applicable fees, a license shall be issued. If requirements for a license are not met, the licensing agency shall send a written notice to the applicant stating the reasons for not approving the application and shall inform the applicant of the opportunity for a hearing under sub. (7). The licensing agency shall issue the license or the notice of denial within 70 days after receiving a complete application and the program statement and any supporting documents and following the on-site visit.

HFS 83.07(10) ACTION BY THE DEPARTMENT TO ENFORCE THIS CHAPTER.

HFS 83.07(10)(a) *Plan of correction.*

HFS 83.07(10)(a)1. When a notice of violation is issued by the department the licensee shall submit a plan of correction to the department no more than 30 days after the date of the notice. The department may require that a plan of correction be submitted within a specified time less than 30 days after the date of notice for violations that the department determines may be harmful to the health, safety, welfare or rights of residents.

HFS 83.07(10)(a)2. The department may require modifications in the proposed plan of correction.

HFS 83.07(10)(b) *Placing limits on clients groups.* The department may, at any time, following notice to the licensee and through modification of a license, limit the types of client groups served by a CBRF or the number of client group members served by the CBRF for any of the following reasons:

HFS 83.07(10)(b)1. The client groups are not compatible.

HFS 83.07(10)(b)2. The administrator and employees have not met the training requirements applicable to each client group.

HFS 83.07(10)(b)3. The licensee is unable to demonstrate that the needs of the client group members as

identified by their assessments under s. HFS 83.32 (1) are being met.

HFS 83.07(10)(c) *Placing conditions on license.* Pursuant to s. 50.03 (4) (e), Stats., the department may place a condition on a license, if the department finds that a condition or occurrence relating to the operation and maintenance of a CBRF directly threatens the health, safety or welfare of a resident.

HFS 83.07(11) LICENSE DENIAL OR REVOCATION. The department may refuse to grant a license if it determines that the applicant is not fit and qualified pursuant to s. 50.03 (4) (a) 1., Stats., and s. HFS 83.11 (1) or fails to meet the requirements for licensure in this chapter and ch. 50, Stats. The department may revoke a license pursuant to s. 50.03 (5g), Stats., if the applicant or licensee or any administrator, employee, or any other person affiliated with or living in the CBRF who has contact with residents:

HFS 83.07(11)(a) Is the subject of a pending criminal charge that substantially relates to the care of adults or minors, the funds or property of adults or minors or activities of the CBRF.

HFS 83.07(11)(b) Has been convicted of a felony, misdemeanor or other offense which substantially relates to the care of adults or minors, the funds or property of adults or minors or activities of the CBRF.

HFS 83.07(11)(c) Has a record of violating applicable laws and regulations of the United States or this or any other state in the operation of a residential or health care facility, or in any other health-related activity.

HFS 83.07(11)(d) Has substantially failed to comply with any provision of this chapter or ch. 50, Stats.

HFS 83.07 - ANNOT.

Note: Examples of actions the department will consider in making a determination that an act substantially relates to the care of adults or minors, the funds or property of adults or minors or activities of the CBRF are: abuse, neglect, sexual assault, indecent exposure, lewd and lascivious behavior, or any crime involving non-consensual sexual conduct; child abuse, sexual exploitation of children, child abduction, child neglect, contributing to the delinquency or neglect of a child, enticing a child, enticing a child for immoral purposes, exposing a minor to pornography or other harmful materials, incest, or any crime involving children as victims or participants; armed robbery, aggravated battery, false imprisonment, kidnapping, homicide, any crimes involving bodily harm or threat of bodily harm, any crime involving use of a dangerous weapon, or any crime evidencing disregard to health and safety; cruelty, neglect, or abandonment of animals and instigating fights between animals; burglary, extortion, forgery, concealing identity, embezzlement, and arson; crimes involving a substantial misrepresentation of any material fact to the public including bribery, fraud, racketeering or allowing an establishment to be used for illegal purposes; offenses involving narcotics, alcohol and controlled substances that result in a felony conviction; operating a motor vehicle while under the influence of an intoxicant or other drug, operating after revocation, and leaving the scene of an accident after injury or death to a person or damage to a vehicle driven or attended by any person.

HFS 83.07(12) SUMMARY SUSPENSION OF A LICENSE. Pursuant to ss. 227.51 (3) and 50.03 (5g), Stats., the department may, by written order, summarily suspend a license when the department finds that public health, safety or welfare imperatively requires emergency action.

HFS 83.07(13) APPEAL.

HFS 83.07(13)(a) Any person whose application for a license is denied or whose license is revoked may request a hearing on that decision under ss. 227.42 and 50.03 (5g) (f), Stats.

HFS 83.07(13)(b) A request for a hearing shall be filed in the department of administration's division of hearing and appeals within 10 days after the date of the notice under sub. (11) or (12).

Adult Family Homes (AFH)

Wisconsin State Statute, Chapter 50

50.033(4) **License revocation.** The license of a licensed adult family home may be revoked because of the substantial and intentional violation of this section or of rules promulgated by the department under s. 50.02 (2) (am) 2. or because of failure to meet the minimum requirements for licensure. The operator of the licensed adult family home shall be given written notice of any revocation and the grounds for the revocation. Any adult family home licensure applicant or operator of a licensed adult family home may, if aggrieved by the failure to issue the license or by revocation, appeal under the procedures specified by the department by rule under s. 50.02 (2) (am) 2.

50.033(5) **Injunction.** The department or a licensing county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 may commence an action in circuit court to enjoin the operation of an adult family home that is not licensed under sub. (1m) or that is licensed and has repeatedly used methods of operation in substantial violation of the rules promulgated under s. 50.02 (2) (am) 2. or that endanger the health, safety or welfare of any adult receiving care and maintenance in an adult family home.

Wisconsin Administrative Code, HFS 88

HFS 88.03(6) ACTION BY LICENSING AGENCY TO ENFORCE THIS CHAPTER.

HFS 88.03(6)(a) *Requirement for plan of correction.*

HFS 88.03(6)(a)1. A licensing agency when it issues a notice of violation may require the licensee to submit a plan of correction for approval of the licensing agency. The licensee shall submit the plan of correction to the licensing agency not more than 30 days after the date of the notice or within a shorter period of time, as specified by the licensing agency, if the licensing agency determines that continuation of the violation may be harmful to the health, safety, welfare or rights of residents.

