Subject	Nursing Homes	CBRFs	RCACs
Staff Requirements (continued)	HFS 132.64-Requires provision of or arrangement for rehabilitative services as needed. HFS 132.65-Specifies in detail provision of pharmaceutical services, including need for committee and medications consultant. HFS 132.66-Requires prompt provision of lab, radiologic and blood services. HFS 132.67-Requires facility to retain advisory dentist, specifies dental exam every 6 months, and arrangements for emergency dental care. HFS 132.68-Requires facility to hire or retain social worker and specifies social services to be provided. 132.69-Requires facility to provide activities program and sets requirements.		
*****************	***************************	*****************************	********************************
Staff Training	HFS 132.44-Requires orientation for all employees, other training for direct care staff, continuing education for direct care staff, dietary in-services for dietary staff, and medications administration training for authorized staff. HFS 132 contains no specific training requirements for certified nurse assistants, except under HFS 132.44(1)(b)1-5: Non-nurse direct care staff must receive training through a training program offered by a RN, a program offered by a hospital or a health	HFS 83.13 (7)(a) 9: Documentation of successful completion of the initial training and in-service training requirements and continuing education requirements under HFS 83.14. HFS 83.14 (4): Training Plan by CBRF. A CBRF may provide all or some of the required training for its staff. If it provides the training, the CBRF shall develop a plan for training which shall be approved by the department. HFS 83.14 (8): Documentation. All	HFS 89.23(3) - Provides general staff training requirements such as "timely," "appropriate," but specifies need to respect privacy, tenant rights and independence and support **"tenant autonomy in decision-making, including the right to accept risk."** HFS 89.23(4)(a) - Requires "trained" and "capable" staff; nursing services and supervision of delegated nursing services consistent with Nurse Practice Act; HFS 89.23(4)(b) - Defines service manager qualifications as "capable" and

Subject	Nursing Homes	CBRFs	RCACs
Staff Training (continued)	agency, a course offered by a vocational school or the American Red Cross, or a program approved by the DHFS. The 75-hour minimum training requirement and the annual 12-hour in-service training mandate are both federal requirements not referenced under HFS 132.	training, orientation and continuing education shall be documented by the licensee, administrator or designee in the employee's personnel file and signed by the employee at the time it is received. HFS 83.14 (1) Administrative and all resident care staff are required to take 45 hours of initial training, including resident rights, challenging behaviors and client group specific training, universal precautions, ISP development, fire safety and first aid, and procedures to alleviate choking. 83.14 (2) Staff responsible for determining dietary needs, menu planning, food preparation and sanitation shall complete three hours of training. 83.14 (3) The Administrator, as well as any non-medical staff who will manage or administer medications, must complete 8 hours of training.	"competent"; stipulates person in charge may be off-site. HFS 89.23(4)(d) - Requires all staff to have training in fire safety, first aid, universal precautions and the facility's emergency plan, and in the facility's policies and procedures relating to tenants rights. 89.24(4)(d) 2.b. Singles out need for staff training or experience in "purpose and philosophy of assisted living, including respect for tenant privacy, autonomy, and independence."
******************	*******************************	*******************************	********************************

State of Wisconsin
Department of Health and Family Services

Jim Doyle, Governor
Helene Nelson, Secretary

July 1, 2003

The Honorable Carol Roessler, Co-Chair
Legislative Joint Audit Committee
Wisconsin State Senate
Room 8 South, State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Dear Senator Roessler:

I am pleased to submit the second report to the Legislative Joint Audit Committee in response to the audit of the Department's regulation of nursing home and assisted facilities, as well as respond to questions the committee sent to the Department in your correspondence on February 21, 2003 and on March 21, 2003. The Department, as outlined in the attached Executive Summary, has made and continues to strive for efficiencies in the regulation of the long-term care environment, including making incremental changes to how we enforce the administrative rules and statutes the Legislature approves. I am confident these successes will continue as we move forward.

I welcome all opportunities to work together with the Committee for the citizens of Wisconsin as we carry out our major responsibilities of assuring public safety in nursing homes and assisted living facilities.

Sincerely,

Helene Nelson
Secretary

This is a work in progress. We welcome your interest and suggestions.

Cc: Kenneth Munson
Diane Welsh
Gary Radloff
Sinikka McCabe
Susan Schroeder
Otis Woods

Department of Health and Family Services
Executive Summary: Oversight of Nursing Homes and Assisted Living Facilities
Response to the Legislative Joint Audit Committee
July 1, 2003

The following Executive Summary of the Department oversight of Nursing Homes and Assisted Living Facilities provides detailed and specific information relating to current and planned efforts in the Bureau of Quality Assurance to improve its regulatory oversight of the long term care industry in Wisconsin.

Also included in this analysis are the following appendices:

Appendix 1	Informal Dispute Resolution Statistics for Nursing Homes
Appendix 2	Admissions Restriction in Other States
Appendix 3	Federal Clarification letter Governing Informal Dispute Resolution
Appendix 4	BQA Use of Civil Money Penalties
Appendix 5	Federal Clarification Letter Governing Use of Civil Money Penalty Funds
Appendix 6	Detailed Description of the Caregiver Program
Appendix 7	Assisted Living Enforcement Procedures

The Legislative Audit Bureau requested that the Department notify the Committee on:

- the effect of timeliness of returning responsibility for informal dispute resolution decision-making to regional managers (report 02-21 page 60);
- the number of cases resolved through informal dispute resolution (report 02-21, page 60) in FY 2000-01, FY 2001-02, and the first six months of FY 2002-03; and
- the number of cases resolved through informal dispute resolution (report 02-21, page 60) in FY 2000-01, FY 2001-02, and the first six months of FY 2002-03 that were subsequently appealed.

Returning Informal Dispute Resolution Decision-making to Regional Managers

As reported in the audit, the Bureau of Quality Assurance (BQA) returned informal dispute resolution (IDR) decision-making to the five regional managers following the July 2002 retirement of the incumbent IDR coordinator. Additionally, BQA re-deployed other staff, experienced with extensive program knowledge, to assist the regional directors in completing the reviews.

Since the audit, there have been no changes to the timelines required by the process. Within three days of receiving the BQA survey report or statement of deficiency, the facility must request informal dispute resolution to contest any portion of the BQA report. Within seven to ten days of receiving the statement of deficiency, the provider is to submit additional documentation to refute any citation on the statement of deficiency. Finally, BQA must respond to the provider with its decision within 21 days of issuing the statement of deficiency.

