

CHAPTER 50

UNIFORM LICENSURE

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Cross–reference: See s. 46.011 for definitions applicable to chs. 46, 48, 50, 51, 54, 55 and 58.

SUBCHAPTER I

CARE AND SERVICE RESIDENTIAL FACILITIES

50.01 Definitions. As used in this subchapter:

(1) “Adult family home” means one of the following:

(a) A private residence to which all of the following apply:

1. Care and maintenance above the level of room and board but not including nursing care are provided in the private residence by the care provider whose primary domicile is this residence for 3 or 4 adults, or more adults if all of the adults are siblings, each of whom has a developmental disability, as defined in s. 51.01 (5), or, if the residence is licensed as a foster home, care and maintenance are provided to children, the combined total of adults and children so served being no more than 4, or more adults or children if all of the adults or all of the children are siblings, or, if the residence is licensed as a treatment foster home, care and maintenance are provided to children, the combined total of adults and children so served being no more than 4.

2. The private residence was licensed under s. 48.62 as a foster home or treatment foster home for the care of the adults specified in subd. 1. at least 12 months before any of the adults attained 18 years of age.

(b) A place where 3 or 4 adults who are not related to the operator reside and receive care, treatment or services that are above the level of room and board and that may include up to 7 hours per week of nursing care per resident. “Adult family home” does not include a place that is specified in sub. (1g) (a) to (d), (f) or (g).

(1b) “Advanced practice nurse prescriber” means an advanced practice nurse who is certified under s. 441.16 (2) to issue prescription orders.

(1d) “Residential care apartment complex” means a place where 5 or more adults reside that consists of independent apartments, each of which has an individual lockable entrance and exit, a kitchen, including a stove, and individual bathroom, sleeping and living areas, and that provides, to a person who resides in the place, not more than 28 hours per week of services that are supportive, personal and nursing services. “Residential care apartment complex” does not include a nursing home or a community–based residential facility, but may be physically part of a structure that is a nursing home or community–based residential facility. In this subsection, “stove” means a cooking appliance that is a microwave oven of at least 1,000 watts or that consists of burners and an oven.

(1e) “Basic care” includes periodic skilled nursing services or physical, emotional, social or restorative care.

(1g) “Community–based residential facility” means a place where 5 or more adults who are not related to the operator or administrator and who do not require care above intermediate level nursing care reside and receive care, treatment or services that are above the level of room and board but that include no more than 3 hours of nursing care per week per resident. “Community–based residential facility” does not include any of the following:

(a) A convent or facility owned or operated by members of a religious order exclusively for the reception and care or treatment of members of that order.

(b) A facility or private home that provides care, treatment and services only for victims of domestic abuse, as defined in s. 46.95 (1) (a), and their children.

(c) A shelter facility as defined under s. 560.9808 (1) (d).

(d) A place that provides lodging for individuals and in which all of the following conditions are met:

1. Each lodged individual is able to exit the place under emergency conditions without the assistance of another individual.

2. No lodged individual receives from the owner, manager or operator of the place or the owner's, manager's or operator's agent or employee any of the following:

a. Personal care, supervision or treatment, or management, control or supervision of prescription medications.

b. Care or services other than board, information, referral, advocacy or job guidance; location and coordination of social services by an agency that is not affiliated with the owner, manager or operator, for which arrangements were made for an individual before he or she lodged in the place; or, in the case of an emergency, arrangement for the provision of health care or social services by an agency that is not affiliated with the owner, manager or operator.

(e) An adult family home.

(f) A residential care apartment complex.

(g) A residential facility in the village of Union Grove that was authorized to operate without a license under a final judgment entered by a court before January 1, 1982, and that continues to comply with the judgment notwithstanding the expiration of the judgment.

(1m) "Facility" means a nursing home or community-based residential facility. If notice is required to be served on a facility or a facility is required to perform any act, "facility" means the person licensed or required to be licensed under s. 50.03 (1).

(1r) "Home health agency" has the meaning given under s. 50.49 (1) (a).

(1s) "Intensive skilled nursing care" means care requiring specialized nursing assessment skills and the performance of specific services and procedures that are complex because of the resident's condition or the type or number of procedures that are necessary, including any of the following:

(a) Direct patient observation or monitoring or performance of complex nursing procedures by registered nurses or licensed practical nurses on a continuing basis.

(b) Repeated application of complex nursing procedures or services every 24 hours.

(c) Frequent monitoring and documentation of the resident's condition and response to therapeutic measures.

(1t) "Intermediate level nursing care" means basic care that is required by a person who has a long-term illness or disability that has reached a relatively stable plateau.

(1w) "Licensed practical nurse" means a nurse who is licensed or has a temporary permit under s. 441.10 or who is licensed as a licensed practical/vocational nurse in a party state, as defined in s. 441.50 (2) (j).

(2) "Nurse's assistant" means a person who performs routine patient care duties delegated by a registered nurse or licensed practical nurse who supervises the person, for the direct health care of a patient or resident. "Nurse's assistant" does not mean a person who is licensed, permitted, certified, or registered under ch. 441, 448, 449, 450, 451, 455, 459, or 460 or a person whose duties primarily involve skills that are different than those taught in instructional programs for nurse's assistants.

(2m) "Nursing care" means nursing procedures, other than personal care, that are permitted to be performed by a registered nurse under s. 441.01 (3) or by a licensed practical nurse under s. 441.001 (3), directly on or to a resident.

(3) "Nursing home" means a place where 5 or more persons who are not related to the operator or administrator reside, receive care or treatment and, because of their mental or physical condition, require access to 24-hour nursing services, including limited nursing care, intermediate level nursing care and skilled nursing services. "Nursing home" does not include any of the following:

(c) A convent or facility owned or operated exclusively by and for members of a religious order that provides reception and care or treatment of an individual.

(d) A hospice, as defined in s. 50.90 (1), that directly provides inpatient care.

(e) A residential care apartment complex.

(4) "Nursing home administrator" has the meaning assigned in s. 456.01 (3).

(4m) "Operator" means any person licensed or required to be licensed under s. 50.03 (1) or a person who operates an adult family home that is licensed under s. 50.033 (1m) (b).

(4o) "Personal care" means assistance with the activities of daily living, such as eating, dressing, bathing and ambulation, but does not include nursing care.

(4r) "Plan of correction" means a nursing home's response to alleged deficiencies cited by the department on forms provided by the department.

(5m) "Recuperative care" means care anticipated to be provided in a nursing home for a period of 90 days or less for a resident whose physician has certified that he or she is convalescing or recuperating from an illness or medical treatment.

(5r) "Registered nurse" means a nurse who is licensed under s. 441.06 or permitted under s. 441.08 or who is licensed as a registered nurse in a party state, as defined in s. 441.50 (2) (j).

(6) "Resident" means a person who is cared for or treated in and is not discharged from a nursing home, community-based residential facility or adult family home, irrespective of how admitted.

(6g) "Respite care" means care anticipated to be provided in a nursing home for a period of 28 days or less for the purpose of temporarily relieving a family member or other caregiver from his or her daily caregiving duties.

(6r) "Short-term care" means recuperative care or respite care provided in a nursing home.

(6v) "Skilled nursing services" means those services, to which all of the following apply, that are provided to a resident under a physician's orders:

(a) The services require the skills of and are provided directly by or under the supervision of a person whose licensed, registered, certified or permitted scope of practice is at least equivalent to that of a licensed practical nurse.

(b) Any of the following circumstances exist:

1. The inherent complexity of a service prescribed for a resident is such that it can be safely and effectively performed only by or under the supervision of registered nurses or licensed practical nurses.

2. The full recovery or medical improvement of the resident is not possible, but the services are needed to prevent, to the extent possible, deterioration of the resident's condition or to sustain current capacities of the resident.

3. Because of special medical complications, performing or supervising a service that is generally unskilled or observing the resident necessitates the use of a person whose licensed, registered, certified or permitted scope of practice is at least equivalent to that of a licensed practical nurse.

(7) "Violation" means a failure to comply with any provision of this subchapter or administrative rule promulgated thereunder. An alleged deficiency in a nursing home reported in writing to the department by any of its authorized representatives shall not be deemed to be a violation until the department determines it is a violation by serving notice under s. 50.04 (4). If the facility contests the department determination, the facility shall be afforded the due process procedures in this subchapter.

History: 1975 c. 413; 1977 c. 170, 418; 1979 c. 111; 1983 a. 189 s. 329 (18); 1985 a. 29, 276; 1985 a. 332 s. 251 (1); 1987 a. 127, 161; 1989 a. 31, 136, 199; 1991 a. 39; 1993 a. 327, 446, 491; 1995 a. 27; 1997 a. 13, 27, 156, 237; 1999 a. 22, 32; 2001 a. 74, 107; 2003 a. 33; 2005 a. 187.

Cross-reference: See s. 46.011 for definitions applicable to chs. 46, 48, 50, 51, 54, 55 and 58.

Up to 7 hours of nursing care may be provided by a community-based residential facility under sub. (1g). *Hacker v. DHSS*, 197 Wis. 2d 441, 541 N.W.2d 766 (1995), 93-1043.

The department can constitutionally license and regulate community-based residential facilities operated by religious organizations that are not exempt under s. 50.01 (1), 1985 stats. [now 50.01 (1g)] or s. 50.03 (9). 71 Atty. Gen. 112.

50.02 Department; powers and duties. (1) DEPARTMENTAL AUTHORITY. The department may provide uniform, statewide licensing, inspection and regulation of community–based residential facilities and nursing homes as provided in this subchapter. The department shall certify, inspect and otherwise regulate adult family homes, as specified under s. 50.032 and shall license adult family homes, as specified under s. 50.033. Nothing in this subchapter may be construed to limit the authority of the department of commerce or of municipalities to set standards of building safety and hygiene, but any local orders of municipalities shall be consistent with uniform, statewide regulation of community–based residential facilities. The department may not prohibit any nursing home from distributing over–the–counter drugs from bulk supply. The department may consult with nursing homes as needed and may provide specialized consultations when requested by any nursing home, separate from its inspection process, to scrutinize any particular questions the nursing home raises. The department shall, by rule, define “specialized consultation”.

(2) STANDARDS. (a) The department, by rule, shall develop, establish and enforce regulations and standards for the care, treatment, health, safety, rights, welfare and comfort of residents in community–based residential facilities and nursing homes and for the construction, general hygiene, maintenance and operation of those facilities which, in the light of advancing knowledge, will promote safe and adequate accommodation, care and treatment of residents in those facilities; and promulgate and enforce rules consistent with this section. Such standards and rules shall provide that intermediate care facilities, which have 16 or fewer beds may, if exempted from meeting certain physical plant, staffing and other requirements of the federal regulations, be exempted from meeting the corresponding provisions of the department’s standards and rules. The department shall consult with the department of commerce when developing exemptions relating to physical plant requirements.

(ad) The department shall promulgate rules that require each facility licensed under this subchapter to provide information necessary for the department to assess the facility’s compliance with s. 55.14.

(ag) The department shall, by rule, define “Class A” and “Class C” community–based residential facilities for the purposes of s. 50.035 (3).

(am) The department shall promulgate all of the following rules with respect to adult family homes:

1. For the purposes of s. 50.032, defining the term “permanent basis” and establishing minimum requirements for certification, certification application procedures and forms, standards for operation and procedures for monitoring, inspection, decertification and appeal of decertification. The rules shall be designed to protect and promote the health, safety and welfare of the disabled adults receiving care and maintenance in certified adult family homes.

2. For the purposes of s. 50.033, establishing minimum requirements for licensure, licensure application procedures and forms, standards for operation and procedures for monitoring, inspection, revocation and appeal of revocation.

(b) 1. The department shall conduct plan reviews of all capital construction and remodeling of nursing homes to ensure that the plans comply with building code requirements under ch. 101 and with life safety code and physical plant requirements under s. 49.498, this chapter or under rules promulgated under this chapter.

2. The department shall promulgate rules that establish a fee schedule for its services under subd. 1. in conducting the plan reviews. The schedule established under these rules shall set fees for nursing home plan reviews in amounts that are less than the sum of the amounts required on September 30, 1995, for fees under this paragraph and for fees for examination of nursing home plans under s. 101.19 (1) (a), 1993 stats.

(bm) The department shall, by rule, define “intermediate nursing care”, “limited nursing care” and “skilled nursing services” for use in regulating minimum hours of service provided to residents of nursing homes.

(bn) The department may, by rule, increase the minimum hours of nursing home care per day that are specified in s. 50.04 (2) (d) 1. to 3.

(c) If a nursing home is certified as a provider of services under s. 49.45 (2) (a) 11. and is named in a verified complaint filed with the department stating that staffing requirements imposed on the nursing home are not being met, the department shall, in order to verify the staffing requirements, randomly inspect payroll records at the nursing home that indicate the actual hours worked by personnel and the number of personnel on duty. The department may not limit its inspection to schedules of work assignments prepared by the nursing home.

(d) The department shall promulgate rules that prescribe the time periods and the methods of providing information specified in ss. 50.033 (2r) and (2s), 50.034 (5m) and (5n), 50.035 (4m) and (4n) and 50.04 (2g) (a) and (2h) (a).

(3) CONSIDERATIONS IN ESTABLISHING STANDARDS AND REGULATIONS. (a) The department shall establish several levels and types of community–based residential facilities and nursing homes as provided in par. (b), including a category or categories designed to enable facilities to qualify for federal funds.

(b) In setting standards and regulations, the department shall consider the residents’ needs and abilities, the increased cost in relation to proposed benefits to be received, the services to be provided by the facility, the relationship between the physical structure and the objectives of the program conducted in the facility and the primary functions of the facility. Recognizing that size and structure will influence the ability of community–based residential facilities to provide a homelike environment, the legislature encourages the department to develop rules which facilitate in particular the development of: small facilities, small living units in larger facilities, individual residential units, independent living to the extent possible, and integration of residents into the community.

(c) The department shall promulgate rules to establish a procedure for waiver of and variance from standards developed under this section. The department may limit the duration of the waiver or variance.

(d) The department shall promulgate rules to establish a procedure for the admission, evaluation and care of short–term care nursing home residents. These rules shall specify that the nursing home or community–based residential facility shall be required to provide to the department as documentation of this admission, evaluation and care only that amount of information commensurate with the length of stay and the medical needs, if any, of the particular resident.

(4) REPORTS TO THE BOARD ON AGING AND LONG–TERM CARE. The department shall submit at least one report quarterly to the board on aging and long–term care regarding enforcement actions, consultation, staff training programs, new procedures and policies, complaint investigation and consumer participation in enforcement under this subchapter and changes that may be needed under this subchapter. The department shall submit at least one report annually to the board on aging and long–term care regarding implementation of rules under sub. (3) (d).

(5) DEATH INVESTIGATION. No later than 14 days after the date of a death reported under s. 50.035 (5) (b) or 50.04 (2i) (b), the department shall investigate the death.

History: 1971 c. 125, 161; 1973 c. 122, 323, 327, 333; 1975 c. 119, 260; 1975 c. 413 ss. 5 to 8; 1977 c. 29, 170, 418; 1981 c. 20, 121, 391; 1983 a. 542; 1985 a. 29; 1987 a. 161; 1989 a. 336; 1991 a. 250; 1993 a. 16, 327; 1995 a. 27 ss. 3222 to 3225, 9116 (5); 1995 a. 98; 1997 a. 237; 1999 a. 9, 103; 2005 a. 264, 387.

Cross Reference: See also ch. HFS 132 and 134, Wis. adm. code.

A municipal ordinance that required registration of nursing homes was in direct conflict with sub. (1) and, therefore, invalid. *Volunteers of America v. Village of Brown Deer*, 97 Wis. 2d 619, 294 N.W.2d 44 (Ct. App. 1980).

The state has given the department preemptive authority over community-based residential facilities and nursing homes. 68 Atty. Gen. 45.

50.025 Plan reviews. The department may conduct plan reviews of all capital construction and remodeling of community-based residential facilities. The department shall promulgate rules that establish a fee schedule for its services in conducting the plan reviews.

History: 1977 c. 29; 1977 c. 170 ss. 7, 9; 1993 a. 16.