HFS 88.03(6)(a)2. The licensing agency may require modifications in a proposed plan of correction before approving it or may substitute its own plan of correction.

HFS 88.03(6)(b) *Placing limits on type of individuals.* A licensing agency may, at any time, following notice to the licensee and by modifying a license, limit the types of individuals served by an adult family home or the number of residents served by an adult family home for any of the following reasons:

HFS 88.03(6)(b)1. The types of individuals are not compatible.

HFS 88.03(6)(b)2. The licensee and service providers do not have the appropriate training to serve the residents.

HFS 88.03(6)(b)3. The licensee is unable to demonstrate that the needs of residents as identified in their individual service plans under s. HFS 88.06 (3) are being met.

HFS 88.03(6)(c) *Placing conditions on license.* A licensing agency may place a condition on a license if the licensing agency finds that a condition or occurrence relating to the operation and maintenance of the adult family home directly threatens the health, safety or welfare of a resident.

HFS 88.03(6)(d) *Revocation.* A licensing agency may revoke an adult family home's license if the licensing agency determines that the home has intentionally and substantially violated a requirement of this chapter or fails to meet the minimum requirements for licensure. The licensing agency shall give the licensee written notice of revocation and the grounds for the revocation and shall inform the licensee of the right to appeal that decision under sub. (7).

HFS 88.03(6)(e) *Suspension*. A licensing agency may summarily suspend a license when it finds that there is imminent danger to the health, safety or welfare of the residents in care. A finding of imminent danger may be based on but is not limited to any of the following:

HFS 88.03(6)(e)1. Failure of the licensee to provide environmental protections such as heat, water, electricity or telephone service.

HFS 88.03(6)(e)2. The licensee, a service provider or any other person affiliated with or living in the adult family home or who has contact with residents has been convicted of or has a pending charge for a crime against life or for causing bodily harm.

HFS 88.03(6)(e)3. The licensee, a service provider or any other person living in the adult family home or who has contact with residents has been convicted of a felony, misdemeanor or other offense or has a pending criminal charge which is substantially related to the care of the residents or activities of the home.

HFS 88.03(6)(e)4. The licensee, a service provider or any other person living in the adult family home or who has contact with residents is the subject of a current investigation of alleged abuse or neglect of a resident.

HFS 88.03(6)(f) *Injunction*. Pursuant to s. 50.033 (5), Stats., a licensing agency may commence an action in circuit court to enjoin the operation of an adult family home that is not licensed under this chapter or that is licensed and has repeatedly used methods of operation in substantial violation of this chapter, or that endangers the health, safety or welfare of any adult receiving care and maintenance in the home.

HFS 88.03(6)(g) *Sanctions*

HFS 88.03(6)(g)1. A licensing agency shall provide an adult family home with written notice of any sanction to be imposed on the adult family home. The notice shall include:

HFS 88.03(6)(g)1.a. The grounds for a sanction based on an investigation made by the licensing agency.

HFS 88.03(6)(g)1.b. An explanation of the types of sanctions that the licensing agency is imposing under this section.

HFS 88.03(6)(g)1.c. An explanation of the process under sub. (7) for appealing an appealable sanction.

HFS 88.03(6)(g)2. The licensing agency may order any of the following actions:

HFS 88.03(6)(g)2.a. That a person stop conducting, maintaining or operating an adult family home if the adult family home is without a valid license.

HFS 88.03(6)(g)2.b. That a licensee stop violating any provision of its license or of this chapter.

HFS 88.03(6)(g)2.c. That a licensee submit a plan of correction under par. (a) for violation of any provision of its license or of this chapter.

HFS 88.03(6)(g)2.d. That a licensee implement and comply with a plan of correction previously submitted by the licensee and approved by the licensing agency.

HFS 88.03(6)(g)2.e. That a licensee implement and comply with a plan of correction developed by the licensing agency.

HFS 88.03(6)(g)2.f. That a licensee accept no additional residents until all violations are corrected.

HFS 88.03(6)(g)2.g. That a licensee provide or secure training in one or more specific areas for the licensee

or service provider.

HFS 88.03(7) APPEAL.

HFS 88.03(7)(a) Any person whose application for a license is denied under sub. (3) or revoked under sub. (6) (d) or suspended under sub. (6) (e) may request a hearing on that decision under s. 227.42, Stats.

HFS 88.03(7)(b) A request for a hearing shall be in writing, shall be filed with the department of administration's division of hearings and appeals and shall be sent to that office so that it is received there within 10 days after the date of the notice under sub. (3), (4) or (6) (d).

Residential Care Apartment Complexes (RCAC)

Wisconsin State Statute, Chapter 50

50.034(2)(e) Establishing intermediate sanctions and penalties for and standards and procedures for imposing intermediate sanctions or penalties on certified residential care apartment complexes and for appeals of intermediate sanctions or penalties.

50.034(2)(f) Establishing standards and procedures for appeals of revocations of certification or refusal to issue or renew certification.

50.034(7) **Revocation of certification.** Certification for a residential care apartment complex may be revoked because of the substantial and intentional violation of this section or of rules promulgated by the department under sub. (2) or because of failure to meet the minimum requirements for certification. The operator of the certified residential care apartment complex shall be given written notice of any revocation of certification and the grounds for the revocation. Any residential care apartment complex certification applicant or operator of a certified residential care apartment complex may, if aggrieved by the failure to issue or renew the certification or by revocation of certification, appeal under the procedures specified by the department by rule under sub. (2).

50.034(8) **Forfeitures.**

50.034(8)(a) Whoever violates sub. (5m) or (5n) or rules promulgated under sub. (5m) or (5n) may be required to forfeit not more than \$500 for each violation.

50.034(8)(b) The department may directly assess forfeitures provided for under par. (a). If the department determines that a forfeiture should be assessed for a particular violation, it shall send a notice of assessment to the residential care apartment complex. The notice shall specify the amount of the forfeiture assessed, the violation and the statute or rule alleged to have been violated, and shall inform the residential care apartment complex of the right to a hearing under par. (c).