Table 1 below contains data showing the timeliness of the process since the return of this function to the regional managers:

TABLE 1

2002

	# IDRs Conducted	Avg. # Days between Date Served and Date Notified	% of IDR Result Notifications that were Timely
IDR Coordinator	20	55.5	5%
Regional Directors	110	29.6	33%
Other Staff	23	25.7	65%

2003

	# IDRs Conducted	Avg. # Days between Date Served and Date Notified	% of IDR Result Notifications that were Timely
Regional Directors	26	20.0	81%
Other Staff	32	21.7	78%

Revised Informal Dispute Resolution Process

By October 1, 2003, with approval from the Centers for Medicare and Medicaid Services (CMS) and the selection of a successful bidder, the Department will implement a revised informal dispute resolution process similar to what the states of Michigan and Indiana offer. Under the proposal, nursing homes will have the option of requesting either an informal dispute resolution review from the Department or from an external, impartial agency. Unlike the Department's review, however, the external review will be for a fee paid to the external reviewer. BQA staff shared this proposal with provider associations on June 12, 2003. The Bureau has requested comments regarding this proposal and expects to receive them by July 1, 2003. This proposal meets with the industry's ongoing request for an impartial review of survey reports issued by BQA.

The proposal improves the timeliness and effectiveness of the current process by mandating desk reviews for citations at the lower federal grid level, considered low in scope and severity, but will offer desk or telephone reviews for citations with increased seriousness (scope and severity). Additionally, the Department will limit the reviews to one hour, unless the reviewer agrees to extend the duration in recognition of the number of citations under dispute. This timeline will be established prior to conducting the review. The revised schedule allows the reviewers to meet their timeline obligations with the flexibility offered by the proposed changes.

The Department will monitor the effectiveness of the new process and will make changes, as necessary, to meet federal timelines.

{NOTE: Appendix 3 presents recent federal clarification regarding contracting state agency informal dispute resolution responsibilities to non-state entities.}

Number of cases resolved through informal dispute resolution in FY 2000-01, FY 2001-02, and the first six months of FY 2002-03, including those appealed.

Appendix 1 summarizes the data requested by the Legislative Audit Committee.

The Committee requested additional information from the Department in response to the Department's testimony during the February 5, 2003 hearing and in response to the Department's first report to the Committee.

Use of Admissions Restrictions as a Tool for Compelling Nursing Home Compliance in Other States

The Department is a member of the Association of Health Facilities Survey Agencies (AHFSA), an organization comprised of regulatory agencies like BQA from the other states, Puerto Rico and Guam. A general inquiry to AHFSA resulted in a reply from only eight states: Alabama, Connecticut, Florida, Kentucky, Maryland, Massachusetts, New Jersey, and Virginia. All eight have state regulations that allow for restrictions on admissions. Five of the eight responded positively when addressing whether sanctions were effective in compelling compliance. These states also indicated that since most facilities have an opportunity to correct before a federal denial of payment for new admissions becomes effective, this was not as effective remedy as the state remedy that allowed for more immediate implementation. Appendix 2 lists the detailed responses from the seven states.

The Department's current and planned efforts to target nursing home state licensure enforcement activities on historically non-compliant homes and the Department's assessment of the possibility of implementing such a process:

BQA is developing criteria to determine when a facility's current and past state licensure compliance is an indicator of continuous serious care-delivery problems that jeopardize the health, safety and welfare of its residents. The Bureau has drafted a letter to be implemented when one of the bureau's regional offices has identified a facility that warrants further review and scrutiny. The letter places the facility on notice that the Department has determined there to be serious issues in the care provided in the home and, through BQA, the Department will closely watch the facility and its future activity. Furthermore, the letter reminds the facility what remedy options the department has statutorily, if the facility continues to operate in a manner that could be harmful to the health, safety or welfare of its residents. Through this process, the Department has developed a list of problematic facilities regional staff will use as a guide for future monitoring activities.

The Bureau has also recently drafted settlement agreements with a couple of facilities that have problematic compliance histories, and have confirmed non-compliance that resulted in forfeiture assessments. In these cases, the bureau has agreed that in lieu of part or all of the possible monetary forfeiture, the facility would

instead hire an advisor to review the facilities' systems and report their findings to both the facility and the bureau. The advisor then works with the facility in achieving compliance and developing systems to assist the

facility in remaining in compliance. The settlement agreements were drafted by our Office of Legal Counsel and signed by the Bureau and the facility.

The Bureau's forfeiture backlog has been a concern with the LAB and within the Department. The Department has arranged to have two temporary staff assigned to BQA to eliminate the backlog. Existing, permanent staff will devote 100 percent of their time to more current deficiencies, implementing all sanctions, including monetary assessments. The Department is committed to bringing current the forfeiture workload, while also implementing other sanctions State laws permit.

The Department's position on maintaining both state and federal regulations for nursing homes.

For regulatory and reimbursement purposes, many health care entity types in Wisconsin are "state only" or "federal only". Assisted living facilities are subject to state licensure regulations only. Examples of federal certification regulations only are ambulatory surgery centers, end stage renal disease centers and clinical laboratories.

Nursing homes are subject to both federal certification and state licensure regulations. Nursing homes that choose to participate in the federal Medicare program are required by the federal government to be licensed by their state. All but a very few Wisconsin nursing homes participate in the federal Medicare program. Those nursing homes not participating in the federal Medicare program are state licensed only. State licensing is therefore necessary to protect the public and to assure safe, quality care is delivered to persons residing in them.

For nursing homes, as well as other entity types subject to both federal and state regulations such as hospitals, hospices and home health agencies, federal certification and state licensure regulation have many similarities. There are also significant differences.

State licensure records requirements for nursing homes are more rigorous and prescriptive than the records requirements of the federal regulations. The state carries the burden of proof in appeals cases when there are significant violations of state licensing standards. Diminished records requirements could compromise the Department's position in appeals hearings. The Department's Office of Legal Counsel has been adamant that state licensure records requirements not be changed.

Wisconsin's resident rights regulations are also more rigorous than their federal regulatory counterparts. It is important not to erode this public protection. Resident advocacy agencies have been vigilant in their watch over these protections.

The Department's assessment of best practices in assisted living facility regulation in other states.

This is an ongoing review by BQA. Currently BQA has formed a workgroup to revise the survey process for assisted living. The new survey process will incorporate some of the best practices that other states are doing from other states. Preliminary areas that we are looking at related to the new survey process include:

- Doing an abbreviated survey for facilities with a good compliance history
- Incorporating technical assistance into the survey process
- Acknowledging "best practice" by the facility and encouraging the industry to help elevate the quality of their peers.

The status of the rewrite of HFS 83, Wis. Adm. Code, and its anticipated effects on the regulatory environment.

Wis. Admin. Code HFS 83 has been under "rewrite" status for a number of years. This has been a collaborative effort with a number of program bureaus within the department, the provider associations, industry providers, advocates and other stakeholders. Four developments delayed moving forward with the rewrite. They are as follows:

1. How to resolve the "approved training" program problem? Currently the state has 636 approved programs, 2,172 approved instructors, there is no mechanism or resources to ensure that the programs are following the approved program, that the correct instructors are conducting the training or that the staff have obtained a level of competence by going through the program. As a result of this BQA has discovered a troubling number of instances of fraud, problems with portability, and ineffectiveness. A training workgroup was developed including representatives from the department, the technical colleges, the industry, advocates, approved trainers and other stakeholders. This group met over a number of months with no resolution to the problem. One proposal by the regulatory agency (BQA), to replace the "approved" training with 3rd party competency testing, remains in the discussion phase. There is mixed support regarding this issue. Negative response is related to increased costs to the provider, questioning whether competency testing is effective, and concern that competency testing will turn away potentially good staff in a market that is already suffering from not enough good staff. BQA is currently researching what other states are doing regarding staff training.