50.03 Licensing, powers and duties. (1) PENALTY FOR UNLICENSED OPERATION. No person may conduct, maintain, operate or permit to be maintained or operated a community-based residential facility or nursing home unless it is licensed by the department. Any person who violates this subsection may, upon a first conviction, be fined not more than \$500 for each day of unlicensed operation or imprisoned not more than 6 months or both. Any person convicted of a subsequent offense under this subsection may be fined not more than \$5,000 for each day of unlicensed operation or imprisoned not more than one year in the county jail or both.

(1m) DISTINCT PART OR SEPARATE LICENSURE FOR INSTITUTIONS FOR MENTAL DISEASES. Upon application to the department, the department may approve licensure of the operation of a nursing home or a distinct part of a nursing home as an institution for mental diseases, as defined under 42 CFR 435.1009. Conditions and procedures for application for, approval of and operation under licensure under this subsection shall be established in rules promulgated by the department.

(2) ADMINISTRATION. (a) The department shall make or cause to be made such inspections and investigations as it deems necessary.

(b) With approval of the department, the county board of any county having a population of 500,000 or more may, in an effort to assure compliance with this section, establish a program for the inspection of facilities licensed under this section within its jurisdiction. If a county agency deems such action necessary after inspection, the county agency may, after notifying the department, withdraw from the facility any persons receiving county support for care in a facility which fails to comply with the standards established by this section or rules promulgated under this section.

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

(d) Any holder of a license or applicant for a license shall be deemed to have given consent to any authorized officer, employee or agent of the department to enter and inspect the facility in accordance with this subsection. Refusal to permit such entry or inspection shall constitute grounds for initial licensure denial, as provided in sub. (4), or suspension or revocation of license, as provided in sub. (5).

(e) The applicant or licensee may review inspection reports and may submit additional information to the department. Portions of the record may be withheld to protect the confidentiality of residents or the identity of any person who has given information subject to the condition that his or her identity remain confidential.

(f) 1. If a complaint is received by a community-based residential facility, the licensee shall attempt to resolve the complaint informally. Failing such resolution, the licensee shall inform the complaining party of the procedure for filing a formal complaint under this section.

2. Any individual may file a formal complaint under this section regarding the general operation of a community-based resi-

dential facility and shall not be subject to reprisals for doing so. All formal complaints regarding community-based residential facilities shall be filed with the county department under s. 46.215 or 46.22 on forms supplied by the county department, unless the county department designates the department of health and family services to receive a formal complaint. The county department shall investigate or cause to be investigated each formal complaint. Records of the results of each investigation and the disposition of each formal complaint shall be kept by the county department and filed with the unit within the department of health and family services which licenses community-based residential facilities.

3. Upon receipt of a formal complaint, the county department may investigate the premises and records, and question the licensee, staff and residents of the community-based residential facility involved. The county department shall attempt to resolve the situation through negotiation or other appropriate means.

4. If no resolution is reached, the county department shall forward the formal complaint, the results of the investigation, and any other pertinent information to the unit within the department which may take further action under this chapter against the community-based residential facility. The unit shall review the complaint and may conduct further investigations, take enforcement action under this chapter or dismiss the complaint. The department shall notify the complainant in writing of the formal disposition of the complaint and the reasons therefor. If the complaint is dismissed, the complainant is entitled to an administrative hearing conducted by the department to determine the reasonableness of the dismissal.

5. If the county department designates the department to receive formal complaints, the subunit under s. 46.03 (22) (c) shall receive the complaints and the department shall have all the powers and duties granted to the county department in this section.

(2m) SERVICE OF NOTICES. (a) Each licensee or applicant for license shall file with the department the name and address of a person authorized to accept service of any notices or other papers which the department may send by registered or certified mail, with a return receipt requested. The person authorized by a nursing home under this paragraph shall be located at the nursing home.

(b) Notwithstanding s. 879.05, wherever in this subchapter the department is required to serve any notice or other paper on a licensee or applicant for license, personal service or the sending of the notice or paper by registered or certified mail, with a return receipt requested, to the most recent address on file with the department under par. (a) shall constitute proper service.

(3) APPLICATION FOR REGISTRATION AND LICENSE. (am) In this subsection, "managing employee" means a general manager, business manager, administrator, director or other individual who exercises operational or managerial control over, or who directly or indirectly conducts, the operation of the facility.

(b) The application for a license and the report of a licensee shall be in writing upon forms provided by the department and shall contain such information as the department requires, including the name, address and type and extent of interest of each of the following persons:

1. All managing employees and, if any, the director of nursing of the facility.

2. Any person who, directly or indirectly, owns any interest in any of the following:

a. The partnership, corporation or other entity which operates the facility;

b. The profits, if any, of the facility;

c. The building in which the facility is located;

d. The land on which the facility is located;

e. Any mortgage, note, deed of trust or other obligation secured in whole or in part by the land on which or building in which the facility is located, except that disclosure of the disburse-

ments of a secured mortgage, note, deed of trust or other obligation is not required; and

f. Any lease or sublease of the land on which or the building in which the facility is located.

3. If any person named in response to subd. 1. or 2. is a partnership, then each partner.

3L. If any person named in response to subd. 1. or 2. is a limited liability company, then each member.

4. If any person named in response to subd. 1. or 2. is a corporation, then each officer and director of the corporation. In the case of a corporation required to report under section 12 of the securities exchange act, a copy of that report shall meet the requirements of this subdivision with respect to stockholders of the corporation. A report filed under this subdivision shall be the most recent report required to be filed under section 12 of the federal securities exchange act.

(c) If any person named in response to par. (b) 2. is a bank, credit union, savings bank, savings and loan association, investment association or insurance corporation, it is sufficient to name the entity involved without providing the information required under par. (b) 4.

(d) The licensee shall promptly report any changes which affect the continuing accuracy and completeness of the information required under par. (b).

(e) Failure by a nursing home to provide the information required under this subsection shall constitute a class “C” violation under s. 50.04 (4).

(f) Community-based residential facilities shall report all formal complaints regarding their operation filed under sub. (2) (f) and the disposition of each when reporting under sub. (4) (c) 1.

(4) ISSUANCE OF LICENSE. (a) 1. a. Except as provided in sub. (4m) (a), the department shall issue a license for a nursing home if it finds the applicant to be fit and qualified and if it finds that the nursing home meets the requirements established by this subchapter. The department, or its designee, shall make such inspections and investigations as are necessary to determine the conditions existing in each case and shall file written reports. The department shall promulgate rules defining “fit and qualified” for the purposes of this subd. 1. a.

b. Except as provided in sub. (4m) (b), the department shall issue a license for a community-based residential facility if it finds the applicant to be fit and qualified, if it finds that the community-based residential facility meets the requirements established by this subchapter and if the community-based residential facility has paid the license fee under s. 50.037 (2) (a). In determining whether to issue a license for a community-based residential facility, the department may consider any action by the applicant or by an employee of the applicant that constitutes a substantial failure by the applicant or employee to protect and promote the health, safety or welfare of a resident. The department may deny licensure to or revoke licensure for any person who conducted, maintained, operated or permitted to be maintained or operated a community-based residential facility for which licensure was revoked. The department, or its designee, shall make such inspections and investigations as are necessary to determine the conditions existing in each case and shall file written reports. In reviewing the report of a community-based residential facility that is required to be submitted under par. (c) 1., the department shall consider all complaints filed under sub. (2) (f) since initial license issuance or since the last review, whichever is later, and the disposition of each. The department shall promulgate rules defining “fit and qualified” for the purposes of this subd. 1. b.

2. The past record of violations of applicable laws and regulations of the United States or of this or any other state, in the operation of a residential or health care facility, or in any other health-related activity by any of the persons listed in sub. (3) (b) shall be relevant to the issue of the fitness of an applicant for a license.

3. Within 10 working days after receipt of an application for initial licensure of a community-based residential facility, the

department shall notify the city, town or village planning commission, or other appropriate city, town or village agency if there is no planning commission, of receipt of the application. The department shall request that the planning commission or agency send to the department, within 30 days, a description of any specific hazards which may affect the health and safety of the residents of the community-based residential facility. No license may be granted to a community-based residential facility until the 30-day period has expired or until the department receives the response of the planning commission or agency, whichever is sooner. In granting a license the department shall give full consideration to such hazards determined by the planning commission or agency.

(c) 1. A community-based residential facility license is valid until it is revoked or suspended under this section. Every 24 months, on a schedule determined by the department, a community-based residential facility licensee shall submit a biennial report in the form and containing the information that the department requires, including payment of the fees required under s. 50.037 (2) (a). If a complete biennial report is not timely filed, the department shall issue a warning to the licensee. The department may revoke a community-based residential facility license for failure to timely and completely report within 60 days after the report date established under the schedule determined by the department.

2. A nursing home license is valid until it is revoked or suspended under this section. Every 12 months, on a schedule determined by the department, a nursing home licensee shall submit a report in the form and containing the information that the department requires, including payment of the fee required under s. 50.135 (2) (a). If a complete report is not timely filed, the department shall issue a warning to the licensee. The department may revoke a nursing home license for failure to timely and completely report within 60 days after the report date established under the schedule determined by the department.

(d) Immediately upon the denial of any application for a license under this section, the department shall notify the applicant in writing. Notice of denial shall include a clear and concise statement of the violations on which denial is based and notice of the opportunity for a hearing under s. 227.44. If the applicant desires to contest the denial of a license it shall provide written notice to the department of a request for a hearing within 10 days after receipt of the notice of denial.

(e) Each license shall be issued only for the premises and persons named in the application and is not transferable or assignable. The license shall be posted in a place readily visible to residents and visitors, such as the lobby or reception area of the facility. Any license granted shall state the number of the facility’s beds that are licensed by the department, the person to whom the license is granted, the date of issuance, the maximum level of care for which the facility is licensed as a condition of its licensure and such additional information and special conditions as the department may prescribe.

(f) The issuance or continuance of a license after notice of a violation has been sent shall not constitute a waiver by the department of its power to rely on the violation as the basis for subsequent license revocation or other enforcement action under this subchapter arising out of the notice of violation.

(g) Prior to initial licensure of a community-based residential facility, the applicant for licensure shall make a good faith effort to establish a community advisory committee consisting of representatives from the proposed community-based residential facility, the neighborhood in which the proposed community-based residential facility will be located and a local unit of government. The community advisory committee shall provide a forum for communication for those persons interested in the proposed community-based residential facility. Any committee established under this paragraph shall continue in existence after licensure to make recommendations to the licensee regarding the impact of the community-based residential facility on the neigh-

borhood. The department shall determine compliance with this paragraph both prior to and after initial licensure.

(4m) PROBATIONARY LICENSE. (a) If the applicant for licensure as a nursing home has not been previously licensed under this subchapter or if the nursing home is not in operation at the time application is made, the department shall issue a probationary license. A probationary license shall be valid for 12 months from the date of issuance unless sooner suspended or revoked under sub. (5). Prior to the expiration of a probationary license, the department shall inspect the nursing home and, if the nursing home meets the applicable requirements for licensure, shall issue a regular license under sub. (4) (a) 1. a. If the department finds that the nursing home does not meet the requirements for licensure, the department may not issue a regular license under sub. (4) (a) 1. a.

(b) If the applicant for licensure as a community-based residential facility has not been previously licensed under this subchapter or if the community-based residential facility is not in operation at the time application is made, the department shall issue a probationary license, except that the department may deny licensure to any person who conducted, maintained, operated or permitted to be maintained or operated a community-based residential facility for which licensure was revoked within 5 years before application is made. A probationary license shall be valid for up to 12 months from the date of issuance unless sooner suspended or revoked under sub. (5g). Prior to the expiration of a probationary license, the department shall inspect the community-based residential facility and, if the community-based residential facility meets the applicable requirements for licensure, shall issue a regular license under sub. (4) (a) 1. b. If the department finds that the community-based residential facility does not meet the requirements for licensure, the department may not issue a regular license under sub. (4) (a) 1. b.

(5) SUSPENSION AND REVOCATION OF NURSING HOME LICENSES. (a) *Power of department.* The department, after notice to a nursing home applicant or licensee, may suspend or revoke a license in any case in which the department finds that the nursing home has substantially failed to comply with the applicable requirements of this subchapter and the rules promulgated under this subchapter. No state or federal funds passing through the state treasury may be paid to a nursing home that does not have a valid license issued under this section.

(b) *Form of notice.* Notice under this subsection shall include a clear and concise statement of the violations on which the revocation is based, the statute or rule violated and notice of the opportunity for an evidentiary hearing under par. (c).

(c) *Contest of revocation.* If a nursing home desires to contest the revocation of a license, the nursing home shall, within 10 days after receipt of notice under par. (b), notify the department in writing of its request for a hearing under s. 227.44. The department shall hold the hearing within 30 days of receipt of such notice and shall send notice to the nursing home of the hearing as provided under s. 227.44 (2).

(d) *Effective date of revocation.* 1. Subject to s. 227.51 (3), revocation under this subsection 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.

3. The department may extend the effective date of license revocation in any case in order to permit orderly removal and relocation of residents of the nursing home.

(5g) SANCTIONS AND PENALTIES FOR COMMUNITY-BASED RESIDENTIAL FACILITIES. (a) In this subsection, “licensee” means a community-based residential facility that is licensed under sub. (4) or (4m) (b).

(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:

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).

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.

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).

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).

5. That a licensee implement and comply with a plan of correction previously submitted by the licensee and approved by the department.

6. That a licensee implement and comply with a plan of correction that is developed by the department.

7. That a licensee accept no additional residents until all violations are corrected.

8. That a licensee provide training in one or more specific areas for all of the licensee’s staff or for specific staff members.

(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:

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:

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).

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.

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 secretary of administration for deposit in the school fund.

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 admin-

istrative and judicial reviews. The only issue to be contested in any such action shall be whether the forfeiture has been paid.

2. Suspension of licensure for the community–based residential facility for 14 days.

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

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

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.

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).

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.

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).

(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.

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.

3. The department may deny a license for a licensee whose license was revoked under this paragraph.

(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).

(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.

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

(5m) RESIDENT REMOVAL. (a) *Departmental authority.* The department may remove any resident from any facility required to be licensed under this chapter when any of the following conditions exist:

1. Such facility is operating without a license.

2. The department has suspended or revoked the existing license of the facility as provided under sub. (5).

3. The department has initiated revocation procedures under sub. (5) and has determined that the lives, health, safety, or welfare

of the resident cannot be adequately assured pending a full hearing on license revocation under sub. (5).

4. The facility has requested the aid of the department in the removal of the resident and the department finds that the resident consents to removal or that the removal is made for valid medical reasons or for the welfare of the resident or of other residents.

5. The facility is closing, intends to close or is changing its type or level of services or means of reimbursement accepted and will relocate at least 5 residents or 5% of the residents, whichever is greater.

6. The department determines that an emergency exists which requires immediate removal of the resident. An emergency is a situation, physical condition or one or more practices, methods or operations which presents imminent danger of death or serious physical or mental harm to a resident of a facility.

(b) *Removal decision.* In deciding to remove a resident from a facility under this subsection, the department shall balance the likelihood of serious harm to the resident which may result from the removal against the likelihood of serious harm which may result if the resident remains in the facility.

(c) *Relocation.* The department shall offer removal and relocation assistance to residents removed under this section, including information on available alternative placements. Residents shall be involved in planning the removal and shall choose among the available alternative placements, except that where an emergency situation makes prior resident involvement impossible the department may make a temporary placement until a final placement can be arranged. Residents may choose their final alternative placement and shall be given assistance in transferring to such place. No resident may be forced to remain in a temporary or permanent placement except pursuant under s. 55.06, 2003 stats., or an order under s. 55.12 for protective placement. Where the department makes or participates in making the relocation decision, consideration shall be given to proximity to residents' relatives and friends.

(d) *Transfer trauma mitigation.* The department shall prepare resident removal plans and transfer trauma mitigation care plans to assure safe and orderly removals and protect residents' health, safety, welfare and rights. In nonemergency situations, and where possible in emergency situations, the department shall design transfer trauma mitigation care plans for the individual resident and implement such care in advance of removal. The resident shall be provided with opportunity for 3 visits to potential alternative placements prior to removal, except where medically contraindicated or where the need for immediate removal requires reduction in the number of visits.