50.034(8)(c) A residential care apartment complex may contest an assessment of a forfeiture by sending, within 10 days after receipt of notice under par. (b), a written request for a hearing under s. 227.44 to the division of hearings and appeals created under s. 15.103 (1). The administrator of the division may designate a hearing examiner to preside over the case and recommend a decision to the administrator under s. 227.46. The decision of the administrator of the division shall be the final administrative decision. The division shall commence the hearing within 30 days after receipt of the request for a hearing and shall issue a final decision within 15 days after the close of the hearing. Proceedings before the division are governed by ch. 227. In any petition for judicial review of a decision by the division, the party, other than the petitioner, who was in the proceeding before the division shall be the named respondent.

50.034(8)(d) All forfeitures shall be paid to the department within 10 days after receipt of notice of assessment or, if the forfeiture is contested under par. (c), within 10 days after receipt of the final decision after exhaustion of administrative review, unless the final decision is appealed and the order is stayed by court order. The department shall remit all forfeitures paid to the state treasurer for deposit in the school fund.

50.034(8)(e) The attorney general may bring an action in the name of the state to collect any forfeiture imposed under this section if the forfeiture has not been paid following the exhaustion of all administrative and judicial reviews. The only issue to be contested in any such action shall be whether the forfeiture has been paid.

Wisconsin Administrative Code, HFS 89

HFS 89.44(3) The department may revoke the registration of a residential care apartment complex which fails to comply with one or more of the requirements of this chapter. In the event of revocation, the department shall provide the residential care apartment complex with prior written notice of the proposed action, the reasons for the action and notice of the opportunity for appeal under s. HFS 89.45.

HFS 89.45 Appeals.

HFS 89.45(1) If the registration of a facility is revoked under s. HFS 89.44 (3) or, under s. HFS 89.62 (3), the application for registration is denied, the facility may request a hearing on that decision under s. 227.42, Stats.

HFS 89.45(2) A request for a hearing shall be in writing and shall be filed with the department of administration's division of hearings and appeals within 10 days after the date of notice of enforcement action under s. HFS 89.44 (3) or 89.62 (3). An appeal is filed on the date that it is received by the division of hearings and appeals.

HFS 89.56 Intermediate sanctions and penalties.

HFS 89.56(1) NOTICE OF VIOLATION. The department shall issue a written notice of violation when it finds that a certified residential care apartment complex is in violation of this chapter. The notice shall explain the grounds for the notice of violation, the sanctions or penalties to be imposed, if any, and the process for appeal.

HFS 89.56(2) PLAN OF CORRECTION. A residential care apartment complex shall submit a written plan of correction to the department within 30 days after the date of the notice of violation. The department may specify a time period of less than 30 days for submittal of the plan of correction when it determines that the violation may be harmful to the health, safety, welfare or rights of tenants.

HFS 89.56(3) SANCTIONS. The department may order one or more of the following sanctions:

HFS 89.56(3)(a) That the facility stop violating the applicable provisions of this chapter.

HFS 89.56(3)(b) That the facility submit, implement and comply with a plan of correction for violations, subject to department review and approval. The department may require the plan of correction to be submitted and implemented within a time period specified by the department and may require modifications to the facility's proposed plan of correction.

HFS 89.56(3)(c) That the facility comply with a plan of correction developed and imposed by the department.

HFS 89.56(3)(d) That the facility stop admissions until the violations are corrected.

HFS 89.56(3)(e) That the facility provide or secure training for its service manager or other staff in areas

specified by the department.

HFS 89.56(3)(f) That medical assistance or medical assistance waiver reimbursement for new admissions to the facility be denied until all violations are corrected.

HFS 89.56(3)(g) That payment be disallowed for services provided during the period of noncompliance.

HFS 89.56(3)(h) That a residential care apartment complex cease operations if it is without a valid certification.

HFS 89.56(3)(i) That the facility's certification be summarily suspended following procedures in ch. 227, Stats., when the department finds that public health, safety or welfare requires emergency action.

HFS 89.56(4) PENALTIES. The department may directly assess a forfeiture of from \$10 to \$1,000 per violation per day for violations which it determines to be harmful to the health, safety, welfare or rights of tenants.

HFS 89.57 Revocation.

HFS 89.57(1) REVOCATION. The department may revoke a residential care apartment complex's certification whenever the department finds that the residential care apartment complex has failed to maintain compliance with one or more of the requirements set forth in this chapter. In the event of revocation, the department shall provide the residential care apartment complex with prior written notice of the proposed action, the reasons for the action and notice of opportunity for appeal under s. HFS 89.59.

HFS 89.59 Appeals.

HFS 89.59(1) Any facility for which an application for certification is denied or not renewed, for which certification is revoked or summarily suspended or which is subject to an order for sanctions or penalties may request a hearing on that decision under s. 227.42, Stats. The hearing on a summary suspension order shall be limited to whether the reason for the order continues.

HFS 89.59(2) A request for a hearing shall be in writing and shall be filed with the department of administration's division of hearings and appeals within 10 days after the date of the notice under s. HFS 89.53 (2) (c) or (4) (b), 89.56 (1) or 89.57 (1) or within 10 days after the date of the order under s. HFS 89.56 (3). An appeal is filed on the date that it is received by the division of hearings and appeals.

Adult Day Care (ADC)

Certification Standards for Adult Day Care

VI. LAWS AND CODES

VI.(1) Non-compliance with any federal, state, and local laws/codes that govern the operation of the facility, including, but not limited to, space, heating, plumbing, ventilation and lighting systems, fire safety, sanitation and wage and hour requirements may result in revocation of certification.

VI. (3) Non-compliance with standards may result in revocation of certification and ineligibility for Medicaid Waiver funds.

CITATIONS SUBJECT TO ENFORCEMENT
ALS-03-006

CORRESPONDENCE/MEMORANDUM

Division of Supportive Living
Bureau of Quality Assurance

D R A F T

DATE: February 21, 2003

TO: AL Regional Field Operations Supervisors
AL Licensing Specialists
AL Nurse Consultants
AL Support Staff

ALS-03-006

FROM: Kevin Coughlin, Section Chief
Assisted Living Section

SUBJECT: Citations Subject to Enforcement Review

This memo provides general guidance for determining assisted living citations that should be submitted for enforcement review.