2. In the summer of 2002 the department of commerce adopted the new international building code. This new regulation greatly impacts new construction, new additions and remodeling of assisted ling facilities. BQA is working on ensuring all of the elements of the International Building Code are incorporated into HFS 83 rewrite. This will then have to be reviewed by the department of commerce for any conflict before moving forward.

3. The new Assisted Living Section was established on January 1, 2003. The development of this new section required a shift in priorities delaying work on HFS 83. In addition, it was important for the new management group to come up to speed on where we are at with HFS 83 rewrite and to get their involvement. The assisted living section is in the process of developing a new survey process. Currently assisted living is receiving significant attention good and bad on a national level. Many states are

currently adopting legislation regarding the regulation of assisted living facilities. BQA is currently reviewing a number of these developments to see if it makes sense to incorporate into HFS 83. In addition, in 2001 the U. S. Senate Special Committee on Aging commissioned the Assisted Living Workgroup made up of nearly 50 organizations to discuss assisted living and develop recommendations. Their final report was issued in April 2003. The report can be found at:http://www.aahsa.org/alw.htm BQA will be reviewing this document to ensure that HFS 83 incorporates the workgroups recommendations.

4. It will be important to review any developments that result from responding to the Legislative Audit Bureau recommendations and from the requests from the Wisconsin State Legislature Joint Audit Committee. Some of this may require administrative code change and need to be incorporated in HFS 83.

It is BQA's hope to re-open HFS 83 revision discussion s, with new eyes, in the fall of 2003. The Department hopes that a number of changes will enhance quality of care and quality of life for residents who live in assisted living facilities. The Assisted Living Forum (formerly the CBRF forum) will continue to function as the advisory committee for HFS 83 rewrite.

The status of discussions between the Department, assisted living facility providers, and other interested parties, regarding recommended improvements to the regulatory system for assisted living facilities.

In January 2003, BQA established the assisted living forum. This forum combined two exiting forums, the Community based residential forum and the residential care apartment complex forum and added Adult family homes and adult day care programs the other two provider groups that make up Wisconsin assisted living. This forum is now comprised of the following members:

- Representatives from Department including, BQA, Bureau of Developmental Disability Services, and Bureau on Aging Long Term Care Resources;
- Advocacy representatives from the long-term care ombudsman program, other advocacy agencies;
- Assisted living provider associations;
- The Wisconsin technical colleges;
- County association;
- Provider representatives from the four provider groups; and
- Other assisted living stakeholders.

This group meets every other month to discuss emerging issues in assisted living, regulatory interpretation, funding issues, best practice, and other issues impacting assisted living. In response to the February letter by the Joint Audit Committee, a standing item has been added to the agenda, "Collaborative ideas and best practice to enhance quality in assisted living". On June 6, 2003, Wisconsin Association for Homes and Services of the Aging (WAHSA) submitted a document to BQA entitled, "WAHSA's Assisted Living Document: A Discussion on the Differences Between Assisted Living and Nursing Homes". BQA is

reviewing this document and will be meeting with representatives of WAHSA on July 1, 2003 to discuss and share perspectives.

In addition, BQA representatives met with Wisconsin Assisted Living Association (WALA) representatives on June 19, 2003 to discuss collaborative ideas and ways to enhance quality in assisted living facilities. As a result of all these initiatives and goals implemented with the creation the assisted living section, BQA representatives have begun the process of changing the survey process for assisted living facilities. BQA is updating their memorandum of understanding with the ombudsman program to enhance the effectiveness of our relationship and ultimately improve the quality in assisted living.

Following are follow up responses to the Committee's request for clarification of information the Department submitted on February 28, 2003:

Forfeiture Data Update

Table 2 below is summary of the enforcement data as of June 19, 2003

TABLE 2

	Current Backlog		293
	2001	14	
	2002	136	
	Subtotal	150	150
	2003 to be assessed		143

NOTE: Also included are59 outstanding hospice assessments.

The Bureau of Quality Assurance was able to quickly reduce the backlog by implementing the following changes:

- Processing all of the Chapter 50 nursing home violations, thereby reducing the backlog by 59 violations;
- Processing all of the outstanding violations from facilities for persons with developmental disabilities (FDDs); reducing the backlog by and additional 23 violations;
- Employing temporary staff resources to specifically address the backlog;
- Directing permanent enforcement staff to only focus their attention and efforts on the current and ongoing violations (cited within the last six months); and, most importantly to address ongoing reviews
- Streamlining the process by developing the forfeitures based entirely on the information contained in the statement of deficiency (non-compliance report), rather than completely reviewing the supporting

documentation. This involves utilizing shorter violation summaries, and creating more concise and clearer adjustment factor tables when implementing sanctions allowed under Chapter 50, Stats.

Administrative Ratios for Forfeiture Assessment

Based on a legal clarification of the State Constitution, the Department is not able to retain a portion of the forfeiture assessed against nursing facilities or assisted living facilities. All forfeitures or fines collected for violations of state laws or administrative rules must be deposited in the Common School Funds. Based on this interpretation, in order for the Department to cover costs generated by the assessing of forfeitures, a surcharge is necessary. However, the Legislatures Joint Committee on Finance did not agree with this additional charge and denied the request.

New Assisted Living Forfeiture Procedures

Appendix 7 includes the revised forfeiture protocol the Department has implemented for assisted living facilities. The Department recognizes the need to evaluate assisted living compliance in a manner different than the nursing home enforcement process. Although newly implemented, there will be continuous on ongoing review of the effectiveness of these guidelines with the intent to amend as necessary.

BQA Central Office Staff Resources: Caregiver Program

The Caregiver Program or Caregiver Regulation and Investigation Section has 17.5 full-time equivalent positions and is compromised of the Caregiver Regulation Unit and the Caregiver Investigation Unit. A major responsibility of the Caregiver Program is enforcing the Caregiver Law. Passed in 1998, the Caregiver Law has two major components: Criminal Background Checks and Caregiver Misconduct Reporting. The section is also responsible for nurse aide training and testing, and maintaining the CNA registry.

Chapter HFS 12, Wis. Admin. Code, requires entities approved by the Department to conduct criminal background checks on all prospective employees, contractors and non-client residents who have regular and direct contact with the entities' residents, patients, or tenants. The Caregiver Law, under s. 50.65, Stats., requires that the Department conduct background checks on all license holders before the granting of a license or certificate issued by the Department. All background checks, whether conducted by licensed/approved entities or by the Department, must be conducted once every four years.