(e) *Relocation teams.* The department may place relocation teams in any facility from which residents are being removed, discharged or transferred for any reason, for the purpose of implementing removal plans and training the staffs of transferring and receiving facilities in transfer trauma mitigation.

(f) *Nonemergency removal procedures.* In any removal conducted under par. (a) 1. to 5., the department shall provide written notice to the facility and to any resident sought to be removed, to the resident's guardian, if any, and to a member of the resident's family, where practicable, prior to the removal. The notice shall state the basis for the order of removal and shall inform the facility and the resident or the resident's guardian, if any, of their right to a hearing prior to removal. The facility and the resident or the resident's guardian, if any, shall advise the department within 10 working days following receipt of notice if a hearing is requested.

(g) *Emergency removal procedures.* In any removal conducted under par. (a) 6. the department shall notify the facility and any resident to be removed that an emergency situation has been found to exist and removal has been ordered, and shall involve the residents in removal planning if possible. Following emergency removal, the department shall provide written notice to the facility, to the resident, to the resident's guardian, if any, and to a member of the resident's family, where practicable, of the basis for the

finding that an emergency existed and of the right to challenge removal under par. (h).

(h) *Hearing.* Within 10 days following removal under par. (g), the facility may send a written request for a hearing to challenge the removal to the department. The department shall hold the hearing within 30 days of receipt of the request. Where the challenge is by a resident, the hearing shall be held prior to removal at a location convenient to the resident. At the hearing, the burden of proving that a factual basis existed for removal under par. (a) shall rest on the department. If the facility prevails, it shall be reimbursed by the department for payments lost less expenses saved as a result of the removal and the department shall assist the resident in returning to the facility, if assistance is requested. No resident removed may be held liable for the charge for care which would have been made had the resident remained in the facility. The department shall assume this liability, if any. If a resident prevails after hearing, the department shall reimburse the resident for any excess expenses directly caused by the order to remove.

(i) *County as agent.* The department may authorize the county in which the facility is located to carry out, under the department's supervision, any powers and duties conferred upon the department in this subsection.

(7) RIGHT OF INJUNCTION. (a) *Licensed facility.* Notwithstanding the existence or pursuit of any other remedy, the department may, upon the advice of the attorney general, maintain an action in the name of the state in the circuit court for injunction or other process against any licensee, owner, operator, administrator or representative of any owner of a facility to restrain and enjoin the repeated violation of any of the provisions of this subchapter or rules promulgated by the department under this subchapter where the violation affects the health, safety or welfare of the residents.

(b) *Unlicensed facility.* Notwithstanding the existence or pursuit of any other remedy, the department may, upon the advice of the attorney general, maintain an action in the name of the state for injunction or other process against any person or agency to restrain or prevent the establishment, management or operation of any facility required to be licensed under this section without a license.

(c) *Enforcement by counties maintaining inspection programs.* The county board of any county conducting inspections under sub. (2) (b) may, upon notifying the department that a facility is in violation of this subchapter or the rules promulgated under this subchapter, authorize the district attorney to maintain an action in the name of the state in circuit court for injunction or other process against the facility, its owner, operator, administrator or representative, to restrain and enjoin repeated violations where the violations affect the health, safety or welfare of the residents.

(9) EXCEPTION FOR CHURCHES OPPOSED TO MEDICAL TREATMENT. Nothing in this section shall be so construed as to give authority to supervise or regulate or control the remedial care or treatment of individual patients who are adherents of a church or religious denomination which subscribes to the act of healing by prayer and the principles of which are opposed to medical treatment and who are residents in any facility operated by a member or members, or by an association or corporation composed of members of such church or religious denomination, if the facility admits only adherents of such church or denomination and is so designated; nor shall the existence of any of the above conditions alone militate against the licensing of such a home or institution. Such facility shall comply with all rules and regulations relating to sanitation and safety of the premises and be subject to inspection thereof. Nothing in this subsection shall modify or repeal any laws, rules and regulations governing the control of communicable diseases.

(10) UNIFORM ACCOUNTING SYSTEM. The department shall establish a uniform classification of accounts and accounting procedures for each level of licensure which shall be based on generally accepted accounting principles and which reflect the alloca-

tion of revenues and expenses by primary functions, to be used by the department in carrying out this subsection and s. 49.45. Each facility subject to this subsection or s. 49.45 shall satisfactorily establish with the department by a date set by the department that it has instituted the uniform accounting system as required in this subsection or is making suitable progress in the establishment of each system.

(11) JUDICIAL REVIEW. (a) All administrative remedies shall be exhausted before an agency determination under this subchapter shall be subject to judicial review. Final decisions after hearing shall be subject to judicial review exclusively as provided in s. 227.52, except that any petition for review of department action under this chapter shall be filed within 15 days after receipt of notice of the final agency determination.

(b) The court may stay enforcement under s. 227.54 of the department's final decision if a showing is made that there is a substantial probability that the party seeking review will prevail on the merits and will suffer irreparable harm if a stay is not granted, and that the facility will meet the requirements of this subchapter and the rules promulgated under this subchapter during such stay. Where a stay is granted the court may impose such conditions on the granting of the stay as may be necessary to safeguard the lives, health, rights, safety and welfare of residents, and to assure compliance by the facility with the requirements of this subchapter.

(d) The attorney general may delegate to the department the authority to represent the state in any action brought to challenge department decisions prior to exhaustion of administrative remedies and final disposition by the department.

(13) TRANSFER OF OWNERSHIP. (a) *New license.* Whenever ownership of a facility is transferred from the person or persons named in the license to any other person or persons, the transferee must obtain a new license. The license may be a probationary license. Penalties under sub. (1) shall apply to violations of this subsection. The transferee shall notify the department of the transfer, file an application under sub. (3) (b), and apply for a new license at least 30 days prior to final transfer. Retention of any interest required to be disclosed under sub. (3) (b) after transfer by any person who held such an interest prior to transfer may constitute grounds for denial of a license where violations of this subchapter for which notice had been given to the transferor are outstanding and uncorrected, if the department determines that effective control over operation of the facility has not been transferred. If the transferor was a provider under s. 49.43 (10), the transferee and transferor shall comply with s. 49.45 (21).

(b) *Duty of transferor.* The transferor shall notify the department at least 30 days prior to final transfer. The transferor shall remain responsible for the operation of the home until such time as a license is issued to the transferee, unless the facility is voluntarily closed as provided under sub. (14). The transferor shall also disclose to the transferee the existence of any outstanding waiver or variance and the conditions attached to such waiver or variance.

(c) *Outstanding violations.* Violations reported in departmental inspection reports prior to the transfer of ownership shall be corrected, with corrections verified by departmental survey, prior to the issuance of a full license to the transferee. The license granted to the transferee shall be subject to the plan of correction submitted by the previous owner and approved by the department and any conditions contained in a conditional license issued to the previous owner. In the case of a nursing home, if there are outstanding violations and no approved plan of correction has been implemented, the department may issue a conditional license and plan of correction as provided in s. 50.04 (6).

(d) *Forfeitures.* The transferor shall remain liable for all forfeitures assessed against the facility which are imposed for violations occurring prior to transfer of ownership.

(14) CLOSING OF A FACILITY. If any facility acts as specified under sub. (5m) (a) 5.:

(a) The department may provide, direct or arrange for relocation planning, placement and implementation services in order to minimize the trauma associated with the relocation of residents and to ensure the orderly relocation of residents.

(b) The county departments of the county in which the facility is located that are responsible for providing services under s. 46.215 (1) (L), 46.22 (1) (b) 1. c., 51.42 or 51.437 shall participate in the development and implementation of individual relocation plans. Any county department of another county shall participate in the development and implementation of individual relocation plans in place of the county departments of the county in which the facility is located, if the county department accepts responsibility for the resident or is delegated responsibility for the resident by the department or by a court.

(c) The facility shall:

1. Provide at least 30 days' written notice prior to relocation to each resident who is to be relocated, to the resident's guardian, if any, and to a member of the resident's family, if practicable, unless the resident requests that notice to the family be withheld.

2. Attempt to resolve complaints from residents under this section.

3. Identify and, to the greatest extent practicable, attempt to secure an appropriate alternate placement for each resident to be relocated.

4. Consult the resident's physician on the proposed relocation's effect on the resident's health.

5. Hold a planning conference at which an individual relocation plan will be developed with the resident, with the resident's guardian, if any, and with a member of the resident's family, if practicable, unless the resident requests that a family member not be present.

6. Implement the individual relocation plan developed under subd. 5.

7. Notify the department of its intention to relocate residents. The notice shall state the facts requiring the proposed relocation of residents and the proposed date of closing or changing of the type or level of services or means of reimbursement.

8. At the time the facility notifies the department under subd. 7., submit to the department a preliminary plan that includes:

a. The proposed timetable for planning and implementation of relocations and the resources, policies and procedures that the facility will provide or arrange in order to plan and implement the relocations.

b. A list of the residents to be relocated and their current levels of care and a brief description of any special needs or conditions.

c. An indication of which residents have guardians and the names and addresses of the guardians.

d. A list of which residents have been protectively placed under ch. 55.

e. A list of the residents whom the facility believes to meet the requirements of s. 54.10 (3).

(d) The department shall notify the facility within 10 days after receiving the preliminary plan under par. (c) 8., if it disapproves the plan. If the department does not notify the facility of disapproval, the plan is deemed approved. If the department disapproves the preliminary plan it shall, within 10 days of notifying the facility, begin working with the facility to modify the disapproved plan. No residents may be relocated until the department approves the preliminary plan or until a modified plan is agreed upon. If a plan is not approved or agreed upon within 30 days of receipt of the notice of relocation, the department may impose a plan that the facility shall carry out. Failure to submit, gain approval for or implement a plan in a timely fashion is not a basis for a facility to declare an emergency under sub. (5m) (a) 6. or to relocate any resident under sub. (5m) (g).

(e) Upon approval of, agreement to or imposition of a plan for relocation, the facility shall establish a date of closing or changing of the type or level of services or means of reimbursement and

shall notify the department of the date. The date may not be earlier than 90 days from the date of approval, agreement or imposition if 5 to 50 residents will be relocated, or 120 days from the date of approval, agreement or imposition if more than 50 residents will be relocated.

History: 1975 c. 413; 1977 c. 29, 170, 205, 272, 418, 447; 1979 c. 221; 1981 c. 20, 72, 121; 1981 c. 314 s. 146; 1985 a. 29 ss. 1058, 3202 (56) (a); 1985 a. 176; 1985 a. 182 s. 57; 1985 a. 332 s. 251 (1), (3); 1987 a. 27, 127, 399; 1989 a. 31, 359; 1991 a. 39, 221; 1993 a. 27, 112, 375, 491; 1995 a. 27 ss. 3227 to 3232, 9126 (19); 1997 a. 27, 114; 2001 a. 16; 2003 a. 33; 2005 a. 264, 387.

The department can constitutionally license and regulate community-based residential facilities that are operated by religious organizations and that are not exempt convents or similar facilities under s. 50.01 (1) [now 50.01 (1g)] or s. 50.03 (9). 71 Atty. Gen. 112.

50.032 Certification of certain adult family homes.

(1g) DEFINITION. In this section, "adult family home" has the meaning given in s. 50.01 (1) (a).

(1m) CERTIFICATION. (a) No person may operate an adult family home unless the adult family home is certified under this section.

(b) A county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 may certify an adult family home that is located in the county. The department shall certify an adult family home in a county that elects not to certify adult family homes.

(2) REGULATION. Standards for operation of certified adult family homes and procedures for application for certification, monitoring, inspection, decertification and appeal of decertification under this section shall be under rules promulgated by the department under s. 50.02 (2) (am) 1. An adult family home certification is valid until decertified under this section. Certification is not transferable.

(2m) EXCEPTION. Notwithstanding s. 50.01 (1g) (b), if an individual served in an adult family home attains 18 years of age and leaves the adult family home on a permanent basis, as defined in rules promulgated by the department, he or she may be replaced for receipt of service by an individual who has a developmental disability, as defined in s. 51.01 (5).

(2r) REPORTING. Every 12 months, on a schedule determined by the department, a certified adult family home shall submit an annual report in the form and containing the information that the department requires, including payment of a fee, if any is required under rules promulgated under s. 50.02 (2) (am) 1. If a complete annual report is not timely filed, the department shall issue a warning to the operator of the certified adult family home. The department may decertify a certified adult family home for failure to timely and completely report within 60 days after the report date established under the schedule determined by the department.

(3) INVESTIGATION OF ALLEGED VIOLATIONS. If the department or a certifying county department under sub. (1m) (b) is advised or has reason to believe that any person is violating this section or the rules promulgated under s. 50.02 (2) (am) 1., the department or the certifying county department shall make an investigation to determine the facts. For the purposes of this investigation, the department or the certifying county department may inspect the premises where the violation is alleged to occur. If the department or the certifying county department finds that the requirements of this section and of rules under s. 50.02 (2) (am) 1. are met, the department or the certifying county department may certify the premises under this section. If the department or the certifying county department finds that a person is violating this section or the rules under s. 50.02 (2) (am) 1., the department or the certifying county department may institute an action under sub. (5) or (6).

(4) DECERTIFICATION. A certified adult family home may be decertified because of the substantial and intentional violation of this section or of rules promulgated by the department under s. 50.02 (2) (am) 1. or because of failure to meet the minimum requirements for certification. The operator of the certified adult family home shall be given written notice of any decertification and the grounds for the decertification. Any adult family home certification applicant or operator of a certified adult family home

may, if aggrieved by the failure to issue the certification or by decertification, appeal under the procedures specified by the department by rule under s. 50.02 (2) (am) 1.

(5) INJUNCTION. The department or a certifying 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 certified under sub. (1m) or that is certified and has repeatedly used methods of operation in substantial violation of the rules promulgated under s. 50.02 (2) (am) 1. or that endanger the health, safety or welfare of any disabled adult receiving care and maintenance in an adult family home.

(6) PENALTIES. Any person who violates this section or rules promulgated under s. 50.02 (2) (am) 1. may be fined not more than \$500 or imprisoned for not more than one year in the county jail or both.

History: 1987 a. 161, 403; 1993 a. 327; 1997 a. 27.

Cross Reference: See also ch. HFS 82, Wis. adm. code.

50.033 Licensure of certain adult family homes.

(1) DEFINITION. In this section, “adult family home” has the meaning given in s. 50.01 (1) (b).

(1m) LICENSURE. (a) No person may operate an adult family home unless the adult family home is licensed under this section.

(b) A county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 may license an adult family home that is located in the county. The department shall license an adult family home in a county that elects not to license adult family homes.

(2) REGULATION. Standards for operation of licensed adult family homes and procedures for application for licensure, monitoring, inspection, revocation and appeal of revocation under this section shall be under rules promulgated by the department under s. 50.02 (2) (am) 2. An adult family home licensure is valid until revoked under this section. Licensure is not transferable. The biennial licensure fee for a licensed adult family home is \$135. The fee is payable to the county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437, if the county department licenses the adult family home under sub. (1m) (b), and is payable to the department, on a schedule determined by the department if the department licenses the adult family home under sub. (1m) (b).

(2m) REPORTING. Every 24 months, on a schedule determined by the department, a licensed adult family home shall submit a biennial report in the form and containing the information that the department requires, including payment of the fee required under sub. (2). If a complete biennial report is not timely filed, the department shall issue a warning to the licensee. The department may revoke the license for failure to timely and completely report within 60 days after the report date established under the schedule determined by the department.

(2r) PROVISION OF INFORMATION REQUIRED. Subject to sub. (2t), an adult family home shall, within the time period after inquiry by a prospective resident that is prescribed by the department by rule, inform the prospective resident of the services of a resource center under s. 46.283, the family care benefit under s. 46.286 and the availability of a functional and financial screen to determine the prospective resident’s eligibility for the family care benefit under s. 46.286 (1).