Licensing specialists, nurse consultants or Regional Field Operations Supervisors should refer any violation that:

- *creates a condition or occurrence that presents a substantial probability that death or serious mental or physical harm to a resident will result (or did occur).*
- *creates a condition or occurrence that presents a direct threat to the health, safety or welfare of a resident.*

In addition, violations of the following requirements should be referred to the enforcement specialist for review. (The list provides general guidance and does not represent an exhaustive reference.)

- Minimum staff training requirements

- Life Safety

For example, failure to meet requirements for smoke and heat detection systems, resident evacuation assessments, emergency plans and drills, safe building construction, inspection or service requirements, hot water temperatures.

- Abuse, neglect, misappropriation of property

- Resident rights

For example, applying restraints without approval, restricting phone calls/visitors, unfair treatment, competent residents not permitted to make their own decisions.

- Criminal records checks (repeat violations or serious concerns)

- Prompt and adequate treatment, physician notification, health services

Failure to provide services that contributes to a negative resident outcome (harm), or potential for negative outcome. For example, pressure sores without proper treatment, falls without intervention, pain that is not

managed, significant, unplanned weight loss, illness and infections that are not assessed or for which medical attention is not sought, preventable injuries.

- Staffing Patterns

Failure to meet staffing requirements. Residents' needs are not met or safety is compromised due to inadequate staffing.

- Supervision

For example, residents elope or wander from the facility, residents are inappropriately left unsupervised, managers cannot be reached and employees do not know how to respond to an emergency.

- Medications

Residents do not receive medications as ordered.

- Activities

For example, insufficient activity programming, inappropriate activities.

- Infection control or sanitation concerns, foodborne illness

- Financial stability

Facility has not paid utility bills, staff are not paid, insufficient groceries, insufficient supplies to meet resident needs.

- Repeat Violations

If you are unsure about whether or not a citation should be reviewed for enforcement action, contact the enforcement specialist.

Refer to ALS memorandum 03-005 "Referring Citations for Enforcement Review."

KC/LT

cc: Susan Schroeder
Otis Woods
Laurie Arkens
Atty. Jesse Garza, OLC

STATEMENTS OF DEFICIENCY

D R A F T

DATE: February 21, 2003

TO: AL Regional Field Operations Supervisors
AL Licensing Specialists
AL Nurse Consultants
AL Regional Support Staff

ALS-03-008

FROM: Kevin Coughlin, Chief
Assisted Living Section

SUBJECT: Statements of Deficiency – Developing the Enforcement Recommendation

The Statement of Deficiency (SOD) represents a report of facts that forms the basis for enforcement determination. The *Principles of Documentation*, published by the Center for Medicare and Medicaid Services (CMS), provides guidance to licensing specialists/nurse consultants and represents the Assisted Living Section standard for documenting statements of deficiency.

The statement of deficiency is a legal document that supports enforcement action. It must contain accurate and sufficient documentation to facilitate the analysis necessary for enforcement decisions.

Use the following guidelines to write statements of deficiency:

- **Follow the *Principles of Documentation***
- Document if the violation is a repeat citation (consecutive surveys) or an uncorrected deficiency (follow-up visit)
- Verify that the correct regulation has been selected for the deficient practice identified
- Describe the violation in clear, understandable terms
- Include the specific dates of violation in the report (forfeitures are assessed per date of violation)
- Provide sufficient detail and corroborate findings using more than one source (e.g., observation, interview, record review)
- Describe the specific results and consequences of the deficient practice (document adverse outcomes or potential adverse outcomes)
- Record facts, not opinions
- Answer:
 - Who was involved?
 - What occurred (or did not occur)? How did it occur?
 - What did staff do/not do that led to noncompliance?
 - When? (date/time)
 - Where?
 - How was the violation(s) verified? (evidence)
- Include resident and staff identifiers (include staff titles if relevant to the deficiency, e.g., "Staff A, Licensee")

Investigate and report how residents are affected by violations whenever possible. For example, when citing insufficient staff, identify how staff shortages affected residents (residents were left in bed, activities were not provided, residents wandered, there was insufficient help to respond to emergencies, etc.).

Statements of deficiency are permanent, legal documents. Citations that result in enforcement action are subject to appeal and legal scrutiny. Because the statement of deficiency forms the basis for enforcement determinations, the report must be complete, accurate, and defensible.

Questions about documenting statements of deficiency can be directed to Regional Field Operations Supervisors or the enforcement specialist.

cc: Susan Schroeder
Otis Woods
Laurie Arkens
Atty. Jesse Garza, OLC

**REFERRING CITATIONS FOR
ENFORCEMENT REVIEW
ALS-03-005**

DRAFT

DATE: February 20, 2003

TO: AL Regional Field Operations Supervisors
AL Licensing Specialists
AL Nurse Consultants
AL Regional Support Staff

FROM: Kevin Coughlin, Chief
Assisted Living Section
Bureau of Quality Assurance

SUBJECT: Referring Citations For Enforcement Review

ALS-03-005

Description: Procedure for referring Assisted Living Section (AL) citations for forfeiture assessment or other enforcement action. This procedure applies to enforcement determinations for Community Based Residential Facilities (CBRF), Adult Family Homes (AFH), and certified Residential Care Apartment Complexes (RCAC).

When a deficient practice is identified in assisted living settings, statements of deficiency (SODs) are issued by assisted living licensing specialists and nurse consultants in the regional offices. The central office enforcement specialist coordinates enforcement activities for the Assisted Living Section (AL). "Target" citations (e.g., training violations) and serious deficiencies are referred to the forfeiture specialist for review.

1. After the Regional Field Operations Supervisor (RFOS) has approved a statement of deficiency, the supervisor, licensing specialist and/or nurse consultant, determine if specific citations should be referred to the enforcement specialist for review. (Refer to "Citations Subject to Enforcement Review." ALS-03-006)
2. Referrals for enforcement action are sent by e-mail. Urgent referrals should be sent "high priority" with a red envelope. An RFOS, licensing specialist, or nurse consultant, may submit the citation for enforcement review. The e-mail referral should contain the following:

Subject Line: **Facility Name/Provider Type/Survey Event ID**
example: **MyHome/CBRF/JTB311**

Message: **Survey Date**
Regulation(s)/Code Title
Repeat Citation (if applicable)
Other pertinent information or recommendations (including referrals that have been made)

example 1: 2/1/03

83.14(1)(a) Client Related Training

Two staff did not receive training within six months. All staff had received training at time of survey.

example 2: 2/10/03

83.15(1)(c)1 Staffing Patterns

2nd cite

Resident 1 was left alone at the facility on 1/10/03 and 1/11/03. Facility was cited in past, same resident involved. Referred to county caseworker. Recommend referral to Dept. of Justice.