Chapter HFS 13, Wis. Admin. Code, requires the mandatory reporting of caregiver misconduct activities within approved entities. HFS 13 contains strict language governing the timeframes within which entities must report incidents, assessed to be reportable, to either the Department of Health and Family Services or to the Department of Regulation and Licensing, the latter of which applies to credential holders such as registered nurses and physicians. Misconduct includes theft of property (or identity), and abuse or neglect of the resident, patient or tenant.

A detailed description of the Caregiver Program is located in Appendix 6 to this document.

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

Appendix 4 summarizes the information on the balance in the civil money penalty account for the calendar years 1998, 1999, 2000 and 2001, as well as lists the external agencies contracted by the Department to conduct monitoring activities during FY 2000-01.

Additionally, the Committee seeks clarification regarding approvals, current and previous, required by the federal government for the use of civil money penalty funds. Before August 8, 2002, state survey agencies believed they were required to obtain federal government approval before using civil money penalty funds for various nursing home quality improvement projects. In responding to state agency concerns over the approved use of civil money penalty funds, the Centers for Medicare and Medicaid Services (CMS), on August 8, 2002, issued a clarification memo S&C 02-452. See Appendix 5 for a copy of this clarification memo.

S&C 02-42 extended guidance and greater flexibility to the states concerning the use of civil money penalty funds. CMS maintained its strict stance that the funds must be allocated to facilities that "have been found to be deficient." Furthermore, CMS stressed that "collections should be limited to funding on hand and should be relative short-term projects." A major change to the previous CMS policy was that CMS approval for using civil money penalty funds was not necessary. Instead, CMS iterated that:

> "Regional oversight should be general in nature, responding to questions from states or commenting on the occasional project proposal submitted for regional office input, but there is no requirement that a regional office review and approve each state project before it is implemented."

SUMMARY

The Department continues to make improvements in assuring an accurate and consistent implementation of all nursing homes and assisted living regulations. More is needed. Promoting efficiencies in the Department as we carry out our duty to assure the health, safety and well being of our vulnerable seniors and disabled citizens, is the surest way of promoting quality, effective regulation of long term care in Wisconsin. We continue to utilize creative methods to improve quality of care, whether through technical assistance, collaborating with public and private entities, or best practices, areas the Department will expand in the future.

JOINT AUDIT COMMITTEE RESPONSE

Appendix 1

Informal Dispute Resolution Statistics for Nursing Homes and Institute for Mental Diseases 2000 - 2002

Year	*Requests Received	Type of IDR Conducted	Tags Having an IDR Conducted	State or Federal
2000	114	Desk Review – 7 In-Person Meeting – 61 Not Entered – 2 Phone Conversation - 44 Request Withdrawn – 0	381	State – 95 Federal – 286
2001	128	Desk Review – 7 In-Person Meeting – 61 Not Entered – 1 Phone Conversation – 57 Request Withdrawn – 2	525	State – 143 Federal – 382
2002	143	Desk Review – 11 In-Person Meeting – 69 Not Entered – 2 Phone Conversation – 57 Request Withdrawn – 4	494	State – 137 Federal – 357

Table 1

*Count of Surveys that resulted in an IDR Request.

JOINT AUDIT COMMITTEE RESPONSE
Appendix 1

IDR Resolution Description	2000 # of Tags	2000 % of Total	2001 # of Tags	2001 % of Total	2002 # of Tags	2002 % of Total
Examples Deleted/Verbiage Change	94	24.7%	151	28.8%	145	29.4%
Grid Changed/Tag Change	19	5.0%	32	6.1%	31	6.3%
No Change	171	44.9%	234	44.6%	191	38.7%
No Resolution Entered	2	0.5%			8	1.6%
Other	4	1.0%	2	0.4%	8	1.6%
Tag Withdrawn	91	23.9%	106	20.2%	111	22.5%
Total	381		525		494	

Table 2

Note: Only one Resolution Description is indicated per tag. The actual changes that occurred as a result of IDR could span multiple Resolution Descriptions.

NHs and IMDs
Days from SOD Date Served to Date Provider Notification of IDR Results

Length of Time	2000 Count	2000 %	2001 Count	2001 %	2002 Count	2002 %	Total Count	Total %
0-21 days	85	25.8%	27	6.2%	99	24.4%	211	18.1%
22-54 days	230	69.9%	252	58.2%	221	54.6%	703	60.2%
55-70 days	13	4.0%	66	15.2%	45	11.1%	124	10.6%
> 70 days	1	0.3%	88	20.3%	40	9.9%	129	11.1%
Total	329		433		405		1167	

Table 3

Table 3 above excludes IDR'd tags that do not have a date served entered in Facility Licensure/Certification Information System or have conflicting dates entered.

Informal Dispute Resolution Statistics for Intermediate Care Facility/Mental Retardation 2000 - 2002

Year	*Requests Received	Type of IDR Conducted	State/Federal Tags Associated with Requests	Request Subsequently Withdrawn for Tag	Tags Having an IDR Conducted	State or Federal
2000	5	Desk Review – 0 In-Person Meeting – 1 Phone Conversation – 4	28	5	23	State – 4 Federal – 19
2001	5	Desk Review – 1 In-Person Meeting – 3 Phone Conversation – 1	12	1	11	State – 5 Federal – 6
2002	8	Desk Review – 2 In-Person Meeting – 2 Phone Conversation – 4	21		21	State – 2 Federal – 19

*Count of Surveys that resulted in an IDR Request.

Table 4

IDR Resolution Description	2000 # of Tags	2000 % of Total	2001 # of Tags	2001 % of Total	2002 # of Tags	2002 % of Total
Examples Deleted/Verbiage Change	6	26.1	1	9.1	7	33.3
Tag Change			3	27.3	1	4.8
No Change	13	56.5	6	54.5	10	47.6
No Resolution Entered					1	4.8
Tag Withdrawn	4	17.4	1	9.1	2	9.5
Total	23		11		21	

Table 5

Note: Only one Resolution Description is indicated per tag. The actual changes that occurred as a result of IDR could span multiple Resolution Descriptions.

ICF/MR
Days from SOD Date Served to Date Provider Notified of IDR Results

Length of Time	2000 Count	2000 %	2001 Count	2001 %	2002 Count	2002 %	Total Count	Total %
0-21 days	2	7.1%	1	8.3%	11	73.3%	14	25.5%
22-54 days	7	25.0%	10	83.3%	4	26.7%	21	38.2%
55-70 days	19	67.9%	1	8.3%	0		20	36.4%
> 70 days	0		0		0		0	
Total	28		12		15		55	

Table 6

Table 6 above excludes IDR'd tags that do not have a date served entered in FLCIS or have conflicting dates entered.