(2s) REQUIRED REFERRAL. Subject to sub. (2t), an adult family home shall, within the time period prescribed by the department by rule, refer to a resource center under s. 46.283 a person who is seeking admission, who is at least 65 years of age or has developmental disability or a physical disability and whose disability or condition is expected to last at least 90 days, unless any of the following applies:

(a) For a person who has received a screen for functional eligibility under s. 46.286 (1) (a) within the previous 6 months, the referral under this subsection need not include performance of an additional functional screen under s. 46.283 (4) (g).

(b) The person is entering the adult family home only for respite care.

(c) The person is an enrollee of a care management organization.

(d) For a person who seeks admission or is about to be admitted on a private pay basis and who waives the requirement for a financial screen under s. 46.283 (4) (g), the referral under this subsection may not include performance of a financial screen under s. 46.283 (4) (g), unless the person is expected to become eligible for medical assistance within 6 months.

(2t) APPLICABILITY. Subsections (2r) and (2s) apply only if the secretary has certified under s. 46.281 (3) that a resource center is available for the adult family home and for specified groups of eligible individuals that include those persons seeking admission to or the residents of the adult family home.

(3) INVESTIGATION OF ALLEGED VIOLATIONS. If the department or a licensing county department under sub. (1m) (b) is advised or has reason to believe that any person is violating this section or the rules promulgated under s. 50.02 (2) (am) 2., the department or the licensing county department shall make an investigation to determine the facts. For the purposes of this investigation, the department or the licensing county department may inspect the premises where the violation is alleged to occur. If the department or the licensing county department finds that the requirements of this section and of rules under s. 50.02 (2) (am) 2. are met, the department or the licensing county department may, if the premises are not licensed, license the premises under this section. If the department or the licensing county department finds that a person is violating this section or the rules under s. 50.02 (2) (am) 2., the department or the licensing county department may institute an action under sub. (5).

(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.

(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.

(6) PENALTIES. Any person who violates this section or rules promulgated under s. 50.02 (2) (am) 2. may be fined not more than \$500 or imprisoned for not more than one year in the county jail or both.

History: 1993 a. 327; 1995 a. 27; 1997 a. 27; 1999 a. 9; 2001 a. 16.

Cross Reference: See also ch. HFS 88, Wis. adm. code.

50.034 Residential care apartment complexes.

(1) CERTIFICATION OR REGISTRATION REQUIRED. (a) No person may operate a residential care apartment complex that provides living space for residents who are clients under s. 46.27 (11) or 46.277 and publicly funded services as a home health agency or under contract with a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 that is a home health agency unless the residential care apartment complex is certified by the department under this section. The department may charge a fee, in an amount determined by the department, for certification under this paragraph. The amount of any fee charged by the department for certification of a residential care apartment complex need not be promulgated as a rule under ch. 227.

(b) No person may operate a residential care apartment complex that is not certified as required under par. (a) unless the residential care apartment complex is registered by the department.

(2) RULES. The department shall promulgate all of the following rules for the regulation of certified residential care apartment complexes and for the registration of residential care apartment complexes under this section:

(b) Establishing standards for operation of certified residential care apartment complexes.

(c) Establishing minimum information requirements for registration and registration application procedures and forms for residential care apartment complexes that are not certified.

(d) Establishing procedures for monitoring certified residential care apartment complexes.

(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.

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

(3) REQUIREMENTS FOR OPERATION. A certified or registered residential care apartment complex shall do all of the following:

(a) Establish, with each resident of the residential care apartment complex, a mutually agreed-upon written service agreement that identifies the services to be provided to the resident, based on a comprehensive assessment of the resident's needs and preferences that is conducted by one of the following:

1. For residents for whom services are reimbursable under s. 46.27 (11), by the county department or aging unit designated under s. 46.27 (3) (b) in the county.

2. For residents for whom services are reimbursable under s. 46.277, by the county department under s. 46.277 (4) (a) in the county.

3. For residents who have private or 3rd-party funding, by the residential care apartment complex.

(b) Establish a schedule of fees for services to residents of the residential care apartment complex.

(c) Provide or ensure the provision of services that are sufficient and qualified to meet the needs identified in a resident's service agreement under par. (a), to meet unscheduled care needs and to provide emergency assistance 24 hours a day.

(d) Establish, with each resident of the residential care apartment complex, a signed, negotiated risk agreement that identifies situations that could put the resident at risk and for which the resident understands and accepts responsibility.

(4) LIMITATION. A nursing home or a community-based residential facility may not convert a separate area of its total area to a residential care apartment complex unless the department first approves the conversion. A nursing home, other than a Wisconsin veterans home operated by the department of veterans affairs under s. 45.50, that intends to convert a separate area of its total area to a residential care apartment complex shall also agree to reduce its licensed nursing home beds by the corresponding number of residential care apartment complex residential units proposed for the conversion.

(5) USE OF NAME PROHIBITED. An entity that does not meet the definition under s. 50.01 (1d) may not designate itself as a "residential care apartment complex" or use the words "residential care apartment complex" to represent or tend to represent the entity as a residential care apartment complex or services provided by the entity as services provided by a residential care apartment complex.

(5m) PROVISION OF INFORMATION REQUIRED. Subject to sub. (5p), a residential care apartment complex shall, within the time period after inquiry by a prospective resident that is prescribed by the department by rule, inform the prospective resident of the services of a resource center under s. 46.283, the family care benefit under s. 46.286 and the availability of a functional and financial

screen to determine the prospective resident's eligibility for the family care benefit under s. 46.286 (1).

(5n) REQUIRED REFERRAL. Subject to sub. (5p), a residential care apartment complex shall, within the time period prescribed by the department by rule, refer to a resource center under s. 46.283 a person who is seeking admission, who is at least 65 years of age or has developmental disability or a physical disability and whose disability or condition is expected to last at least 90 days, unless any of the following applies:

(a) For a person who has received a screen for functional eligibility under s. 46.286 (1) (a) within the previous 6 months, the referral under this subsection need not include performance of an additional functional screen under s. 46.283 (4) (g).

(b) The person is entering the residential care apartment complex only for respite care.

(c) The person is an enrollee of a care management organization.

(d) For a person who seeks admission or is about to be admitted on a private pay basis and who waives the requirement for a financial screen under s. 46.283 (4) (g), the referral under this subsection may not include performance of a financial screen under s. 46.283 (4) (g), unless the person is expected to become eligible for medical assistance within 6 months.

(5p) APPLICABILITY. Subsections (5m) and (5n) apply only if the secretary has certified under s. 46.281 (3) that a resource center is available for the residential care apartment complex and for specified groups of eligible individuals that include those persons seeking admission to or the residents of the residential care apartment complex.

(6) FUNDING. Funding for supportive, personal or nursing services that a person who resides in a residential care apartment complex receives, other than private or 3rd-party funding, may be provided only under s. 46.27 (11) (c) 7. or 46.277 (5) (e), except if the provider of the services is a certified medical assistance provider under s. 49.45 or if the funding is provided as a family care benefit under ss. 46.2805 to 46.2895.

(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).

(8) FORFEITURES. (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.

(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).

(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 deci-

sion 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.

(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 secretary of administration for deposit in the school fund.

(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.

History: 1995 a. 27; 1997 a. 13, 252; 1999 a. 9, 63, 185; 2001 a. 16; 2003 a. 33; 2005 a. 22.

Cross Reference: See also ch. HFS 89, Wis. adm. code.

50.035 Special provisions relating to regulation of community-based residential facilities. (1) PERSONNEL TRAINING.

Each employee of a community-based residential facility shall, within 90 days after the beginning date of employment, receive basic first aid training and other safety training. The department shall indicate acceptable sources from which facility employees may receive this training. The department shall also develop instructional materials for use by facilities concerning acceptable methods of operation and procedures for protecting and serving the needs of facility residents. The department may require that all facility employees complete a program involving these materials and may sell the materials to facilities at cost. In addition, each facility employee shall, within 90 days after the beginning date of employment, receive training in fire prevention and control and evacuation techniques. Each facility shall coordinate its training in fire prevention and control and evacuation techniques with the local fire department.

(2) FIRE PROTECTION. (a) 1. Except as provided in subd. 2., each community-based residential facility shall provide, at a minimum, a low-voltage interconnected smoke detection system to protect the entire facility that, if any detector is activated, either triggers alarms throughout the building or triggers an alarm located centrally.

2. A community-based residential facility that has 8 or less beds may use a radio-transmitting smoke detection system that triggers an audible alarm in a central area of the facility in lieu of the interconnected smoke detection system specified in subd. 1.

3. The department or the department of commerce may waive the requirement under subd. 1. or 2. for a community-based residential facility that has a smoke detection or sprinkler system in place that is at least as effective for fire protection as the type of system required under the relevant subdivision.

(b) No facility may install a smoke detection system that fails to receive the approval of the department or of the department of commerce. At least one smoke detector shall be located at each of the following locations:

1. At the head of every open stairway.
2. At the door leading to every enclosed stairway on each floor level.
3. In every corridor, spaced not more than 30 feet apart and not further than 15 feet from any wall.
4. In each common use room, including living rooms, dining rooms, family rooms, lounges and recreation rooms but not including kitchens.
5. In each sleeping room in which smoking is allowed.

(c) A community-based residential facility does not have to meet the requirements under pars. (a) and (b) prior to May 1, 1985. Beginning on May 1, 1985, the department may waive the requirements under pars. (a) and (b) for a community-based residential

facility for a period not to exceed 6 months if the department finds that compliance with those requirements would result in an extreme hardship for the facility.

(3) MANAGER'S PRESENCE IN FACILITY. (a) The person responsible for managing a Class C community-based residential facility, or that person's agent, shall be present in the facility at any time that residents are in the facility. The person responsible for managing a Class A community-based residential facility, or that person's agent, shall be present in the facility from 7 p.m. to 7 a.m. when residents are in the facility.

(b) The department may waive a requirement under par. (a) for a community-based residential facility:

1. For a specified period of time, not to exceed one year, if the department finds that compliance with the requirement would result in an unreasonable hardship for the facility and that all of the residents are physically and mentally capable of taking independent action in an emergency; or

2. For a specified period of time if the department finds that the primary purpose of the facility's program is to promote the independent functioning of its residents with minimum supervision.

(4) FIRE NOTICE. The licensee of a community-based residential facility, or his or her designee, shall notify the department and any county department under s. 46.215 or 46.22 that has residents placed in the facility of any fire that occurs in the facility for which the fire department is contacted. The notice shall be provided within 72 hours after such a fire occurs.

(4m) PROVISION OF INFORMATION REQUIRED. Subject to sub. (4p), a community-based residential facility shall, within the time period after inquiry by a prospective resident that is prescribed by the department by rule, inform the prospective resident of the services of a resource center under s. 46.283, the family care benefit under s. 46.286 and the availability of a functional and financial screen to determine the prospective resident's eligibility for the family care benefit under s. 46.286 (1).

(4n) REQUIRED REFERRAL. Subject to sub. (4p), a community-based residential facility shall, within the time period prescribed by the department by rule, refer to a resource center under s. 46.283 a person who is seeking admission, who is at least 65 years of age or has developmental disability or a physical disability and whose disability or condition is expected to last at least 90 days, unless any of the following applies:

(a) For a person who has received a screen for functional eligibility under s. 46.286 (1) (a) within the previous 6 months, the referral under this subsection need not include performance of an additional functional screen under s. 46.283 (4) (g).

(b) The person is entering the community-based residential facility only for respite care.

(c) The person is an enrollee of a care management organization.

(d) For a person who seeks admission or is about to be admitted on a private pay basis and who waives the requirement for a financial screen under s. 46.283 (4) (g), the referral under this subsection may not include performance of a financial screen under s. 46.283 (4) (g), unless the person is expected to become eligible for medical assistance within 6 months.

(4p) APPLICABILITY. Subsections (4m) and (4n) apply only if the secretary has certified under s. 46.281 (3) that a resource center is available for the community-based residential facility and for specified groups of eligible individuals that include those persons seeking admission to or the residents of the community-based residential facility.

(5) REPORTS OF DEATH REQUIRED. (a) In this subsection:

1. "Physical restraint" includes all of the following:

a. A locked room.

b. A device or garment that interferes with an individual's freedom of movement and that the individual is unable to remove easily.

c. Restraint by a facility staff member of a resident by use of physical force.

2. “Psychotropic medication” means an antipsychotic, antidepressant, lithium carbonate or a tranquilizer.

(b) No later than 24 hours after the death of a resident of a community-based residential facility, the community-based residential facility shall report the death to the department if one of the following applies:

1. There is reasonable cause to believe that the death was related to the use of physical restraint or a psychotropic medication.

3. There is reasonable cause to believe that the death was a suicide.

(6) POSTING OF NOTICE REQUIRED. The licensee of a community-based residential facility, or his or her designee, shall post in a conspicuous location in the community-based residential facility a notice, provided by the board on aging and long-term care, of the name, address and telephone number of the long-term care ombudsman program under s. 16.009 (2) (b).

(7) STATEMENT OF FINANCIAL CONDITION REQUIRED. (a) No community-based residential facility may initially admit as a resident an individual who applies for admission to the facility and who intends to pay for residence in the facility from private funds, unless the individual provides certain financial information to the community-based residential facility. From this information, the community-based residential facility shall prepare and provide to the individual a statement of financial condition to which all of the following apply:

1. The statement is pertinent to the individual.

2. The statement estimates a date, if any, by which the individual’s assets and other private funding sources would be depleted if the individual resides continuously in the community-based residential facility.

3. The statement indicates that public funding may not be available when the individual’s assets and other private funding sources, if any, are depleted and specifies options that may be available to the individual at that time.

(b) The individual shall waive his or her right to confidentiality for the information provided under par. (a), to the administrator of the community-based residential facility, to the preparer of the statement of financial condition and, if par. (c) applies, to the county department under s. 46.215 or 46.22.

(c) If the date estimated under par. (a) 2. is less than 24 months after the date of the individual’s statement of financial condition, the community-based residential facility shall provide the statement to the county department under s. 46.215 or 46.22 and shall refer the potential resident to the county department to determine whether an assessment under s. 46.27 (6) should be conducted.

(9) NOTIFICATION TO PROSPECTIVE RESIDENTS OF ASSESSMENT REQUIREMENT. Every community-based residential facility shall inform all prospective residents of the assessment requirements under ss. 46.27 (7) (cj) 3. and (11) (c) 5n. and 46.277 (5) (d) 1n. for the receipt of funds under those sections.

(10) EXCEPTIONS TO CARE LIMITATIONS. (a) Notwithstanding the limitations on the type of care that may be required by and provided to residents under s. 50.01 (1g) (intro.), the following care may be provided in a community-based residential facility under the following circumstances:

1. Subject to par. (b), a community-based residential facility may provide more than 3 hours of nursing care per week or care above intermediate level nursing care for not more than 30 days to a resident who does not have a terminal illness but who has a temporary condition that requires the care, if all of the following conditions apply:

a. The resident is otherwise appropriate for the level of care that is limited in a community-based residential facility under s. 50.01 (1g) (intro.).

b. The services necessary to treat the resident’s condition are available in the community-based residential facility.

2. Subject to par. (b) and if a community-based residential facility has obtained a waiver from the department or has requested such a waiver from the department and the decision is pending, the community-based residential facility may provide more than 3 hours of nursing care per week or care above intermediate level nursing care for more than 30 days to a resident who does not have a terminal illness but who has a stable or long-term condition that requires the care, if all of the following conditions apply:

a. The resident is otherwise appropriate for the level of care that is limited in a community-based residential facility under s. 50.01 (1g) (intro.).

b. The services necessary to treat the resident’s condition are available in the community-based residential facility.

c. The community-based residential facility has obtained a waiver from the department under this subdivision or has requested such a waiver from the department and the decision is pending.

3. A community-based residential facility may provide more than 3 hours of nursing care per week or care above intermediate level nursing care to a resident who has a terminal illness and requires the care, under the following conditions:

a. If the resident’s primary care provider is a licensed hospice or a licensed home health agency.

b. If the resident’s primary care provider is not a licensed hospice or a licensed home health agency, but the community-based residential facility has obtained a waiver of the requirement under subd. 3. a. from the department or has requested such a waiver and the department’s decision is pending.