3. The enforcement specialist reviews the citation and makes a determination regarding enforcement action, such as forfeiture assessment, revocation, or issuing an order.

4. The enforcement specialist replies to the regional office via e-mail with the following information:

- Regulation
- Enforcement Action (forfeiture assessment detail, if applicable)
- Brief summary of violation (basis for enforcement decision)
- Comments
- Other action required

(example: 83.21(4)(m) Abuse
 Forfeiture: \$500 (\$100 per shift for 5 shifts, 1/11 – 1/15/03)

(A resident was struck by a caregiver on 1/10/03. The facility permitted the caregiver to work 5 additional shifts before investigating or reporting the abuse.)

Refer to Caregiver Investigation Section.

The RFOS is always included as an e-mail recipient of the enforcement notice.

(If there are questions about the citation, the investigation, the facility, or if other information is needed to complete the enforcement analysis, the enforcement specialist contacts the RFOS or licensing specialist/nurse consultant for additional information.)

5. No license revocations are issued without prior review by the Office of Legal Counsel (OLC). In addition, the OLC attorney assigned to the Assisted Living Section, is consulted regarding other complex or serious enforcement actions and licensing requirements. The enforcement specialist and/or OLC attorney will review all notices of revocation prior to issuance.
6. After the enforcement determination has been made, regional office staff draft an enforcement notice to issue to the licensee with the Statement of Deficiency.
7. A copy of the enforcement notice is sent from the regional office to the central office research technician with a copy of the first page of the Statement of Deficiency (SOD). (The SOD number should be included on the first page of the SOD.)

KC/LT/caa

cc: Susan Schroeder
 Otis Woods
 Laurie Arkens
 Atty. Jesse Garza, OLC

**ENFORCEMENT ANALYSIS
AND DETERMINATION CRITERIA**
ALS-03-007

CORRESPONDENCE/MEMORANDUM

Division of Supportive Living
Bureau of Quality Assurance

D R A F T

DATE: February 21, 2003

TO: AL Regional Field Operations Supervisors
AL Licensing Specialists
AL Nurse Consultants
AL Regional Support Staff

ALS-03-007

FROM: Kevin Coughlin, Chief
Assisted Living Section

SUBJECT: Enforcement Analysis and Determination Criteria

The Assisted Living Section enforcement specialist evaluates citations to determine which sanctions to impose, if any, and the amount of any forfeiture to be assessed. The enforcement specialist consults with the Office of Legal Counsel and administrative staff prior to revoking a license and as indicated depending on the scope and complexity of violations under review.

The enforcement analysis is based on the documentation and findings presented in the statement of deficiency.

The following factors are considered in determining whether enforcement action will occur, the sanction to be imposed, and the amount of any forfeiture.

1. The gravity of the violation, including the probability that death or serious physical or psychological harm to a resident will result or has resulted; the severity of the actual or potential harm; and the extent to which the provisions of the applicable statutes or rules were violated.
2. "Good faith" exercised by the licensee. Indications of good faith include, but are not limited to, awareness of the applicable statutes and regulation and reasonable diligence in complying with such requirements, prior accomplishments manifesting the licensee's desire to comply with the requirements, efforts to correct and any other mitigating factors in favor of the licensee.
3. Any previous violations committed by the licensee. Uncorrected and repeat violations.
4. The financial benefit to the facility of committing or continuing the violation.
5. Sanctions imposed for comparable violations in other facilities.

The enforcement analysis will take into account the extent and seriousness of the deficient practice. For example, the number of residents affected by the deficient practice and the degree of negative outcome or potential negative outcome, the period of time during which the violation occurred (hours, days, weeks), or the number of locations in which the deficient practice was identified.

Incidents "self-reported" by the licensee that result in violations represent "good faith" and are considered in the enforcement review.

The findings for specific violations vary depending on circumstances, residents, staff, and other factors. As a result, enforcement determinations for violations of the same code may vary. The enforcement determination and forfeiture amounts, if any, are based on the facts reported in the statement of deficiency.

February 21, 2003

Page 2

KC/LT

cc: Susan Schroeder
Otis Woods
Laurie Arkens
Atty. Jesse Garza, OLC

APPEAL PROCESS

ENFORCEMENT RECORDS
ALS-03-

**ENFORCEMENT NOTIFICATION
AND REFERRAL PROCEDURE**

TRAINING VIOLATIONS
ALS-03-002

DATE: February 21, 2003

TO: AL Regional Field Operations Supervisors
AL Licensing Specialists
AL Nurse Consultants
AL Support Staff

ALS-03-002

DRAFT

FROM: Kevin Coughlin, Section Chief
Assisted Living Section

SUBJECT: Forfeiture Assessments for Violations of HFS Chapter 83 Staff Training Requirements

Staff training is essential to ensuring the health, safety, and welfare of residents in Community Based Residential Facilities (CBRFs). Statewide non-compliance with minimum training requirements has been a persistent problem in CBRFs and training violations are among the top citations issued over the past three years (2000-2002).

Forfeitures for training violations increased effective January 1, 2003 and a standard formula is applied. The standard formula provides general guidance; however, **forfeitures may vary depending on the scope of non-compliance and other factors documented in the statement of deficiency.**

Section HFS Chpt. 83.14 specifies the minimum training requirements for staff employed in CBRFs. When licensing specialists/nurse consultants determine that training requirements have not been met, a Statement of Deficiency (SOD) is issued. The citations are referred to the enforcement specialist for enforcement review.

Procedure

1. The licensing specialist/nurse consultant documents the training violation in ASPEN. For each untrained CBRF employee, the violation should include:
 - the employee's date of hire; and
 - evidence that the required training did not occur. If personnel records do not include training certificates, interview staff to verify that training requirements were not met.

(If training requirements for medication management or dietary services have not been met, include documentation to show that employees had responsibilities in these areas.)