JOINT AUDIT COMMITTEE RESPONSE
Appendix 2

ADMISSIONS RESTRICTIONS IN OTHER STATES

State	Sanction Information	Effectiveness of State Restriction on Admissions	Effectiveness of Federal Denial of Payment for New Admissions (DoPNA)
Alabama	State can limit bed increases based on substandard quality of care and above.	Not very effective.	It is effective.
Connecticut	State statutes and regulations allow admission restrictions.	In selected circumstances the restrictions have been beneficial in compelling compliance.	Primarily effective in situations of substandard quality of care and surveys with serious quality of care deficiencies.
Florida	State has immediate moratorium on admissions.	It is a more instant sanction and is quite effective from a protective standpoint. The average length of time for a facility to come into compliance after imposition is 28 days per facility.	
Kentucky	State allows admissions restrictions.	It is effective in compelling compliance.	The optional DoPNA remedy is recommended frequently and is imposed for facilities that either do not have an opportunity to correct deficiencies related to their poor compliance history or immediately imposed for immediate jeopardy cases. Imposition of the mandatory DoPNA at the 90th day is low. Facilities tend to come into compliance prior to the 90th day.
Maryland	State regulation allows admissions restrictions.	Ban on admissions is not imposed often, but in the instances it has, it appears to have sped up the facility's efforts to come into compliance..	Denial of Payment for New Admissions (DoPNA) is more effective than assessing a Civil Money Penalty.
Massachusetts	State has the option of limiting or freezing admissions.	It is a useful tool.	It is a useful tool.
New Jersey	State regulation for a curtailment of admissions which can be put in place immediately. This also stops readmission from the hospital.	Very effective. Facility wants curtailment lifted immediately because of their reputation in the community and with the hospitals. An on-site revisit must be conducted to lift the curtailment.	Not effective because of the timeframes associated with it. Usually a facility comes into compliance prior to the 90th day after survey so the recommended DoPNA is never imposed.
Virginia	State code allows for a restriction on all new admissions if a facility's compliance history fails to demonstrate compliance with the nursing home licensure regulations. Note: This option has not been utilized for many years.	It was only minimally effective when it was used.	It is intermittently effective.

APPENDIX 3

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-12-25
Baltimore, Maryland 21244-1850

Center for Medicaid and State Operations/Survey and Certification Group

Ref: S&C-03-25

DATE: **June 12, 2003**

FROM: Director
Survey and Certification Group

SUBJECT: Clarification of Issues Related to Informal Dispute Resolution

TO: Survey and Certification Regional Office Management (G-5)
State Survey Agency Directors

This memorandum provides guidance to State Survey Agencies (SAs) regarding the informal dispute resolution (IDR) process. Currently, two SAs in the Centers for Medicare & Medicaid Services (CMS) Region VI have delegated the authority for conducting IDR to an independent third party. Another SA anticipates legislation will be passed this year to remove the IDR process from the SA. States have asked how the establishment of independent IDR impacts the work of SAs and what obligations an IDR process conducted by an outside entity may impose on the survey process.

Under an agreement with CMS, the SA is responsible for all Federal certification decisions. The basis of this conclusion is contained in the 1864 Agreement between the Secretary of Health and Human Services and the State. Article I of that Agreement stipulates that all references in the agreement to the "State" include the SA. Article II stipulates required functions to include the certification of compliance or noncompliance of Medicare skilled nursing facilities. Furthermore, the SA cannot subcontract any of its survey and certification functions without prior written approval of CMS, as stated in Article X of the Agreement.

The IDR process is a survey and certification function. While States are granted some flexibility as to how survey and certification activities are conducted, they must adhere to Federal statutory and regulatory requirements, as well as the State Operations Manual (SOM). For nursing homes, the SOM sets forth procedural requirements for the IDR process in Section 7212. Thus, while other entities outside the SA are allowed to conduct certain survey and certification processes such as IDR, the SA retains final certification authority and responsibility for all Medicare and dually participating providers.

Therefore, if an outside entity conducts IDR, the results of the IDR process may serve only as a recommendation to the SA of noncompliance or compliance with the Federal requirements for skilled nursing facilities.

While SAs may take the opportunity to review the results of IDR to improve the survey process and bring policy issues to the attention of CMS, recommendations from an IDR are not binding on CMS and cannot impede or delay any enforcement proceedings.

We hope this clarification is helpful. For additional questions, please contact Elaine Lew at 410-786-9353 or via email at Elew@cms.hhs.gov.

Effective Date: This policy is effective immediately.

Training: This policy should be shared with all appropriate survey and certification staff, their managers, and the state/regional office training coordinators.

/s/
Steven A. Pelovitz

APPENDIX 4

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

Calendar Year Ending	Account Balance
12/31/98	$228,653.84
12/31/99	$864,085.30
12/31/00	$1,053.579.45
12/31/01	$1,346,012.30

Facility	Monitoring Agency
Audubon Health Care Facility	Healthcare Management & Diagnostics
Perennial Care	Healthcare Management & Diagnostics
Family Heritage	Pathway Health Services
Lincoln Lutheran	Healthcare Management & Diagnostics
Barron-Riverside	Healthcare Management & Diagnostics
Beverly Health & Rehab	Pathway Health Services
LaCrosse Nursing Home	Healthcare Management & Diagnostics

Healthcare Management & Diagnostics
1442 N. Farwell Avenue, Suite 501
Milwaukee, WI 53202

Pathway Health Services
2025 4th Street
White Bear Lake, MN 55110

DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

7500 Security Boulevard
Baltimore, MD 21244-1850

Ref:S&C-02-42

Date: **August 8, 2002**

From: Director
Survey and Certification Group
Center for Medicaid and State Operations

Subject: Use of Civil Money Penalty (CMP) Funds by States

To: Associate Regional Administrator
Divisions of Medicaid & State Operations
Regions I – X
State Survey Agency Directors

The purpose of this memorandum is to provide information regarding how states may use CMP funds collected from nursing homes that have been out of compliance with Federal requirements. It has come to our attention that guidance is needed to ensure that states use CMP funds in accordance with the law and in a consistent manner, while maintaining some flexibility in the use of those funds.

Background – States collect CMP funds from Medicaid nursing facilities and from the Medicaid part of dually-participating skilled nursing facilities (SNFs) that have failed to maintain compliance with Federal conditions of participation. These CMP funds are state, not Federal funds. CMP funds collected from Medicare-participating SNFs and the Medicare part of dually-participating SNFs are Federal funds and are returned to the Medicare Trust Fund.

Section 1919(h)(2)(A)(ii) of the Social Security Act (the Act) provides that CMP funds collected by a state as a result of certain actions by nursing facilities or individuals must be applied to the protection of the health or property of residents of nursing facilities that the state or the Secretary finds deficient. These actions include CMPs assessed against:

(1) A nursing facility that is not in compliance with Federal requirements in sections 1919(b), (c), (d) of the Act;
(2) An individual who willfully and knowingly certifies a material and false statement in a resident assessment (section 1919(b)(3)(B)(ii)(I) of the Act);
(3) An individual who willfully and knowingly causes another individual to certify a material and false statement in a resident assessment (section 1919(b)(3)(B)(ii)(II) of the Act); and
(4) An individual who notifies (or causes to be notified) a nursing facility of the time or date on which a standard survey is scheduled to be conducted (section 1919(g)(2)(A)(i) of the Act).