(b) A community-based residential facility may not have a total of more than 4 residents or 10% of the facility’s licensed capacity, whichever is greater, who qualify for care under par. (a) 1. or 2. unless the facility has obtained a waiver from the department of the limitation of this paragraph or has requested such a waiver and the department’s decision is pending.

(c) The department may grant a waiver of the limitation under par. (a) 2. or 3. a. or (b).

(11) FORFEITURES. (a) Whoever violates sub. (4m) or (4n) or rules promulgated under sub. (4m) or (4n) may be required to forfeit not more than \$500 for each violation.

(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 community-based residential facility. 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 licensee of the right to a hearing under par. (c).

(c) A community-based residential facility 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.

(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 secretary of administration for deposit in the school fund.

(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.

History: 1983 a. 363; 1985 a. 176; 1987 a. 403 ss. 67, 256; 1989 a. 336; 1991 a. 39; 1995 a. 27 ss. 3235 to 3237, 9116 (5); 1997 a. 27, 114, 237; 1999 a. 9, 32, 103, 186; 2001 a. 16; 2003 a. 33.

Cross Reference: See also ch. HFS 83, Wis. adm. code.

50.037 Community-based residential facility licensing fees. (1) **DEFINITION.** In this section, “total monthly charges” means the total amount paid per month, including the basic monthly rate plus any additional fees, for care, treatment and services provided to a resident of a community-based residential facility by a community-based residential facility.

(2) **FEES.** (a) The biennial fee for a community-based residential facility is \$306, plus a biennial fee of \$39.60 per resident, based on the number of residents that the facility is licensed to serve.

(b) Fees specified under par. (a) shall be paid to the department by the community-based residential facility before the department may issue a license under s. 50.03 (4) (a) 1. b. A licensed community-based residential facility shall pay the fee under par. (a) by the date established by the department. A newly licensed community-based residential facility shall pay the fee under this subsection no later than 30 days before the opening of the facility.

(c) A community-based residential facility that fails to submit the biennial fee prior to the date established by the department, or a new community-based residential facility subject to this section that fails to submit the biennial fee by 30 days prior to the opening of the new community-based residential facility, shall pay an additional fee of \$10 per day for every day after the deadline that the facility does not pay the fee.

(3) **EXEMPTION.** Community-based residential facilities where the total monthly charges for each resident do not exceed the monthly state supplemental payment rate under s. 49.77 (3s) that is in effect at the time the fee under sub. (2) is assessed are exempt from this section.

History: 1973 c. 90, 243, 333; 1975 c. 413 s. 18; 1975 c. 430 ss. 73, 80; 1977 c. 26, 418; 1979 c. 221; 1983 a. 27; 1987 a. 161 s. 13m; 1991 a. 39; 1993 a. 16; 1993 a. 27 ss. 253 to 256; Stats. 1993 s. 50.037; 1993 a. 183, 375; 1995 a. 27; 1997 a. 27; 1999 a. 9.

Duty of a private hospital to render emergency treatment. 1974 WLR 279.

50.04 Special provisions applying to licensing and regulation of nursing homes. (1) **APPLICABILITY.** This section applies to nursing homes as defined in s. 50.01 (3).

(1m) **DEFINITIONS.** In this section, “class “C” repeat violation” means a class “C” violation by a nursing home under the same statute or rule under which, within the previous 2 years, the department has served the nursing home a notice of violation or a correction order or has made a notation in the report under sub. (3) (b).

(2) **REQUIRED PERSONNEL.** (a) No nursing home within the state may operate except under the supervision of an administrator licensed under ch. 456 by the nursing home administrators examining board. If the holder of a nursing home license is unable to secure a new administrator because of the departure of an administrator, such license holder may, upon written notice to the department and upon the showing of a good faith effort to secure a licensed administrator, place the nursing home in the charge of an unlicensed individual subject to conditions and time limitations established by the department, with advice from the nursing home administrator examining board. An unlicensed individual who administers a nursing home as authorized under this subsection is not subject to the penalty provided under s. 456.09.

(b) Each nursing home shall employ a charge nurse. The charge nurse shall either be a licensed practical nurse acting under the supervision of a professional nurse or a physician, or shall be a professional nurse. The department shall, by rule, define the duties of a charge nurse.

(c) 1. Except as provided in subd. 2., beginning July 1, 1988, the department shall enforce nursing home minimum staffing requirements based on daily staffing levels.

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

a. The nursing home minimum staffing requirements based on daily staffing levels violate the terms of a collective bargaining agreement that is in effect on December 8, 1987; or

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

(d) Each nursing home, other than nursing homes that primarily serve the developmentally disabled, shall provide at least the following hours of service by registered nurses, licensed practical nurses or nurse’s assistants:

1. For each resident in need of intensive skilled nursing care, 3.25 hours per day, of which a minimum of 0.65 hour shall be provided by a registered nurse or licensed practical nurse.

2. For each resident in need of skilled nursing care, 2.5 hours per day, of which a minimum of 0.5 hour shall be provided by a registered nurse or licensed practical nurse.

3. For each resident in need of intermediate or limited nursing care, 2.0 hours per day, of which a minimum of 0.4 hour shall be provided by a registered nurse or licensed practical nurse.

(2g) **PROVISION OF INFORMATION REQUIRED.** (a) Subject to sub. (2i), a nursing home shall, within the time period after inquiry by a prospective resident that is prescribed by the department by rule, inform the prospective resident of the services of a resource center under s. 46.283, the family care benefit under s. 46.286 and the availability of a functional and financial screen to determine the prospective resident’s eligibility for the family care benefit under s. 46.286 (1).

(b) Failure to comply with this subsection is a class “C” violation under sub. (4) (b) 3.

(2h) **REQUIRED REFERRAL.** (a) Subject to sub. (2i), a nursing home shall, within the time period prescribed by the department by rule, refer to a resource center under s. 46.283 a person who is seeking admission, who is at least 65 years of age or has developmental disability or physical disability and whose disability or condition is expected to last at least 90 days, unless any of the following applies:

1. For a person who has received a screen for functional eligibility under s. 46.286 (1) (a) within the previous 6 months, the referral under this paragraph need not include performance of an additional functional screen under s. 46.283 (4) (g).

2. The person is seeking admission to the nursing home only for respite care.

3. The person is an enrollee of a care management organization.

4. For a person who seeks admission or is about to be admitted on a private pay basis and who waives the requirement for a financial screen under s. 46.283 (4) (g), the referral under this subsection may not include performance of a financial screen under s. 46.283 (4) (g), unless the person expected to become eligible for medical assistance within 6 months.

(b) Failure to comply with this subsection is a class “C” violation under sub. (4) (b) 3.

(2i) **APPLICABILITY.** Subsections (2g) and (2h) apply only if the secretary has certified under s. 46.281 (3) that a resource center is available for the nursing home and for specified groups of eligi-

ble individuals that include those persons seeking admission to or the residents of the nursing home.

(2m) PLAN OF CARE AND ASSESSMENT REQUIRED. (a) Except as provided in par. (b), no nursing home may admit any patient until a physician has completed a plan of care for the patient and the patient is assessed or the patient is exempt from or waives assessment under s. 46.27 (6) (a). Failure to comply with this subsection is a class “C” violation under sub. (4) (b) 3.

(b) Paragraph (a) does not apply to those residents for whom the secretary has certified under s. 46.281 (3) that a resource center is available.

(2r) ADMISSIONS REQUIRING APPROVAL. Except in an emergency, a nursing home that is not certified as a provider of medical assistance or that is an intermediate care facility for the mentally retarded, as defined in s. 46.278 (1m) (am), or an institution for mental diseases, as defined under 42 CFR 435.1009, may not admit as a resident an individual who has a developmental disability, as defined in s. 51.01 (5), or who is both under age 65 and has mental illness, as defined in s. 51.01 (13), unless the county department under s. 46.23, 51.42 or 51.437 of the individual’s county of residence has recommended the admission.

(2t) REPORTS OF DEATH REQUIRED. (a) In this subsection:

1. “Physical restraint” includes all of the following:

a. A locked room.

b. A device or garment that interferes with an individual’s freedom of movement and that the individual is unable to remove easily.

c. Restraint by a facility staff member of a resident by use of physical force.

2. “Psychotropic medication” means an antipsychotic, antidepressant, lithium carbonate or a tranquilizer.

(b) No later than 24 hours after the death of a resident of a nursing home, the nursing home shall report the death to the department if one of the following applies:

1. There is reasonable cause to believe that the death was related to the use of physical restraint or a psychotropic medication.

3. There is reasonable cause to believe that the death was a suicide.

(2v) POSTING OF NOTICE REQUIRED. A nursing home shall post in a conspicuous location in the nursing home all of the following:

(a) A notice, provided by the board on aging and long-term care, of the name, address and telephone number of the long-term care ombudsman program under s. 16.009 (2) (b).

(b) The most recent copy of the report for the nursing home that is specified under s. 50.095 (3).

(3) INSPECTION REPORTS. (a) *Inspection.* The department shall make or cause to be made at least one inspection biennially of each nursing home. The department may determine if conditions and practices comply with applicable standards by examining only a portion of the residents, records or physical plant when it conducts an inspection.

(b) *Biennial report.* The department shall make at least one report on each nursing home in the state biennially. All conditions and practices not in compliance with applicable standards within the last 2 years shall be specifically stated. If a violation is corrected, is contested or is subject to an approved plan of correction, the same shall be specified in the biennial report. The department shall send a copy of the report to the nursing home and shall provide a copy to any person on request. The department may charge a reasonable fee to cover copying costs.

(c) *Posting of notice.* The nursing home administrator shall retain a copy of the most recent biennial report prepared by the department under par. (b) and shall post in a place readily visible to residents and visitors, such as the lobby or reception area of the facility, a notice stating that a copy of the report is available for public inspection on request to the administrator and that a copy will be provided by the department upon request for a minimal fee.

(d) *Survey of institutions for mental diseases.* During inspections conducted under par. (a), the department shall conduct a survey to determine whether any nursing home that is licensed under this section is an institution for mental diseases, as defined under 42 CFR 435.1009.

(4) NOTICE OF VIOLATION; CORRECTION. (a) *Notice of violation; exceptions.* 1. If upon inspection or investigation the department determines that a nursing home is in violation of this subchapter or the rules promulgated under it and the violation is a class “A” or “B” violation, it shall promptly serve a notice of violation upon the licensee. Each notice of violation shall be prepared in writing and shall specify the nature of the violation, and the statutory provision or rule alleged to have been violated. The notice shall inform the licensee of the right to a hearing under par. (e). The written notice of a class “A” violation may be written and served by an agent of the department at the time of the inspection.

1g. a. If upon inspection or investigation the department determines that a nursing home is in violation of this subchapter or the rules promulgated under it and the violation is a class “C” violation, the department may serve a correction order upon the licensee unless the nursing home corrects the violation before the completion of the inspection or investigation. If the correction is made before the completion of the inspection or investigation, the department may make a notation in the report under sub. (3) (b) that shall specify the nature of the violation and the statute or rule alleged to have been violated.

b. If upon inspection or investigation the department determines that a nursing home is in violation of this subchapter or the rules promulgated under it and the violation is a class “C” repeat violation, the department may serve a correction order or notice of violation upon the nursing home. If the nursing home corrects the violation before completion of the inspection or investigation, the department may, as an alternative to serving a correction order or notice of violation, make a notation in the report under sub. (3) (b) that shall specify the nature of the violation and the statute or rule alleged to have been violated.

1m. A correction order shall be prepared in writing and shall specify the nature of the violation, the statutory provision or rule alleged to have been violated and the date by which the violation shall be corrected. The department may grant an extension of the date for correction specified in the correction order. The nursing home shall correct the class “C” violation by the date specified in the correction order or the extended date, if granted.

1r. The department may serve a notice of violation on a nursing home determined to be in violation of this subchapter or the rules promulgated under it for a class “C” violation if either of the following conditions apply:

a. The nursing home fails to make a correction by the date specified in a correction order served under subd. 1g. b. or by an extension of the date, if granted.

b. The violation is a class “C” repeat violation, regardless of whether a correction order has first been served.

2. The department is not required to serve a notice of violation if each of the following conditions exists:

a. The nursing home brings the violation to the department’s attention.

b. The nursing home has made every reasonable effort to prevent and correct the violation, but the violation occurred and remains uncorrected due to circumstances beyond the nursing home’s control.

3. The department is not required to serve a notice of a class “C” violation if it finds that the nursing home is in substantial compliance with the specific rule violated.

(b) *Classification of violations.* 1. A class “A” violation is a violation of this subchapter or of the rules promulgated thereunder which creates a condition or occurrence relating to the operation and maintenance of a nursing home presenting a substantial probability that death or serious mental or physical harm to a resident will result therefrom.

2. A class “B” violation is a violation of this subchapter or of the rules promulgated thereunder which creates a condition or occurrence relating to the operation and maintenance of a nursing home directly threatening to the health, safety or welfare of a resident.

3. A class “C” violation is a violation of this subchapter or of the rules promulgated thereunder which creates a condition or occurrence relating to the operation and maintenance of a nursing home which does not directly threaten the health, safety or welfare of a resident.

4. Each day of violation constitutes a separate violation. Except as provided in sub. (5) (a) 4., the department shall have the burden of showing that a violation existed on each day for which a forfeiture is assessed. No forfeiture may be assessed for a condition for which the nursing home has received a variance or waiver of a standard.

(c) *Correction.* 1. The situation, condition or practice constituting a class “A” violation shall be abated or eliminated immediately unless a fixed period of time, as determined by the department and specified in the notice of violation, is required for correction. If the class “A” violation is not abated or eliminated within the specified time period, the department shall maintain an action in circuit court for injunction or other process against the licensee, owner, operator, administrator or representative of the facility to restrain and enjoin violation of applicable rules, regulations and statutes.

2. At the time of issuance of a notice of a class “B” or “C” violation, the department shall request a plan of correction which is subject to the department’s approval. The nursing home shall have 10 days after receipt of notice of violation in which to prepare and submit a plan of correction but the department may extend this period up to 30 days where correction involves substantial capital improvement. The plan shall include a fixed time period within which violations are to be corrected. If the nursing home plan of correction is substantially in compliance, it may be modified upon agreement between the department and the nursing home to achieve full compliance. If it rejects a plan of correction, the department shall send notice of the rejection and the reason for the rejection to the nursing home and impose a plan of correction. The imposed plan of correction may be modified upon agreement between the department and the nursing home.

3. If the violation has been corrected prior to submission and approval of a plan of correction, the nursing home may submit a report of correction in place of a plan of correction. Such report shall be signed by the administrator under oath.

4. Upon a licensee’s petition, the department shall determine whether to grant a licensee’s request for an extended correction time. Such petition must be served on the department prior to expiration of the correction time originally approved. The burden of proof is on the petitioner to show good cause for not being able to comply with the original correction time approved.

5. This paragraph does not apply to notices of violation served under par. (a) 1r.

(d) *Suspension of admissions.* 1. The department shall suspend new admissions to a nursing home if all of the following apply:

a. The nursing home received notices of violation for a class “A” violation or 3 or more class “B” violations in the previous 12 months.

b. The nursing home received notices of violation for a class “A” violation or 3 or more class “B” violations in any 12–month period during the 3 years immediately preceding the period specified in subd. 1. a.

2. A suspension of admissions under subd. 1. shall begin 90 days after a nursing home received its last notice of violation for a class “A” or class “B” violation if the department determines that the violation remains uncorrected 90 days after the nursing home received the last notice of the violation. If the nursing home indicates to the department that the violation has been corrected,

but the department is unable to verify that the violation has been corrected, a suspension of admissions under subd. 1. shall begin on the day that the department makes a return visit to the nursing home and determines that the violation has not been corrected. A suspension of admissions under subd. 1. shall remain in effect until the department determines that all class “A” and class “B” violations by the nursing home have been corrected. Admission of a new resident during the period for which admissions have been suspended constitutes a class “B” violation.