2. The licensing specialist/nurse consultant or Regional Field Operations Supervisor refers the violation(s) for enforcement review to the enforcement specialist with the following information:
 - tags referred for forfeiture (e.g., 83.14(2));
 - Aspen survey report Event ID.
3. The enforcement specialist reviews the citation(s).
 - each training violation is assessed a forfeiture of \$200 per untrained staff member identified;
 - second and subsequent citations are assessed at \$400 per untrained staff member;
 - the maximum forfeiture per tag will be \$1000.

Exception: Forfeiture assessments may vary depending on findings, resident outcomes, or other considerations.

Example:

83.14(2) Dietary training

Two caregivers had not completed dietary training within 6 months after starting employment.

Forfeiture: \$400 (two employees @ \$200 each)

83.14(2) Repeat citation

Caregiver A was hired on 6/1/02. During survey on 1/1/03, licensing specialist 0781 determined that caregiver A had not completed required dietary training within six months after starting employment (12/1/02).

Forfeiture: \$400 (one employee, repeat citation)

Example:

83.14(1)(d) Repeat citation

Caregivers A, B, and C had not completed minimum training for fire safety, first aid, and procedures to alleviate choking.

Forfeiture: \$1000 (\$400 per employee; maximum \$1000 per tag.)

Example:

83.14(1)(a) Client related training

Caregiver A had not completed the following training requirements within 6 months of employment: client group specific, resident rights, and recognizing and responding to challenging behaviors. The facility provides services to residents with developmental disabilities, including two residents with complex behavioral symptoms.

Forfeiture: \$200 (one employee)

KC/LT/caa

cc: Susan Schroeder
Otis Woods
Atty. Jesse Garza, OLC
Laurie Arkens

SMOKE AND HEAT DETECTION SYSTEM
RCRS-02-

DATE: January 2, 2002

TO: Regional Field Operations Directors
Regional Field Operations Supervisor
Assistants to the Regional Field Operations Director
Licensing/Certification Specialists
Engineers

RCRS-02-01

FROM: La Vern Woodford, Chief
Resident Care Review Section
Bureau of Quality Assurance

SUBJECT: Interconnected Smoke and Heat Detection System Survey Procedure

Effective January 1, 2002, all Community Based Residential Facilities (CBRFs) shall have a fully interconnected smoke and heat detection system per NFPA, s. 50.035, Wis. Stats., and s. HFS 83.43, Wisconsin Administrative Code. Over the past several years, the department has received plans and fees for review of upgraded systems. Plans have been logged in and reviewed. In some cases, engineers have gone out to facilities and have done final inspections of the systems.

The engineers have developed a flow sheet that indicates the facility name, location, plan approval date, whether they have inspected the facility and whether the file is closed. If the file is closed, the plan review, letters, etc., will be transferred to the CBRF file.

Responsibility of the Licensing Specialists:

Offsite

- Review CBRF file and engineer flow sheet to determine what type of action to take at the facility during the survey.

Onsite:

1. If the flow sheet indicates the engineer has inspected and the file is closed.

- Review inspection reports, if applicable, to determine if facility is in compliance with annual inspection, cleaning and testing (s. HFS 83.43(3)(b)1.); if the facility is in compliance for sensitivity testing (s. HFS 83.43(3)(b)2.); and if the facility is in compliance with quarterly testing (s. HFS 83.43(3)(a)).
- Have facility staff in charge test the smoke detection system to verify that they know how the system works (s. HFS 83.42(3)(d)). Facility staff should inform the residents that it is only a test and they do not have to evacuate. Do not force the staff to try if they do not know how to test the equipment. Some systems are connected to the fire department or other monitoring facility and they would need to be informed first.

2. The flow sheet indicates that there has been plan review and approval, but the engineer has not inspected or closed the file.

- Review inspection reports to ascertain whether the plan approved system has been installed. Inspection/Testing form or NFPA 72 Inspection Certificate (see attached) will show it is installed and there will be a signature and date indicating the system complies with NFPA 72.
 - Review inspection reports, if applicable, to determine if the facility is in compliance with annual inspection, cleaning and testing (s. HFS 83.43(3)(b)1.); if the facility is in compliance for sensitivity testing (s. HFS 83.43(3)(b)2.); and if the facility is in compliance with quarterly testing (s. HFS 83.43(3)(a)).
 - Have facility staff in charge test the smoke detection system to verify that they know how the system works (s. HFS 83.42(3)(d)). Staff should inform the residents that it is only a test and they do not have to evacuate. Do not force the staff to try if they do not know how to test the equipment. Some systems are connected to the fire department or other monitoring facility and they would need to be informed first.
 - Give a copy of the Inspection/Testing form or NFPA 72 Inspection Certificate (see attached) to the engineer. The engineer will do the final inspection for compliance with Chapter HFS 83 and in accordance with plan review. Any problems noted by the engineer will be given to the licensing specialist and they will write up the deficiency and send to facility.
3. **Facilities that were built after January 1, 1997, should be in compliance with s. HFS 83.43 and should not be on the flow sheet, unless it is new or under construction, and would indicate "building" on the flow sheet.**
- Review inspection reports, if applicable, to determine if the facility is in compliance with annual inspection, cleaning and testing (s. HFS 83.43(3)(b)1.); if the facility is in compliance for sensitivity testing (s. HFS 83.43(3)(b)2.); and if the facility is in compliance with quarterly testing (s. HFS 83.43(3)(a)).
 - Have facility staff in charge test the smoke detection system to verify that they know how the system works (s. HFS 83.42(3)(d)). Facility staff should inform the residents that it is only a test and they do not have to evacuate. Do not force the staff to try if they do not know how to test the equipment. Some systems are connected to the fire department or other monitoring facility and they would need to be informed first.
4. **Facility was built prior to January 1, 1997, and is not listed on the flow sheet. The facility may have sent in their plans for review and installation, but for some reason we do not show the record; or the facility may have installed an interconnected system without plan review; or the facility was built near January 1, 1997, and had a system installed per s. HFS 83.43; or the facility has not updated their smoke/heat detection system per s.HFS 83.43.**
- Review inspection reports to ascertain whether there are any plan review letters, and if there is a system that has been installed. Inspection/Testing form or NFPA 72 Inspection Certificate (see attached) will show it is installed and there will be a signature, date, and indication that the system complies with NFPA 72.
 - Review inspection reports, if applicable, to determine if the facility is in compliance with annual inspection, cleaning and testing (s. HFS 83.43(3)(b)1.); if the facility is in compliance for sensitivity testing (s. HFS 83.43(3)(b)2.); and if the facility is in compliance with quarterly testing (s. HFS