The Act cites three examples of uses for CMPs:

(1) Payment for the costs of relocation of residents to other facilities;
(2) Maintenance of operation of a facility pending correction of deficiencies or closure; and
(3) Reimbursement of residents for personal funds lost.

The regulations, at 42 CFR 488.442(g), contain similar language, with some very minor wording changes that make it clear that the costs of relocation of residents to other facilities are for state costs. The regulations also indicate that the personal funds lost at a facility are the result of actions by the facility or by individuals used by the facility to provide services to residents. Section 7534B of the State Operations Manual (SOM) contains similar language, but specifies that the funds must be used to protect the health or property of residents of deficient facilities.

In the preamble to the final enforcement regulations published on November 10, 1994, we indicated that the law suggests that CMP revenues be applied to administrative expenses rather than direct care costs, although it is clear that states have broad latitude to determine which of these types of expenses best meet the needs of their residents (page 56210 of the Federal Register, Volume 59, No. 217). Further, the preamble is very clear that the Act permits each state to implement its own procedures with respect to the use of CMPs. Our previous direction to CMS regional offices has been that the specified uses of CMP funds in the Act and section 488.442(g) are not exhaustive, that states need flexibility in determining the appropriate use of funds, and that regional offices have some oversight responsibility. Beyond this, we have not provided general guidance to all states and regional offices on what is considered appropriate use of these funds within the scope of the law and regulations. Due to the lack of guidance, a number of states have been reluctant to use a majority of the money. As a result, some states have a significant amount of money on deposit and this amount is continuously growing.

Flexibility in Use of CMP Funds -- While the Act provides states with much flexibility to be creative in the use of CMP funds, this flexibility is limited by the requirement that CMP funds are to be focused on facilities that have been found to be deficient. However, the law does not specify when a facility must have been determined to be deficient to qualify for benefits under a state project funded by CMPs. Most nursing facilities have had one or more deficiencies either recently or in the past. Rather than setting forth rigid criteria on when it is that a facility must have been deficient to be an eligible target for the application of CMP revenues, we believe that the best course is to offer states maximum flexibility to make this determination. Apart from this, we believe that projects funded by CMP collections should be limited to funding on hand and should be relatively short-term projects.

Each state is responsible for ensuring that CMP funds are applied in accordance with the law. Regional oversight should be general in nature, responding to questions from states or commenting on the occasional project proposal submitted for regional office input, but there is no requirement that a regional office review and approve each state project before it is implemented.

Appropriate CMP Fund Use --As we stated in the preamble to the 1994 final enforcement regulations, CMP revenues should be spent on administrative expenses, rather than direct care costs, as applied to deficient facilities. If the purpose of the state project is related to deficient practice, the CMP funds could be used to prevent continued noncompliance by nursing facilities through educational or other means. For example, to address particular areas of noncompliance, a state could develop videos, pamphlets, or other publications providing best practices, with these educational materials being distributed to all deficient nursing facilities. Other uses could include, for example, the development of public service announcements on issues directly related to the identified deficient area, and employment of consultants to provide expert training to deficient facilities. North Carolina and other states have issued grants to several nursing facilities to fund Eden Alternative Projects, which provide training and other services necessary to support the use of animals in nursing facilities for therapeutic purposes. Because CMP funds collected by a state are state funds, the state may use the money for any project that directly benefits facility residents, in accordance with section 1919(h)(2)(A)(ii) of the Act, including funding an increase in ombudsman services.

Inappropriate CMP Fund Use – We believe that it is not appropriate for states to use CMP funds for a loan to a deficient facility that is having financial difficulty meeting payroll or paying vendors. As pointed out in the preamble, if the CMP is used by the facility to correct the noncompliance that led to its imposition, it is, in effect, not a remedy.

If you believe that a state is not spending collected CMPs in accordance with the law or regulations, or not at all, you should refer this matter to your regional office account representative so that he or she may discuss this matter with the state.

Effective Date: This guidance is effective on the date of issuance.

Training: This policy should be shared with all survey and certification staff, surveyors, their managers and the state/regional training coordinator.

/s/
Steven A. Pelovitz

APPENDIX 6

Bureau of Quality Assurance
Caregiver Regulation and Investigation Section

The Caregiver Regulation and Investigation Section (CRIS) is composed of two units: The Caregiver Investigation Unit and the Caregiver Regulation Unit.

The Caregiver Investigation Unit (CIU) of CRIS is responsible for investigating statewide allegations of abuse and neglect of clients, and misappropriation of clients' property by non-credentialed caregivers in health care facilities regulated by the Bureau of Quality Assurance. These investigations may result in the placement of a substantiated finding on the Caregiver Misconduct Registry. CIU responsibilities include:

- Investigating allegations by conducting interviews of appropriate individuals, collecting evidence, documenting findings and facts, preparing reports, etc.
- Reviewing completed investigations to determine whether a finding of misconduct can be substantiated against the accused caregiver.
- Referring complaints that contain sufficient evidence to the Department's Office of Legal Counsel to make a final determination to place a substantiated finding on the Caregiver Misconduct Registry.
- Testifying in administrative hearings.
- Issuing written notices to accused caregivers regarding the investigation results, including whether a substantiated finding will be placed on the Caregiver Misconduct Registry.

The Caregiver Regulation Unit (CRU) is responsible for developing and disseminating Caregiver Law regulatory policy and procedure decisions to BQA staff and regulated providers. CRU is responsible for receiving and screening statewide allegations of abuse and neglect of clients and misappropriation of clients' property. Allegations with merit are referred to the CIU or the appropriate investigative agency. The CRU approves, denies and monitors statewide nurse aide training and testing programs, as well as oversight of the Wisconsin's Nurse Aide Registry, the federally required list of nurse aides determined eligible to work in health care facilities. The CRU conducts caregiver background checks on all licensed owner/operators and non-client residents of BQA-regulated facilities. CRU responsibilities include:

- Receiving, screening and issuing notices regarding statewide allegations of caregiver misconduct from all BQA regulated facilities and third party reporters. The unit received 1,275 allegations in 2001 and 1209 in 2002
- Referring allegations that have merit to CIU or appropriate investigative agency.
- Maintaining the Caregiver Misconduct Registry, including monthly posting of newly added non-credentialed caregivers (nurse aides, personal care workers, and housekeepers) with substantiated findings, to the Caregiver Program web-site for use by employing health care providers. A monthly memo is issued to all state nurse aide registries. 164 caregiver names with substantiated finding were added to the Caregiver Misconduct Registry during 2002. The Registry currently lists a total of 921 names.