3. In determining whether subd. 1. applies, the department may not consider a notice of violation found to be unjustified after hearing.

4. If the department suspends new admissions to a nursing home under this paragraph, the department shall publish a class 1 notice under ch. 985 in a newspaper likely to give notice in the area where the nursing home is located.

(e) *Hearings.* 1. If a nursing home desires to contest any department action under this subsection, it shall send a written request for a hearing under s. 227.44 to the division of hearings and appeals created under s. 15.103 (1) within 10 days of receipt of notice of the contested action. Department action that is subject to a hearing under this subsection includes service of a notice of a violation of this subchapter or rules promulgated under this subchapter, a notation in the report under sub. (3) (b), imposition of a plan of correction and rejection of a nursing home’s plan of correction, but does not include a correction order. Upon the request of the nursing home, the division shall grant a stay of the hearing under this paragraph until the department assesses a forfeiture, so that its hearing under this paragraph is consolidated with the forfeiture appeal hearing held under sub. (5) (e). All agency action under this subsection arising out of a violation, deficiency or rejection and imposition of a plan of correction shall be the subject of a single hearing. Unless a stay is granted under this paragraph, the division shall commence the hearing within 30 days of the request for hearing, within 30 days of the department’s acceptance of a nursing home’s plan of correction or within 30 days of the department’s imposition of a plan of correction, whichever is later. The division shall send notice to the nursing home in conformance with s. 227.44. Issues litigated at the hearing may not be relitigated at subsequent hearings under this paragraph arising out of the same violation or deficiency.

2. The division shall notify the nursing home of its decision to reverse, modify or uphold the contested action within 15 days after the close of the hearing.

3. In any petition for judicial review of a decision by the division under subd. 2., the department, if not the petitioner who was in the proceeding before the division under subd. 1., shall be the named respondent.

(5) **FORFEITURES.** (a) *Amounts.* Any operator or owner of a nursing home which is in violation of this subchapter or any rule promulgated thereunder may be subject to the forfeitures specified in this section.

1. A class “A” violation may be subject to a forfeiture of not more than \$10,000 for each violation.

2. A class “B” violation may be subject to a forfeiture of not more than \$5,000 for each violation.

3. A class “C” violation may be subject to a forfeiture of not more than \$500. No forfeiture may be assessed for a class “C” violation unless at least one of the following applies:

a. The department serves the nursing home a notice of violation following the nursing home’s failure to correct a class “C” violation by the date specified in a correction order or an extended date set by the department, if granted.

b. The department serves the nursing home a notice of violation for a class “C” repeat violation.

4. Notwithstanding subs. 1., 2. and 3., if the violation or group of violations results from inadequate staffing, the amount of the forfeiture that the department may assess shall be no less than the difference between the cost of the staff actually employed

and the estimated cost of the staff required. The number of staff required shall be determined by the provider contract, court order or the department, by rule, whichever is greatest. The inadequate staff shall be presumed to exist from the date of the notice of violation.

5. a. A nursing home that violates a statute or rule resulting in a class “A” violation and that has received a notice of violation for a class “A” violation within the previous 3–year period involving the same situation shall be subject to a forfeiture 3 times the amount authorized for a class “A” violation.

b. Except as provided in subd. 5. a., a nursing home that violates a statute or rule resulting in a class “A” or class “B” violation and that has received a notice of a class “A” or class “B” violation of the same statute or rule within the previous 3–year period may be subject to a forfeiture 3 times the amount authorized for the most recent class of violation involved.

c. A notice of violation found to be unjustified after hearing may not be considered in applying this subdivision.

d. The forfeiture amount that is tripled under this subdivision shall be the amount assessed after all appeals have been exhausted. If an assessment of forfeiture is not contested and the forfeiture is paid as provided in par. (fm), the forfeiture amount that is tripled is the amount assessed after the reduction specified in par. (fm).

5m. Beginning on December 8, 1987, the department may consider, for purposes of applying triple forfeitures under subd. 5., any notice of violation issued by the department within the 2–year period preceding December 8, 1987, or issued by the department on or after December 8, 1987.

6. If a licensee fails to correct a violation within the time specified in the notice of violation or approved plan of correction, or within the extended correction time granted under sub. (4) (c) 4., or if a violation continues after a report of correction, the department may assess upon the licensee a separate forfeiture of not more than \$10,000 for class “A” violations, and may assess a separate forfeiture of not more than \$5,000 for class “B” violations, for each day of continuing violation.

(b) *Factors in assessment of forfeitures.* In determining whether a forfeiture is to be imposed and in fixing the amount of the forfeiture to be imposed, if any, for a violation, the following factors shall be considered:

1. The gravity of the violation, including the probability that death or serious physical or psychological harm to a resident will result or has resulted; the severity of the actual or potential harm; and the extent to which the provisions of the applicable statutes or rules were violated.

2. “Good faith” exercised by the licensee. Indications of good faith include, but are not limited to, awareness of the applicable statutes and regulation and reasonable diligence in complying with such requirements, prior accomplishments manifesting the licensee’s desire to comply with the requirements, efforts to correct and any other mitigating factors in favor of the licensee.

3. Any previous violations committed by the licensee.

4. The financial benefit to the nursing home of committing or continuing the violation.

(c) *Assessment of forfeitures; powers and duties of department.* 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 or for failure to correct it, it shall send a notice of assessment to the nursing home. The notice shall specify the amount of the forfeiture assessed, the violation, the statute or rule alleged to have been violated, and shall inform the licensee of the right to hearing under par. (e).

(d) *Forfeiture period.* 1. In the case of a class “B” violation, no forfeiture may be assessed for the violation from the day following the date of discovery until the date of notification. If the department fails to approve or reject a plan of correction within 15 days after its receipt of a complete plan, no forfeiture may be imposed for the period beginning with the 15th day after receipt

and ending when notice of approval or rejection is received by the home. If a plan of correction is approved and carried out, no forfeiture may be assessed during the time period specified in the approved plan of correction, commencing on the day the plan of correction is received by the department.

2. In the case of a class “C” violation for which a notice of violation has been served, a forfeiture may be assessed:

a. Under par. (a) 3. a., for the period beginning on the date for correction set forth in the correction order or an extended date set by the department, if granted, and ending on the date on which the violation is corrected.

b. Under par. (a) 3. b., for each day of the period during which the violation occurred.

(dm) *Forfeiture assessment date.* In the case of a class “B” violation, the department may not assess a forfeiture upon a nursing home until:

1. The home fails to submit a plan of correction under sub. (4) (c) 2.;

2. The department has issued an order imposing an approved plan under sub. (4) (c) 2.; or

3. The time set for the correction of the violation by the home under sub. (4) (c) 2. has expired.

(e) *Forfeiture appeal hearing.* A nursing home may contest an assessment of forfeiture by sending, within 10 days after receipt of notice of a contested action, a written request for 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 of receipt of the request for 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.

(f) *Forfeitures paid within 10 days.* All forfeitures shall be paid to the department within 10 days of receipt of notice of assessment or, if the forfeiture is contested under par. (e), within 10 days of 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 to the secretary of administration for deposit in the school fund.

(fm) *Forfeiture reduction for timely payment.* If a nursing home does not contest a notice of violation under sub. (4) (e) and does not contest an assessment of forfeiture under par. (e) for a class “A” or class “B” violation and pays the forfeiture to the department within 10 days after receipt of the notice of assessment, the department shall reduce the amount of the assessment by 35%.

(fr) *Report to the legislature.* Annually, the department shall submit a report to the legislature under s. 13.172 (2) that specifies for the previous year the number of class “A” violations, the amount of the forfeiture assessment for each of those violations and, if known, the amount of the forfeiture actually paid and collected with respect to those violations. The report shall also include an explanation for any assessment that was less than \$2,500 for the violations specified in the report.

(g) *Enforcement by attorney general.* 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.

(6) **CONDITIONAL LICENSE.** (a) *Power of department.* In addition to the right to assess forfeitures under sub. (5), the department may issue a conditional license to any nursing home if the depart-

ment finds that either a class “A” or class “B” violation, as defined in sub. (4), continues to exist in such home. The issuance of a conditional license shall revoke any outstanding license held by the nursing home. The nursing home may seek review of a decision to issue a conditional license as provided under s. 50.03 (5).

(b) *Violation correction plan.* Prior to the issuance of a conditional license, the department shall establish a written plan of correction. The plan shall specify the violations which prevent full licensure and shall establish a time schedule for correction of the deficiencies. Retention of the license shall be conditional on meeting the requirements of the plan of correction.

(c) *Notice.* Written notice of the decision to issue a conditional license shall be sent to the facility together with the proposed plan of correction. The notice shall inform the facility of its right to a case conference prior to issuance of the conditional license under par. (d) and of its right to a full hearing under par. (e).

(d) *Case conference.* If the facility desires to have a case conference it shall, within 4 working days of receipt of the notice under par. (c), send a written request for a case conference to the department. The department shall, within 4 working days from the receipt of the request, hold a case conference in the county in which the facility is located. Following this conference the department may affirm or overrule its previous decision, or modify the terms of the conditional license and plan of correction. The conditional license may be issued after the case conference, or after the time for requesting a case conference has expired, prior to any further hearing.

(e) *Hearing.* If after the case conference the licensee desires to contest the basis for issuance of a conditional license, or the terms of the license or plan of correction, the licensee shall send a written request for hearing to the department within 4 working days after issuance of the conditional license. The department shall hold the hearing within 30 days of receipt of such notice and shall immediately notify the licensee of the date and location of the hearing.

(f) *Term; inspection.* A conditional license shall be issued for a period specified by the department, but in no event for more than one year. The department shall periodically inspect any nursing home operating under a conditional license. If the department finds substantial failure by the nursing home to follow the plan of correction, the conditional license may be revoked as provided under s. 50.03 (5). The licensee is entitled to a hearing on the revocation under s. 50.03 (5), but the department may rely on facts found in a hearing under par. (e) as grounds for revocation.

(g) *Expiration.* If the department determines that a conditional license shall expire without renewal or replacement of the conditional license by a regular license, the department shall so notify the licensee at least 30 days prior to expiration of the license. The notice shall comply with notice requirements under s. 50.03 (5). The licensee is entitled to a hearing under s. 50.03 (5) prior to expiration of the license.

(7) **VIOLATIONS.** If an act forms the basis for a violation of this section and s. 49.498, the department or the attorney general may impose sanctions in conformity with this section or under s. 49.498, but not both.

History: 1977 c. 170 ss. 6, 29; 1977 c. 272; 1979 c. 34; 1981 c. 20, 121, 317, 391; 1983 a. 27 s. 2200 (1); 1985 a. 29; 1985 a. 182 s. 57; 1985 a. 332 s. 251 (1), (7); 1987 a. 27, 127, 399; 1989 a. 31, 336; 1991 a. 39, 269, 315; 1995 a. 27; 1997 a. 27, 114, 237, 252, 280; 1999 a. 9, 32, 103; 2003 a. 33.

A state nursing home is not subject to the forfeiture provisions of ch. 50. Wisconsin Veterans Home v. Division of Nursing Home Forfeiture Appeals, 104 Wis. 2d 106, 310 N.W.2d 646 (Ct. App. 1981).

A county-operated nursing home was subject to forfeitures under sub. (5). Lakeland Home v. Nursing Home Appeals Division, 118 Wis. 2d 636, 348 N.W.2d 523 (1984).

The sub. (5) (e) 30-day limit for commencing a hearing is directory, not mandatory. St. Michael’s Church v. DOA, 137 Wis. 2d 326, 404 N.W.2d 114 (Ct. App. 1987).

The requirement under sub. (2r) that an individual may not be admitted to an intermediate care facility unless the county department of the individual’s county of residence has recommended admission is a residency requirement, which in the case of a private facility is an unconstitutional restriction on travel. Bethesda Lutheran Homes and Services v. Leean, 122 F.3d 443 (1997).

50.05 Placement of monitor and appointment of receiver. (1) DEFINITIONS.

In this section:

(a) “Affiliate” means:

1. With respect to a partnership, each partner thereof.
1L. With respect to a limited liability company, each member thereof.

2. With respect to a corporation, each officer, director, principal stockholder and controlling person thereof.

3. With respect to a natural person: any person related in the first degree of kinship to that person; each partnership and each partner thereof of which that person or any affiliate of that person is a partner; each limited liability company and each member or manager thereof of which that person or any affiliate of that person is a member or manager; and each corporation in which that person or any affiliate of that person is an officer, director, principal stockholder or controlling person.

(b) “Controlling person” means any person who has the ability, directly or indirectly, to control the management or policies of the facility.

(c) “Emergency” means a situation, physical condition or one or more practices, methods or operations which presents imminent danger of death or serious physical or mental harm to residents of the facility.

(d) “Facility” means a nursing home or community-based residential facility.

(dm) “Nursing facility” has the meaning given in s. 49.498 (1) (i).

(e) “Operator” means any person licensed or required to be licensed under this subchapter as the operator of a facility.

(f) “Principal stockholder” of a corporation means any person who, directly or indirectly, beneficially owns, holds or has the power to vote, 10% or more of any class of securities issued by the corporation.

(2) **CONDITIONS FOR PLACEMENT OF A MONITOR OR APPOINTMENT OF A RECEIVER.** The department may place a monitor in a facility and the secretary, as specified in sub. (4), may petition for appointment of a receiver for a facility when any of the following conditions exist:

(a) The facility is operating without a license.

(b) The department has suspended or revoked the existing license of the facility.

(c) The department has initiated revocation procedures under s. 50.03 (5) and has determined that the lives, health, safety, or welfare of the residents cannot be adequately assured pending a full hearing on license revocation.

(d) The facility is closing or intends to close and adequate arrangements for relocation of residents have not been made at least 30 days prior to closure.

(e) The department determines that an emergency exists or that placement of a monitor or appointment of a receiver is necessary to protect the health, safety or welfare of the residents.

(f) The facility is a nursing facility that is in violation of s. 49.498 or a rule promulgated under s. 49.498, meets the criteria established by rule under s. 49.498 (14) (c) for placement of a monitor or appointment of a receiver, and there is a need for placement of a monitor or appointment of a receiver during the period that any of the following applies:

1. There is an orderly closure of the nursing facility.

2. The nursing facility institutes improvements in order to bring the nursing facility into compliance with the requirements of s. 49.498 or a rule promulgated under s. 49.498.

(3) **MONITOR.** In any situation described in sub. (2), the department may place a person to act as monitor in the facility. The monitor shall observe operation of the facility, assist the facility by advising it on how to comply with state regulations, and shall submit a written report periodically to the department on the operation

of the facility. The department may require payment by the operator or controlling person of the facility for the costs of placement of a person to act as monitor in the facility.

(4) **APPOINTMENT OF RECEIVER.** Only the secretary, represented by the department of justice, may apply for a court order appointing the secretary or the secretary's designee receiver of the facility. The secretary, as represented, may apply by verified petition to the circuit court for Dane County for the order. The court shall hold a hearing on the petition within 5 days of the filing of the petition. The petition and notice of the hearing shall be served on the operator, administrator or designated agent of the facility as provided under ch. 801 or shall be posted in a conspicuous place in the facility not later than 3 days before the time specified for the hearing, unless a different period is fixed by order of the court. Notwithstanding ss. 803.01 to 803.09 and 844.18, the only persons who may appear as a party at a hearing under this subsection or sub. (5) are the secretary or the secretary's designee and the operator of the facility. The court shall appoint a receiver for a specified time period requested by the secretary up to 120 days, if it finds that any ground exists which would authorize the appointment of a receiver under sub. (2) and that appointment of a receiver will contribute to the continuity of care or the orderly and safe transfer of residents in the facility. The court may extend the period of receivership in 30-day increments only on the petition of the department and if the court finds that the department has been unable to transfer all of the residents to another suitable location or the department has determined that it is necessary for the receivership to be extended for the continued health, safety and welfare of the residents. Notwithstanding s. 808.03 (1), any order issued at the hearing on the petition for receivership under this subsection or sub. (5) or at a subsequent hearing concerning matters arising under the receivership or concerning termination of the receivership under sub. (14) may be appealed as a matter of right.