- 83.43(3)(a)). Look at the inspection reports carefully to see if there are any comments about resident rooms with battery operated detectors, comments indicating problems, etc.
- Have facility staff in charge test the smoke detection system to verify that they know how the system works (s. HFS 83.42(3)(d)). Facility staff should inform the residents that it is only a test and they do not have to evacuate. Do not force the staff to try if they do not know how to test the equipment. Some systems are connected to the fire department or other monitoring facility and they would need to be informed first. Pay special attention to those new areas that were required in January 1, 1997, i.e., bedrooms, rooms with lintels, heat detectors, etc.
- If the licensing specialist feels there is the probability that the system is not installed per Chapter HFS 83 or not updated at all, alert the RFOS or RFOD when onsite by telephone. The RFOD/RFOS will advise the licensing specialist on how to proceed and will inform the licensee.
- Give a copy of the Inspection/Testing form or NFPA 72 Inspection Certificate (see attached) and plan review letters, and any other documents related to inspection or installation of the system, to the engineer. The engineer will do the final inspection for compliance with Chapter HFS 83 and in accordance with plan review. Any problems noted by the engineer will be given to the licensing specialist and the licensing specialist will write up the deficiency and send to facility.

Decision Making/Enforcement:

- Issue deficiencies identified in any area related to the fire protection system.
- If the facility is not in compliance with the requirements concerning an interconnected smoke detection system as of January 1, 2002, issue a citation under s. HFS 83.43(4)(b)3. In addition, draft an enforcement letter indicating that we are assessing a per-day forfeiture from January 1, 2002, until the facility is in compliance with the smoke/heat detection system requirements. Forfeitures will range from \$10 per day (facilities that are making good faith efforts to get into compliance) to \$50 per day (facilities that have not done anything to get into compliance). Send the draft to Bob Huncosky for review and approval.

LW/KC/caa

cc: Sue Schroeder
Deb Bursinger
Jane Walters
Juan Flores
Jon Cechvala
Lynn Wallace
Jan Eakins
Lora Quinn
David Soens

Attachment



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Applicable Codes Relating to Fire Protection Systems to Meet the January 1, 2002 Deadline

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Date: January 18, 2002 **DSL-BQA Memo 02-001**

To: Community Based Residential Facilities **CBRF 01**

From: La Vern Woodford, Chief, Resident Care Review Section

Via: Susan Schroeder, Director, Bureau of Quality Assurance

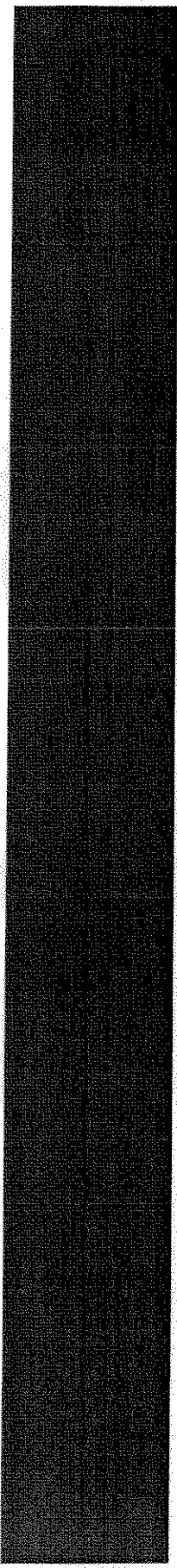
Introduction

This is the fifth in a series of BQA Memos that have been sent since 1996 regarding fire protection systems. (Previous memos: DSL-BQA Memo 00-036; DSL-BQA Memo 99-032; DSL-BQA Memo 97-033 (PDF); DSL-BQA Memo 96-044) By January 1, 2002, all Community Based Residential Facilities (CBRFs) must have an approved, fully interconnected, or radio-transmitting, fire protection system in all required locations.

This memorandum outlines fire protection system requirements for CBRFs that must be in place by January 1, 2002. Because these requirements are based on [Wisconsin Statutes](#), Section 50.035, and on Wisconsin Administrative Code, [Section HFS 83.43](#), no waivers or variances will be provided. CBRFs must be in compliance with the smoke detection, heat detection, and plan review submission described below by January 1, 2002. (Please note that the Chapter HFS 83 code references pertaining to these requirements have been in effect since November 1996.)

Smoke Detectors

1. Section HFS 83.43(4)(b)1. and 2. All CBRFs shall have at least one smoke detector in each of the following locations:
 - a. At the head of every open stairway.

- 
- b. On the hallway side of every enclosed stairway on each floor level.
 - c. In every corridor, spaced not more than 30 feet apart and not further than 15 feet from any wall or in accordance with the manufacturer's separation specifications.
 - d. In each common use room, including a living room, dining room, family room, lounge and recreation room, but not including a kitchen, bathroom or laundry room.
 - e. In or near the living room of an apartment.
 - f. In all bedrooms.
 - g. In each room of the staff living quarters, including the staff office, but not including the kitchen or bathroom.
 - h. In the basement or in each room in the basement, except a furnace room or laundry room.
 - i. In adjoining rooms where the shared openings have a minimum lintel depth of eight inches from the ceiling.
 - j. In each compartment of any room if the openings between compartments have a minimum lintel depth of at least eight inches from the ceiling.

2. Effective January 1, 1997, facilities were allowed a five-year extension to comply with the fire alarm system requirements.

3. All CBRFs of nine or more beds are required to have an interconnected (hard-wired) detection system. CBRFs of eight or fewer beds are required to have an interconnected or radio-transmitting detection system per Wisconsin Statute, Section 50.035(2)(a)2.

Note: There is no statutory authority for facilities having nine or more beds to install a radio-transmitting smoke detection system that is designed for larger facilities.