- Responding to federal inquiries regarding caregivers with substantiated findings that are entered on the Office of Inspector General's Exclusion List.

- Conducting caregiver background checks on owners, board members and non-client residents of regulated facilities at the time of license application or change and at least every subsequent four years after that date. Convening substantially related review panels to review offenses that potentially affect a person's ability to hold a license. Individuals with convictions for serious crimes or other governmental findings may be prohibited from operating or residing at a facility unless approved through the Department's Rehabilitation Review process.

- Maintaining a Caregiver Intake phone line, e-mail address and web site to respond to providers, caregivers and general public questions regarding the Caregiver Program requirements.

- Developing and providing Caregiver Program regulatory information to BQA-regulated providers, including memos, manuals, brochures and statewide entity training.

- Administering federal and state requirements for nurse aide training and competency evaluation programs, including the review, approval, denial and monitoring of all Wisconsin nurse aide training programs and the one approved competency evaluation program. On-site inspections are conducted within the first year and every two years thereafter for all sites offering these programs. As a result of the review, programs are re-certified, suspended or withdrawn, based upon federal and state requirements. The CRU also conducts on-site inspections due to program violation complaints.

- Maintaining regulatory oversight of the Wisconsin Nurse Aide Registry. The Nurse Aide Registry currently contains information on over 160,000 nurse aides who meet applicable state and federal training and testing requirements. Over 9,900 newly trained nurse aides were entered on the Wisconsin Nurse Aide Registry during the last federal fiscal year.

- Monitoring the telephone Interactive Voice Response (IVR) messages and internet web registry messages that provide Registry information to inquirers regarding aides' training and testing information, eligibility for employment and the entry of a caregiver misconduct substantiated finding.

  Wisconsin has a contract with Promissor to provide all of the Department's Nurse Aide Registry and statewide, standardized nurse aide competency testing services. This firm is already providing similar services to several states. This initiative was pursued as a budget cutting measure for the state. As the contract holder, CRU is responsible for the oversight of the Nurse Aide Registry and competency testing services. The conversion of the Registry data to the contractor's system was completed by January 1, 2003. The current cost to Wisconsin is $0.00 with the firm receiving revenue from testing fees. Promissor's performance is monitored continuously with an annual review in November of each year. Changes in this contract could require that Wisconsin fund all costs for Promissor to maintain the Nurse Aide Registry. The current budget application does not request any funds for the Registry. The potential fiscal impact could be $500,000 annually; these costs would be divided equally between Medicare, Medicaid and State funds in equal shares. Should contract changes have a fiscal impact, Wisconsin will file a request for supplemental Medicare and Medicaid budget as defined in paragraph 4640 of the SOM. .

APPENDIX 6

While the Bureau reduced staff for maintaining the Registry, CRU continues to be responsible for a variety of transition and monitoring responsibilities including:

- Reviewing and troubleshooting data conversion problems
- Responding and directing nurse aide and employer customer calls to contractor
- Forwarding Nurse Aide Registry forms to contractor
- Purging and relocation of Registry paper files
- Monitoring contract compliance with application processing and test scheduling.
- Quality assurance reviews of Nurse Aide Registry, IVR, and web registry data.

Following the implementation of the standardized competency evaluation program, BQA enhanced the nurse aide training program monitoring process to reflect federal OBRA 1987 recommendations, resulting in a more thorough onsite review. The goals of the enhanced nurse aide training program monitoring are to ensure that:

- Training programs and training records reflect that each nurse aide included on the Registry has been trained according to federal and state regulations; and
- Programs are held accountable to their approved training curriculum.

Overall, the nurse aide training program monitoring has meant a longer, more detailed onsite review process at no increase in cost for the Bureau.

APPENDIX 7

DEPARTMENT OF HEALTH AND FAMILY SERVICES
BUREAU OF QUALITY ASSURANCE

ASSISTED LIVING SECTION

ENFORCEMENT PROCEDURES AND GUIDELINES

March 19, 2003

INTRODUCTION

Assisted Living Enforcement – Position Paper
May 28, 2003

In recent years, Wisconsin has experienced a decline in nursing home occupancy and experienced growth in assisted living facilities. Concurrent with the growth in community residential settings, has been an increase in the acuity of care required by residents in assisted living facilities. Many facilities are able to comply with licensing requirements and meet the complex needs of a growing population of vulnerable adults. However, many facilities are ill equipped to meet resident needs and compliance with fundamental and essential regulatory requirements has proven problematic for some. As one avenue to promote compliance with regulations, the Assisted Living Section recognized the need to develop procedures and guidelines for the enforcement of assisted living statutes and administrative rules.

An additional impetus for the development of enforcement protocols occurred as the result of an audit ordered by the state legislature. The audit comprised a review of nursing home and assisted living survey and enforcement processes in the state. The Legislative Audit Bureau identified a lack of structure for enforcement activities in assisted living that was a marked contrast to the written protocols directing enforcement processes in nursing homes and facilities for the developmentally disabled. The Audit Bureau recommended that the state (1) document the "unwritten" enforcement procedures that were in place and (2) develop uniform enforcement procedures that would ensure consistency, accountability, and fairness.

Prior to the development of written procedures, and as a result of limited staff resources for enforcement activities, problems occurred with the uniformity of sanctions imposed for noncompliance. The enforcement review process was (and is) centralized; however, in the absence of written guidance to regional offices regarding the types of citations to refer for enforcement review, citations resulting in sanctions varied across the state.

The state recognized a need to address persistent noncompliance by some providers. For example, the state identified a number of repeat violations in the area of minimum training requirements for staff of Community Based Residential Facilities (CBRF). Nominal forfeitures had been assessed against facilities that failed to ensure staff had received essential training. As a result, it was often more "economical" for some providers to pay the nominal forfeiture than to invest in staff training. Subsequently, there were repeated violations of training requirements and serious concerns, statewide, about staff qualifications. The state's minimum training requirements are designed to enable caregivers to achieve basic competencies to provide for the health, safety, and welfare of residents in assisted living. The development of written enforcement criteria, including a specific procedure to address noncompliance with training requirements, was identified as an area where enhanced enforcement would directly contribute to improved services for residents.

The written enforcement guidelines apply to all Community Based Residential Facilities in the state. The ramifications are significant since enforcement actions

can include monetary forfeitures, a denial of new admissions, and the revocation of a license. Therefore, the state recognized that (1) written enforcement guidelines were essential and "overdue" and (2) guidelines must be comprehensive, promote fair and reasonable sanctions, and be based on statute and administrative rule.