(5) **EMERGENCY PROCEDURE.** If it appears from the petition filed under sub. (4), or from an affidavit or affidavits filed with the petition, or from testimony of witnesses under oath when the court determines that this is necessary, that there is probable cause to believe that an emergency exists in the facility, the court shall immediately issue the requested order for appointment of a receiver, ex parte and without further hearing. An appearance by the secretary or the secretary's designee to obtain the order is not a hearing of any preliminary contested matter for the purposes of s. 801.58 (1). Notice of the petition and order shall be served on the operator, administrator, or designated agent of the facility as provided under ch. 801 or shall be posted in a conspicuous place in the facility within 24 hours after issuance of the order and a hearing on the petition shall be held within 3 days after notice is served or posted unless the operator consents to a later date. After the hearing, the court may terminate, continue or modify the temporary order.

(6) **OBJECTIVE.** The receiver shall with all reasonable speed, but in any event by the date receivership ends under sub. (4), provide for the orderly transfer of all residents in the facility to other suitable facilities or make other provisions for their continued health, safety and welfare.

(7) **POWERS AND DUTIES OF RECEIVER.** A receiver appointed under this chapter:

(a) May exercise those powers and shall perform those duties set out by the court.

(b) Shall operate the facility in such a manner as to assure safety and adequate health care for the residents.

(c) Shall have the same rights to possession of the building in which the facility is located and of all goods and fixtures in the building at the time the petition for receivership is filed as the operator would have had if the receiver had not been appointed. The receiver shall take such action as is reasonably necessary to protect or conserve the tangible assets or property of which the receiver takes possession, or the proceeds of any transfer thereof,

and may use them only in the performance of the powers and duties set forth in this section and by order of the court.

(d) May use the building, fixtures, furnishings, and any accompanying consumable goods in the provision of care and services to residents and to any other persons receiving services from the facility at the time the petition for receivership was filed. The receiver shall collect payments for all goods and services provided to residents or others during the period of the receivership, at the same rate of payment as was charged by the operators at the time the petition for receivership was filed, unless a different rate is set by the court.

(e) May correct or eliminate any deficiency in the structure or furnishings of the facility which presents an immediate or serious danger to the health or safety of residents while they remain in the facility, provided the total cost of correction does not exceed \$3,000. The court may order expenditures for this purpose in excess of \$3,000 only on application from the receiver.

(f) May let contracts and hire agents and employees to carry out the powers and duties created under this section. Competitive bidding requirements under s. 16.75 do not apply to contracts for services or materials let by the receiver.

(g) Except as specified in sub. (9), shall honor all leases, mortgages and secured transactions governing the building in which the facility is located and all goods and fixtures in the building of which the receiver has taken possession, but only to the extent of payments which, in the case of a rental agreement, are for the use of the property during the period of the receivership, or which, in the case of a purchase agreement, come due during the period of the receivership.

(h) Shall have full power to direct and manage and to discharge employees of the facility, subject to any contract rights they may have. The receiver shall pay employees at the same rate of compensation, including benefits, that the employees would have received from the operator, except that the receiver shall compensate employees for time actually worked during the period of receivership and may reimburse for vacations or periods of sick leave. The receiver may grant salary increases and fringe benefits to employees of a nursing home, in accord with the facility payment formula under s. 49.45 (6m). Receivership does not relieve the operator of any obligation to employees not carried out by the receiver.

(i) Shall, if any resident is transferred or discharged, provide for:

1. Transportation of the resident and the resident's belongings and medical records to the place to which the resident is being transferred or discharged.

2. Aid in location of an alternative placement and in discharge planning.

3. If the patient is being transferred, preparation for transfer to mitigate transfer trauma.

(j) Shall, if any resident is to be transferred, permit participation by the resident or the resident's guardian in the selection of the resident's alternative placement.

(k) Shall, unless emergency transfer is necessary, prepare a resident under pars. (i) 3. and (j) by explaining alternative placements, and by providing orientation to the placement chosen by the resident or the resident's guardian.

(L) Shall be entitled to and shall take possession of all property or assets of residents which are in the possession of an owner, operator or controlling person of the facility. The receiver shall preserve all property, assets and records of residents of which the receiver takes possession and shall provide for the prompt transfer of the property, assets and records to the alternative placement of any transferred resident.

(m) May restrict admissions to the facility.

(8) **PAYMENT TO RECEIVER.** (a) A person who is served with notice of an order of the court appointing a receiver and of the receiver's name and address shall be liable to pay the receiver for

any goods or services provided by the receiver after the date of the order if the person would have been liable for the goods or services as supplied by the operator. The receiver shall give a receipt for each payment and shall keep a copy of each receipt on file. The receiver shall deposit amounts received in a special account and shall use this account for all disbursements.

(b) The receiver may bring an action to enforce the liability created by par. (a). Proof of payment to the receiver is as effective in favor of the person making the payment as payment of the amount to the person who would, but for this subsection, have been entitled to receive the sum so paid.

(c) A resident may not be discharged, nor may any contract or rights be forfeited or impaired, nor may forfeiture or liability be increased, by reason of an omission to pay an owner, operator or other person a sum paid to the receiver.

(9) AVOIDANCE OF PREEXISTING LEASES, MORTGAGES AND CONTRACTS. (a) A receiver may not be required to honor any lease, mortgage, secured transaction or other wholly or partially executory contract entered into by the owners or operators of the facility if any of the following is applicable:

1. The person seeking payment under the lease, mortgage, secured transaction or other wholly or partially executory contract was an operator or controlling person of the facility or was an affiliate of an operator or controlling person at the time the lease, mortgage, secured transaction or other wholly or partially executory contract was made.

2. The rental, price or rate of interest required to be paid under the lease, mortgage, secured transaction or other wholly or partially executory contract was in excess of a reasonable rental, price or rate of interest at the time the contract was entered into.

3. Payment under the lease, mortgage, secured transaction or other wholly or partially executory contract has been modified by the parties' subsequent oral or written agreement or constructive waiver.

(b) If the receiver is in possession of real estate or goods subject to a lease, mortgage or security interest which the receiver is permitted to avoid under par. (a), and if the real estate or goods are necessary for the continued operation of the facility under this section, the receiver may apply to the court to set a reasonable rental, price or rate of interest to be paid by the receiver during the duration of the receivership. The court shall hold a hearing on the application within 15 days. The receiver shall send notice of the application to any known owners of the property involved at least 10 days prior to the hearing. Payment by the receiver of the amount determined by the court to be reasonable is a defense to any action against the receiver for payment or for possession of the goods or real estate subject to the lease or mortgage involved by any person who received such notice, but the payment does not relieve the owner or operator of the facility of any liability for the difference between the amount paid by the receiver and the amount due under the original lease or mortgage involved.

(c) During the period of appointment of a receiver, there may be no foreclosure of a mortgage entered into by the owner or operator of the facility or eviction of facility residents if the foreclosure or eviction serves to defeat the purpose of the appointment.

(9m) IMPEDING RECEIVERSHIP PROHIBITED; AUTOMATIC STAY. No person may impede the operation of a receivership established under this section. After the appointment of a receiver, any action that interferes with the functioning of the facility, including cancellation of an insurance policy executed on behalf of the facility, repossession of equipment used in the facility or termination of utility services or other services or goods that are necessary to protect the health, safety or welfare of the nursing home residents, is automatically stayed for a period of not more than 60 days.

(10) CONTINGENCY FUND. If funds collected under subs. (3), (7) and (8) are insufficient to meet the expenses of performing the powers and duties conferred on the receiver by this section, or if there are insufficient funds on hand to meet those expenses, the

department may draw from the supplemental fund created under s. 20.435 (6) (dm) to pay the expenses associated with the placement of a monitor, if any, in a nursing home and the receivership of a nursing home. Operating funds collected under this section and not applied to the expenses of the placement of a monitor, if any, and the receivership, except for the amount of a security, if any is required under sub. (14m), shall be used to reimburse the fund for advances made under this section.

(11) COMPENSATION OF MONITOR OR RECEIVER. The court shall set the compensation of a person placed as a monitor, if any, and of the receiver, which will be considered necessary expenses of a receivership.

(12) LIABILITY OF RECEIVER; STATUS AS PUBLIC EMPLOYEE. (a) In any action or special proceeding brought against a receiver in the receiver's official capacity for acts committed while carrying out the powers and duties created under this section, the receiver shall be considered a public employee for purposes of s. 895.46.

(b) A receiver may be held liable in a personal capacity only for the receiver's own gross negligence, intentional acts or breach of fiduciary duty.

(c) A receiver may not be required to post any bond.

(13) LICENSING OF FACILITY UNDER RECEIVERSHIP. Other provisions of this chapter notwithstanding, the department may issue a license to a facility placed in receivership under this section. The duration of a license issued under this section is limited to the duration of the receivership.

(14) TERMINATION OF RECEIVERSHIP. (a) Except as provided under par. (b), the court may not terminate a receivership for any reason other than as specified under subs. 1. to 3. and shall, after the department determines and notifies the court that the facility is able to ensure continued compliance with federal and state laws, terminate the receivership:

1. If the time period specified in the order appointing the receiver elapses and the department has not petitioned for an extension;

2. If the department grants the facility a new license, whether the structure of the facility, the right to operate the facility, or the land on which it is located is under the same or different ownership; or

3. If all of the residents in the facility have been provided alternative modes of health care, either in another facility or otherwise.

(b) The court may terminate a receivership of a nursing facility imposed because of a violation of s. 49.498 or a rule promulgated under s. 49.498 if the department submits testimony to the satisfaction of the court that the nursing facility has the management capability to ensure continued compliance with the requirements of s. 49.498 or a rule promulgated under s. 49.498.

(14m) BOND UPON TERMINATION; REAPPOINTMENT. If the court terminates a receivership under sub. (14) and the department grants a license for the facility to the same applicant under which the facility was licensed immediately prior to appointment of a receiver under sub. (4) or (5), the court may require that person to post a bond for a period of not less than 120 days in an amount fixed by the court as security for maintaining compliance with this subchapter and the rules promulgated under this subchapter. If the court, after notice to the parties in the receivership proceeding and after a hearing, finds that the standards for appointment under sub. (4) are met, the court may reappoint the receiver. If the court reappoints the receiver, the receiver may use the security, if any has been required under this subsection, in addition to funds under subs. (7), (8) and (10), for purposes of payment of the placement of a monitor, if any, and for the receivership.

(15) ACCOUNTING; LIEN FOR EXPENSES. (a) Within 30 days after termination, the receiver shall give the court a complete accounting of all property of which the receiver has taken possession, of all funds collected under this section and of the expenses

of the monitor, if any is placed in a nursing home, and the receivership.

(b) If the operating funds collected by the receiver under subs. (7) and (8) exceed the reasonable expenses of the placement of a monitor in a nursing home, if any, and of the receivership, the court shall order payment of the surplus to the operator or controlling person, after reimbursement of funds drawn from the contingency fund under sub. (10). If the operating funds are insufficient to cover the reasonable expenses of the placement of a monitor in a nursing home, if any, and of the receivership, the operator or controlling person shall be liable for the deficiency. The operator or controlling person may apply to the court to determine the reasonableness of any expense of the placement of a monitor in a nursing home, if any, and of the receivership. The operator or controlling person shall not be responsible for expenses in excess of what the court finds to be reasonable. Payment recovered from the operator or controlling person shall be used to reimburse the contingency fund for amounts drawn by the receiver under sub. (10).

(c) The department has a lien for any deficiency under par. (b) upon any beneficial interest, direct or indirect, of any operator or controlling person in the following property:

1. The building in which the facility is located.
2. The land on which the facility is located.
3. Any fixtures, equipment or goods used in the operation of the facility.
4. The proceeds from any conveyance of property described in subd. 1., 2. or 3., made by the operator or controlling person within one year prior to the filing of the petition for receivership.
5. Any other property or assets of the operator or controlling person if no property or proceeds exist under subds. 1. to 4.

(d) The lien provided by this subsection is prior to any lien or other interest which originates subsequent to the filing of a petition for receivership under this section, except for a construction or mechanic's lien arising out of work performed with the express consent of the receiver or a lien under s. 292.31 (8) (i) or 292.81.

(e) The clerk of circuit court for the county in which the facility is located shall record the filing of the petition for receivership in the judgment and lien docket kept under s. 779.07 opposite the names of the operators and controlling persons named in the petition.

(f) The receiver shall, within 60 days after termination of the receivership, file a notice of any lien created under this subsection. No action on a lien created under this subsection may be brought more than 2 years after the date of filing. If the lien is on real property, the notice shall be filed with the clerk of circuit court of the county in which the facility is located and entered on the judgment and lien docket kept under s. 779.07. If the lien is on personal property, notice of the lien shall be filed in the same manner, form, and place as financing statements are filed under subch. V of ch. 409 regarding debtors who are located in this state. The department of financial institutions shall file the notice of the lien in the same file as financing statements are filed under subch. V of ch. 409. The notice shall specify the name of the person against whom the lien is claimed, the name of the receiver, the dates of the petition for receivership and the termination of receivership, a description of the property involved and the amount claimed. No lien shall exist under this section against any person, on any property, or for any amount not specified in the notice filed under this paragraph. To the extent applicable, ch. 846 controls the foreclosure of liens under this subsection that attach to real property.

(16) OBLIGATIONS OF OWNERS. Nothing in this section shall be deemed to relieve any owner, operator or controlling person of a facility placed in receivership of any civil or criminal liability incurred, or any duty imposed by law, by reason of acts or omissions of the owner, operator or controlling person prior to the appointment of a receiver under this section, nor shall anything contained in this section be construed to suspend during the receivership any obligation of the owner, operator or controlling person for payment of taxes or other operating and maintenance

expenses of the facility nor of the owner, operator or controlling person or any other person for the payment of mortgages or liens. No owner may be held professionally liable for acts or omissions of the receiver or the receiver's employees during the term of the receivership.

History: 1977 c. 112; 1979 c. 32 s. 92 (9); 1979 c. 34; 1981 c. 121; 1983 a. 27 s. 2202 (20); 1985 a. 29 s. 3200 (23) (b), (c); 1987 a. 27; 1989 a. 31; 1993 a. 112, 453; 1995 a. 27, 224, 227; 1997 a. 27, 35; 1999 a. 83; 2001 a. 10.

50.053 Case conference. The department may hold a case conference with the parties to any contested action under this subchapter to resolve any or all issues prior to formal hearing. Unless any party to the contested case objects, the department may delay the commencement of the formal hearing in order to hold the case conference.

History: 1977 c. 170; 1999 a. 103.

50.06 Certain admissions to facilities. (1) In this section, "incapacitated" means unable to receive and evaluate information effectively or to communicate decisions to such an extent that the individual lacks the capacity to manage his or her health care decisions, including decisions about his or her post-hospital care.

(2) An individual under sub. (3) may consent to admission, directly from a hospital to a facility, of an incapacitated individual who does not have a valid power of attorney for health care and who has not been adjudicated incompetent in this state, if all of the following apply:

(a) No person who is listed under sub. (3) in the same order of priority as, or higher in priority than, the individual who is consenting to the proposed admission disagrees with the proposed admission.

(am) 1. Except as provided in subd. 2., no person who is listed under sub. (3) and who resides with the incapacitated individual disagrees with the proposed admission.

2. Subdivision 1. does not apply if any of the following applies:

a. The individual who is consenting to the proposed admission resides with the incapacitated individual.

b. The individual who is consenting to the proposed admission is the spouse of the incapacitated person.

(b) The individual for whom admission is sought is not diagnosed as developmentally disabled or as having a mental illness at the time of the proposed admission.

(c) A petition for guardianship for the individual under s. 54.34 and a petition under s. 55.075 for protective placement of the individual are filed prior to the proposed admission.

NOTE: Par. (c) is shown as affected by 2 acts of the 2005 Wisconsin legislature and as merged by the revisor under s. 13.93 (2) (c).