Heat Detectors

1) Section HFS 83.43(5)(a). All CBRFs shall have at least one heat detector integrated with the smoke detection system at all of the following locations, or in accordance with the heat detector manufacturer's separation specifications:

1. The kitchen, when it is a separate enclosed room, or when it has a shared opening with a minimum lintel depth of at least eight inches from the ceiling separating it from any adjoining room.
2. In any attached garage.
3. In the attic or in each enclosed compartment of the attic.

4. In an enclosed furnace room.
5. In an enclosed laundry room.

2) Section HFS 83.43(5)(b). CBRFs licensed before January 1, 1997, shall meet the requirements under par. (a) within five years after January, 1997, or when any smoke detector of the smoke detector system in the facility on January 1, 1997 needs replacement and new smoke detectors compatible with the smoke detection system currently in the CBRF are not available and a new smoke detection system needs to be installed, whichever comes first.

Interdepartmental Code

Please be advised that the Department of Health and Family Services, Wisconsin Administrative Code, Section HFS 83.42 and the Department of Commerce, Commercial Building Code COMM 51.24 [updated to COMM 14], both have requirements concerning fire alarm system design, construction, inspection, testing, and maintenance referenced in the National Fire Protection Association (NFPA), Standard 72.

Plan Review

Section HFS 83.56(2). Plan Review. All construction plans for new CBRFs of any size and any additions to existing buildings shall be reviewed and approved by the Department before construction.

The Bureau considers the installation of new parts of the fire protection system to be an addition to the facility.

Any changes to the fire protection system require plan submittal and approval. For plan review assistance, please call (608) 267-1442 and reference forms DSL-2333 for CBRFs attached to health care facilities or DSL-2496 for freestanding CBRFs, or department web site at: http://www.dhfs.state.wi.us/rl_DSL/PlanReview/index.htm

Follow Sections HFS 83.56(2) and (3) for plan review submission and fee requirements.

Compliance with This Requirement

The department expects all CBRFs to have an approved, fully interconnected, or radio-transmitting, fire protection system in all required locations by January 1, 2002. Any facility found not to be in compliance will be cited and issued a statement of deficiency. In accordance with Wis. Stat., sec. 50.03(5g)(c)1, a *daily* forfeiture will be assessed from January 1, 2002, until the facility is in compliance. Forfeitures will range from \$10 *per day* (facilities that are making good faith efforts to get into compliance) to \$50 *per day* (facilities that have not done anything to get into compliance).

not done anything to get into compliance).

If you have questions, please contact the appropriate Regional Field Operations Director listed below [via Regional Offices, ask for Assisted Living Supervisor]

Last Revised: *February 13, 2003*

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HOT WATER TEMPERATURES



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Date: June 3, 1998 **DSL-BQA 98-020**

To: Community Based Residential Facilities **CBRF-06 Updates DSL-BQA-97-047**

From: Judy Fryback, Director, Bureau of Quality Assurance

In November 1997, we mailed DSL-BQA-97-047 advising all community-based residential facilities of the requirements for hot-water temperatures found in section HFS 83.41(5)(d)2, Wis. Administrative Code. This code states,

"The temperature of water at fixtures in showers and tubs used by residents shall be automatically regulated by valves and may not exceed 110 degrees Fahrenheit, except for Community Based Residential Facilities (CBRFs) exclusively serving residents recovering from alcohol or drug dependency or clients of a governmental corrections agency."

In addition, we noted that similar temperatures should be found at sinks used by residents, pursuant to the requirements in sec. HFS 83.21(4)(w), Wis. Admin. Code. This code requires the CBRF to provide a

"safe environment...The CBRF shall safe-guard residents who cannot fully guard themselves from an environmental hazard to which it is likely that they would be exposed, including both conditions which would be hazardous to anyone, and conditions which are hazardous to the resident because of the resident's condition or handicap."

From March through May 1998, the Bureau of Quality Assurance cited and assessed forfeitures against 33 CBRFs for hot water temperatures that ranged between 130-160 degrees F. At these temperatures, severe, full-thickness scalding that causes irreversible second and third-degree burns can occur in 1 to 30 seconds. At 140 degrees, first-degree burns can occur in less than 2 seconds. Too-hot water may be particularly dangerous for the elderly and handicapped who may have,

2. Install a shower valve at each shower used by residents that complies with the intent of the "fail safe" system. The Department of Commerce has currently approved one such valve – the Chicago 2500 TempShield Tub and Shower faucet valve. This valve controls water temperatures at the tub and shower and shuts off the water if the temperature exceeds 110 degrees. It does not control water temperatures at the sinks and there is not an approved counterpart for installation at the sink. Another method will be required to control water temperatures at the sinks.

3. Install a faucet with an adjustable hot-limit safety stop at each sink used by residents. Safety stops keep water at the faucets at a pre-set temperature by blending the amount of cold and hot water. If the water heater malfunctions, however, and heats the water even higher than where it had been set, a safety stop will still continue blending the same amount of hot and cold water. As a result, water temperatures at the faucet will be hotter than what is expected and burns could occur.

4. Install, at each sink, shower, and tub used by residents, a temperature-actuated flow reduction valve. Depending on the faucet, these valves cost between \$6 and \$30 and can be easily retrofitted onto each shower, tub, and sink fixture. These valves reduce the flow of water to a trickle when the water temperature is approximately 115 degrees F. or above. We cannot recommend brand names; however, such valves are available at local plumbing or hardware stores. Because we do not have experience with the reliability of these valves, we suggest that you monitor the temperature of water coming from faucets on which these devices have been installed. In addition, these devices only limit the hot-water temperature to approximately 115 degrees F. Facilities using this option on tubs and showers will need to request a waiver of the 110-degree hot water requirement for tubs and showers.

To maintain compliance with HFS 83.41(5)(d) 2 and HFS 83.21(4)(w), Wis. Administrative Code, we ask that you:

- Routinely check the temperature of water at various fixtures used by residents;
- Take appropriate responsive action if the temperature is above 110 degrees; and
- Regularly clean the mixing valve(s) because liming from the mineral deposits found in water may eventually cause mixing valves to malfunction.

If you have questions, please contact the Regional Field Operations Director to whom your facility is assigned. Their names and phone numbers are [via Regional Offices]:

Last Revised: *June 18, 2002*

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