Objectives:

Assisted Living Section (ALS) administrative personnel identified several key objectives that would be met through the development of enforcement guidelines and procedures, including:

- Clear, specific criteria for enforcement analysis and decisions
- Improved compliance by providers
- Improved consistency among regional offices, statewide
- Guidance for field staff and supervisors
- Fulfilling the recommendations of the Legislative Audit Bureau
- Improved quality of care and quality of life for residents
- Implementation of fair and reasonable sanctions
- An efficient system for issuing sanctions, collecting forfeitures, and maintaining records
- Address "target" areas of noncompliance with standardized enforcement processes
- Address repeated noncompliance

To meet the above objectives, the enforcement specialist developed written procedures with input from administrative personnel and field staff. The guidelines address enforcement processes from "beginning to end."

- Enforcement processes are based on state statute and administrative rule. The first step in the development of written guidelines was to identify all relevant enforcement statutes and rules. The statutes and rules were compiled as a separate resource document for assisted living staff.
- Because the survey findings and survey report determine if violations warrant enforcement review, guidelines were developed to assist staff in determining which violations to refer to the enforcement specialist.
- Guidelines were developed to assist staff in documenting cohesive, defensible statements of deficiency (SOD).
- Criteria for analyzing violations and making enforcement decisions were developed.
- Procedures for effective record keeping were established.
- Mechanisms for inter-agency collaboration were developed and documented. For example, a procedure for referring serious violations to advocates, county agencies, and abuse investigators was drafted.
- Memorandums were developed to address enforcement for specific, or "target" areas of noncompliance, such as noncompliance with staff training or life safety requirements.

- Documentation included information regarding appeals processes and the issuance of enforcement notices.
- Procedures were developed to address the collection of forfeitures and overdue payments.

The enforcement guidelines are subject to change as regulatory and enforcement practices evolve in the state. That is, procedures are subject to revision and new procedures will be written to respond to emerging issues.

Outcomes:

There are several significant and positive outcomes that have arisen from the development of written enforcement procedures for assisted living. One significant benefit has been improving consistency, statewide, in the assessment of sanctions for noncompliance. Consistency is paramount to advance the integrity of enforcement decisions.

The written criteria for enforcement analysis and decision-making are designed to promote a fair, reasonable, and objective enforcement outcome. Each violation is reviewed against the same criteria, thereby assuring facilities an impartial evaluation of the deficient practice.

Many facilities seek legal recourse and appeal enforcement decisions. Written criteria for imposing sanctions provides a "non-arbitrary" methodology that enhances the state's position in defending the enforcement action.

The percentage of forfeitures collected has increased dramatically since the implementation of a uniform collection process. As a result of written procedures, corporations that operate more than one facility in the state experience consistent results with survey activities and enforcement.

Field staff and supervisors benefit from written resources and guidance regarding enforcement, thus improving overall operations in the assisted living section.

Addressing repeat violations via enforcement processes enables the section to focus resources and remedies on facilities with persistent noncompliance while permitting facilities that achieve compliance to benefit from constructive interaction with the regulatory agency, such as receiving technical assistance.

While enforcement is an unpleasant reality for providers (and for a regulatory agency), sanctions are an effective recourse (in addition to provider training, technical assistance, and other supports) to promote compliance with regulations that directly impact the health, safety, welfare, and quality of life for residents in assisted living settings. That is the one most important outcome of the state's enforcement guidelines.

Evaluation:

There are several levels of ongoing evaluation in place to determine the effectiveness of the enforcement procedures that have been developed. Among these is feedback from field staff and from providers. Feedback from field staff

occurs informally and also via bi-monthly conference calls. During conference calls, licensing specialists identify issues and problems with enforcement practices and resolutions are sought. There are a number of internal "quality assurance" measures implemented by the assisted living management team to evaluate the ongoing effectiveness of enforcement procedures. These internal measures include bi-monthly management meetings and bi-weekly, statewide tele-conference "Quality Assurance" calls. The assisted living section management team meets bi-monthly with provider representatives, advocates, and other stakeholders for an "Assisted Living Forum." During the forum meetings, providers discuss concerns with survey and enforcement processes. The forum provides an opportunity for providers to influence agency policy and enforcement practices. In addition, it provides an opportunity for management staff to discuss new policies and respond to provider concerns.

The assisted living section chief receives ongoing information and a monthly report identifying all enforcement action taken. The report permits a review of the implementation of procedures and is useful in determining if revisions to existing guidelines are indicated.

Statistics are maintained regarding (1) citations that are subject to enforcement; (2) forfeitures assessed; (3) license revocations that occur; and (4) number of facilities receiving sanctions. Monitoring trends in enforcement activity is an important component of evaluation.

Conclusion:

There was a concerted effort not to adopt nursing home enforcement protocols for assisted living. While there is some basic information and context derived from long-term care procedures, the assisted living protocols are unique to address an evolving industry and evolving regulatory processes.

Nearly every staff member in the assisted living section reviewed each draft procedure. Input was obtained from field staff, supervisors, program support staff, and the enforcement specialist and revisions were made accordingly. As a result, the guidelines represent all facets of enforcement within the section and all employees have an investment in the implementation.

Assisted Living Section
Enforcement Procedures and Guidelines

Table of Contents

Section:

1. **Assisted Living Enforcement**

   Statutory Authority/Administrative Rules

2. **Citations Subject to Enforcement Review** — **ALS-03-006**

3. **Statements of Deficiency** — **ALS-03-008**

   Developing the Enforcement Recommendation
   Principles of Documentation — Appendix A

4. **Procedure: Referring Citations for Enforcement Review** — **ALS-03-005**

5. **Enforcement Analysis and Determination Criteria** — **ALS-03-007**

6. **Appeal Process**

7. **Maintaining Enforcement Records**

   Assisted Living Enforcement Report — Appendix B

8. **Enforcement Notification and Referral Procedure** — **ALS-03-009**

9. **Minimum Training Requirements** — **ALS-03-002**

10. **Smoke and Heat Detection System Requirements** — **RCRS-02-01**, **DSL-BQA-02-001**

11. **Hot Water Temperatures** — **DSL-BQA-97-047**, **DSL-BQA-98-020**, **DSL-BQA-98-021**

12. **Issuing the Notice of Enforcement** — **ALS-03-010**

13. **Overdue Forfeiture Payments** — **ALS-03-003**

    Notice of Forfeiture (template)
    Notice of Overdue Forfeiture (sample)
    Sample Statement of Deficiency

14. **License Renewal Late fees** — **ALS-03-004**

    License Continuation Letter
    Late Fee Notice - Warning

STATUTORY AUTHORITY/ ADMINISTRATIVE RULES

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 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 ineligility for Medicaid Waiver funds.

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			*		*

CITATIONS SUBJECT TO ENFORCEMENT
ALS-03-006

DATE: March 17, 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

STATEMENTS OF DEFICIENCY
ALS-03-008

CORRESPONDENCE/MEMORANDUM

Division of Supportive Living

Bureau of Quality Assurance

DATE: March 17, 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)

REFERRING CITATIONS FOR ENFORCEMENT REVIEW ALS-03-005

DATE: February 20, 2003

ALS-03-005

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

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.