(d) The incapacitated individual does not verbally object to or otherwise actively protest the admission. If he or she makes such an objection or protest, he or she may be admitted to the facility, but the person in charge of the facility shall immediately notify the county department under s. 55.02 (2) for the county in which the individual is living or the agency with which the county department contracts. Representatives of the county department or agency shall visit the individual as soon as possible, but not later than 72 hours after notification, and do all of the following:

1. Determine whether the protest persists or has been voluntarily withdrawn and consult with the person who consented to the admission regarding the reasons for the admission.

2. Attempt to have the incapacitated individual released within 72 hours if the protest is not withdrawn and the individual does not satisfy all of the criteria under s. 55.08 (1) or 55.135 (1), and provide assistance in identifying appropriate alternative living arrangements.

3. Comply with s. 55.135 if the requirements of s. 55.135 (1) are met and emergency protective placement in that facility or another facility is necessary or file a petition for protective placement under s. 55.075. The court, with the permission of the facility, may order the incapacitated individual to remain in the facility pending the outcome of the protective placement proceedings.

(3) The following individuals, in the following order of priority, may consent to an admission under sub. (2):

- (a) The spouse of the incapacitated individual.
- (b) An adult son or daughter of the incapacitated individual.
- (c) A parent of the incapacitated individual.
- (d) An adult brother or sister of the incapacitated individual.
- (e) A grandparent of the incapacitated individual.
- (f) An adult grandchild of the incapacitated individual.
- (g) An adult close friend of the incapacitated individual.

(4) A determination that an individual is incapacitated for purposes of sub. (2) shall be made by 2 physicians, as defined in s. 448.01 (5), or by one physician and one licensed psychologist, as defined in s. 455.01 (4), who personally examine the individual and sign a statement specifying that the individual is incapacitated. Mere old age, eccentricity or physical disability, either singly or together, are insufficient to make a finding that an individual is incapacitated. Neither of the individuals who make a finding that an individual is incapacitated may be a relative, as defined in s. 242.01 (11), of the individual or have knowledge that he or she is entitled to or has a claim on any portion of the individual's estate. A copy of the statement shall be included in the individual's records in the facility to which he or she is admitted.

(5) (a) Except as provided in par. (b), an individual who consents to an admission under this section may, for the incapacitated individual, make health care decisions to the same extent as a guardian of the person may and authorize expenditures related to health care to the same extent as a guardian of the estate may, until the earliest of the following:

1. Sixty days after the admission to the facility of the incapacitated individual.
2. Discharge of the incapacitated individual from the facility.
3. Appointment of a guardian for the incapacitated individual.

(b) An individual who consents to an admission under this section may not authorize expenditures related to health care if the incapacitated individual has an agent under a durable power of attorney, as defined in s. 243.07 (1) (a), who may authorize expenditures related to health care.

(6) If the incapacitated individual is in the facility after 60 days after admission and a guardian has not been appointed, the authority of the person who consented to the admission to make decisions and, if sub. (5) (a) applies, to authorize expenditures is extended for 30 days for the purpose of allowing the facility to initiate discharge planning for the incapacitated individual.

(7) An individual who consents to an admission under this section may request that an assessment be conducted for the incapacitated individual under the long-term support community options program under s. 46.27 (6) or, if the secretary has certified under s. 46.281 (3) that a resource center is available for the individual, a functional and financial screen to determine eligibility for the family care benefit under s. 46.286 (1). If admission is sought on behalf of the incapacitated individual or if the incapacitated individual is about to be admitted on a private pay basis, the individual who consents to the admission may waive the requirement for a financial screen under s. 46.283 (4) (g), unless the incapacitated individual is expected to become eligible for medical assistance within 6 months.

History: 1993 a. 187; 1999 a. 9; 2005 a. 264, 387; s. 13.93 (2) (c).

50.065 Criminal history and patient abuse record search. (1) In this section:

(ag) 1. "Caregiver" means any of the following:

a. A person who is, or is expected to be, an employee or contractor of an entity, who is or is expected to be under the control of an entity, as defined by the department by rule, and who has, or is expected to have, regular, direct contact with clients of the entity.

b. A person who has, or is seeking, a license, certification, registration, or certificate of approval issued or granted by the department to operate an entity.

c. A person who is, or is expected to be, an employee of the board on aging and long-term care and who has, or is expected to have, regular, direct contact with clients.

2. "Caregiver" does not include a person who is certified as an emergency medical technician under s. 146.50 if the person is employed, or seeking employment, as an emergency medical technician and does not include a person who is certified as a first responder under s. 146.50 if the person is employed, or seeking employment, as a first responder.

(am) "Certificate of approval" means a certificate of approval issued under s. 50.35.

(b) "Client" means a person who receives direct care or treatment services from an entity.

(bm) "Contractor" means, with respect to an entity, a person, or that person's agent, who provides services to the entity under an express or implied contract or subcontract, including a person who has staff privileges at the entity.

(br) "Direct contact" means face-to-face physical proximity to a client that affords the opportunity to commit abuse or neglect of a client or to misappropriate the property of a client.

(c) "Entity" means a facility, organization or service that is licensed or certified by or registered with the department to provide direct care or treatment services to clients. "Entity" includes a hospital, a personal care worker agency, a supportive home care service agency, a temporary employment agency that provides caregivers to another entity and the board on aging and long-term care. "Entity" does not include any of the following:

1. Licensed or certified child care under ch. 48.
2. Kinship care under s. 48.57 (3m) or long-term kinship care under s. 48.57 (3n).
3. A person certified as a medical assistance provider, as defined in s. 49.43 (10), who is not otherwise approved under s. 50.065 (1) (cm), licensed or certified by or registered with the department.
4. An entity, as defined in s. 48.685 (1) (b).
6. A public health dispensary established under s. 252.10.

(cm) "Hospital" means a facility approved as a hospital under s. 50.35.

(cn) "Nonclient resident" means a person who resides, or is expected to reside, at an entity, who is not a client of the entity and who has, or is expected to have, regular, direct contact with clients of the entity.

(d) "Personal care worker agency" has the meaning specified by the department by rule.

(dm) "Reservation" means land in this state within the boundaries of a reservation of a tribe or within the bureau of Indian affairs service area for the Ho-Chunk Nation.

(e) 1. "Serious crime" means a violation of s. 940.19 (3), 1999 stats., a violation of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19 (2), (4), (5) or (6), 940.22 (2) or (3), 940.225 (1), (2) or (3), 940.285 (2), 940.29, 940.295, 948.02 (1), 948.025 or 948.03 (2) (a), or a violation of the law of any other state or United States jurisdiction that would be a violation of s. 940.19 (3), 1999 stats., or a violation of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19 (2), (4), (5) or (6), 940.22 (2) or (3), 940.225 (1), (2) or (3), 940.285 (2), 940.29, 940.295, 948.02 (1), 948.025 or 948.03 (2) (a) if committed in this state.

2. For the purposes of an entity that serves persons under the age of 18, "serious crime" includes a violation of s. 948.02 (2), 948.03 (2) (b) or (c), 948.05, 948.055, 948.06, 948.07, 948.08, 948.085, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 (1), 948.30, or 948.53 or a violation of the law of any other state or United States jurisdiction that would be a violation of s. 948.02

(2), 948.03 (2) (b) or (c), 948.05, 948.055, 948.06, 948.07, 948.08, 948.085, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 (1), 948.30, or 948.53 if committed in this state.

NOTE: Subd. 2. is shown as affected by two acts of the 2005 Wisconsin legislature and as merged by the revisor under s. 13.93 (2) (c).

(f) “Supportive home care service agency” has the meaning specified by the department by rule.

(g) “Tribe” means a federally recognized American Indian tribe or band in this state.

(2) (am) The department shall obtain all of the following with respect to a person specified under sub. (1) (ag) 1. b. and a person who is a nonclient resident or prospective nonclient resident of an entity:

1. A criminal history search from the records maintained by the department of justice.
2. Information that is contained in the registry under s. 146.40 (4g) regarding any findings against the person.
3. Information maintained by the department of regulation and licensing regarding the status of the person’s credentials, if applicable.
4. Information maintained by the department regarding any substantiated reports of child abuse or neglect against the person.
5. Information maintained by the department under this section regarding any denial to the person of a license, certification, certificate of approval or registration or of a continuation of a license, certification, certificate of approval or registration to operate an entity for a reason specified in sub. (4m) (a) 1. to 5. and regarding any denial to the person of employment at, a contract with or permission to reside at an entity for a reason specified in sub. (4m) (b) 1. to 5. If the information obtained under this subdivision indicates that the person has been denied a license, certification, certificate of approval or registration, continuation of a license, certification, certificate of approval or registration, a contract, employment or permission to reside as described in this subdivision, the department need not obtain the information specified in subs. 1. to 4.

(b) Every entity shall obtain all of the following with respect to a caregiver of the entity:

1. A criminal history search from the records maintained by the department of justice.
2. Information that is contained in the registry under s. 146.40 (4g) regarding any findings against the person.
3. Information maintained by the department of regulation and licensing regarding the status of the person’s credentials, if applicable.
4. Information maintained by the department regarding any substantiated reports of child abuse or neglect against the person.
5. Information maintained by the department under this section regarding any denial to the person of a license, certification, certificate of approval or registration or of a continuation of a license, certification, certificate of approval or registration to operate an entity for a reason specified in sub. (4m) (a) 1. to 5. and regarding any denial to the person of employment at, a contract with or permission to reside at an entity for a reason specified in sub. (4m) (b) 1. to 5. If the information obtained under this subdivision indicates that the person has been denied a license, certification, certificate of approval or registration, continuation of a license, certification, certificate of approval or registration, a contract, employment or permission to reside as described in this subdivision, the entity need not obtain the information specified in subs. 1. to 4.

(bb) If information obtained under par. (am) or (b) indicates a charge of a serious crime, but does not completely and clearly indicate the final disposition of the charge, the department or entity shall make every reasonable effort to contact the clerk of courts to determine the final disposition of the charge. If a background information form under sub. (6) (a) or (am), or any disclosure made pursuant to a disclosure policy described under sub.

(6) (am), indicates a charge or a conviction of a serious crime, but information obtained under par. (am) or (b) does not indicate such a charge or conviction, the department or entity shall make every reasonable effort to contact the clerk of courts to obtain a copy of the criminal complaint and the final disposition of the complaint. If information obtained under par. (am) or (b), a background information form under sub. (6) (a) or (am), any disclosure made pursuant to a disclosure policy described under sub. (6) (am), or any other information indicates a conviction of a violation of s. 940.19 (1), 940.195, 940.20, 941.30, 942.08, 947.01 or 947.013 obtained not more than 5 years before the date on which that information was obtained, the department or entity shall make every reasonable effort to contact the clerk of courts to obtain a copy of the criminal complaint and judgment of conviction relating to that violation.

(bd) Notwithstanding pars. (am) and (b) 1., the department is not required to obtain the information specified in par. (am) 1. to 5., and an entity is not required to obtain the information specified in par. (b) 1. to 5., with respect to a person under 18 years of age whose background information form under sub. (6) (am), or whose response or lack of response to a disclosure policy described under sub. (6) (am), indicates that the person is not ineligible to be employed, contracted with or permitted to reside at an entity for a reason specified in sub. (4m) (b) 1. to 5. and with respect to whom the department or entity otherwise has no reason to believe that the person is ineligible to be employed, contracted with or permitted to reside at an entity for any of those reasons. This paragraph does not preclude the department from obtaining, at its discretion, the information specified in par. (am) 1. to 5. with respect to a person described in this paragraph who is a nonclient resident or a prospective nonclient resident of an entity.

(bg) If an entity hires or contracts with a caregiver for whom, within the last 4 years, the information required under par. (b) 1. to 3. and 5. has already been obtained by another entity, the entity may obtain that information from that other entity, which, notwithstanding par. (br), shall provide the information, if possible, to the requesting entity. If an entity cannot obtain the information required under par. (b) 1. to 3. and 5. from another entity or if an entity has reasonable grounds to believe that any information obtained from another entity is no longer accurate, the entity shall obtain that information from the sources specified in par. (b) 1. to 3. and 5.

(bm) If the person who is the subject of the search under par. (am) or (b) is not a resident of this state, or if at any time within the 3 years preceding the date of the search that person has not been a resident of this state, or if the department or entity determines that the person’s employment, licensing or state court records provide a reasonable basis for further investigation, the department or entity shall make a good faith effort to obtain from any state or other United States jurisdiction in which the person is a resident or was a resident within the 3 years preceding the date of the search information that is equivalent to the information specified in par. (am) 1. or (b) 1. The department or entity may require the person to be fingerprinted on 2 fingerprint cards, each bearing a complete set of the person’s fingerprints. The department of justice may provide for the submission of the fingerprint cards to the federal bureau of investigation for the purposes of verifying the identity of the person fingerprinted and obtaining records of his or her criminal arrests and convictions.

(br) 1. Except as provided in subd. 2, an entity that receives information regarding the arrest or conviction of a caregiver from the federal bureau of investigation in connection with a criminal history search under this section may use the information only to determine whether the caregiver’s arrest or conviction record disqualifies him or her from serving as a caregiver. An entity is immune from civil liability to a caregiver for using arrest or conviction information provided by the federal bureau of investigation to make an employment determination regarding the caregiver.

2. Subdivision 1. does not apply to use by an entity of arrest or conviction information that the entity requests from the federal bureau of investigation after September 30, 2007.

(d) Every entity shall maintain, or shall contract with another person to maintain, the most recent background information obtained on a caregiver under par. (b). The information shall be made available for inspection by authorized persons, as defined by the department by rule.

(3) (a) Every 4 years or at any time within that period that the department considers appropriate, the department shall request the information specified in sub. (2) (am) 1. to 5. for all persons who are licensed to operate an entity and for all persons who are nonclient residents of an entity.

(b) Every 4 years or at any other time within that period that an entity considers appropriate, the entity shall request the information specified in sub. (2) (b) 1. to 5. for all caregivers of the entity.

(3m) Notwithstanding subs. (2) (b) and (3) (b), if the department obtains the information required under sub. (2) (am) or (3) (a) with respect to a person who is a caregiver specified under sub. (1) (ag) 1. b. and that person is also an employee, contractor or nonclient resident of the entity, the entity is not required to obtain the information specified in sub. (2) (b) or (3) (b) with respect to that person.

(4) An entity that violates sub. (2), (3) or (4m) (b) may be required to forfeit not more than \$1,000 and may be subject to other sanctions specified by the department by rule.

(4m) (a) Notwithstanding s. 111.335, and except as provided in sub. (5), the department may not license, certify, issue a certificate of approval to or register a person to operate an entity or continue the license, certification, certificate of approval or registration of a person to operate an entity if the department knows or should have known any of the following:

1. That the person has been convicted of a serious crime.
3. That a unit of government or a state agency, as defined in s. 16.61 (2) (d), has made a finding that the person has abused or neglected any client or misappropriated the property of any client.
4. That a determination has been made under s. 48.981 (3) (c) 4. that the person has abused or neglected a child.
5. That, in the case of a position for which the person must be credentialed by the department of regulation and licensing, the person's credential is not current or is limited so as to restrict the person from providing adequate care to a client.

(b) Notwithstanding s. 111.335, and except as provided in sub. (5), an entity may not employ or contract with a caregiver or permit to reside at the entity a nonclient resident, if the entity knows or should have known any of the following:

1. That the person has been convicted of a serious crime.
3. That a unit of government or a state agency, as defined in s. 16.61 (2) (d), has made a finding that the person has abused or neglected any client or misappropriated the property of any client.
4. That a determination has been made under s. 48.981 (3) (c) 4. that the person has abused or neglected a child.
5. That, in the case of a position for which the person must be credentialed by the department of regulation and licensing, the person's credential is not current or is limited so as to restrict the person from providing adequate care to a client.

(c) If the background information form completed by a person under sub. (6) (am), or a person's response or lack of response to a disclosure policy described under sub. (6) (am), indicates that the person is not ineligible to be employed or contracted with for a reason specified in par. (b) 1. to 5., an entity may employ or contract with the person for not more than 60 days pending the receipt of the information sought under sub. (2) (b). If the background information form completed by a person under sub. (6) (am), or a person's response or lack of response to a disclosure policy described under sub. (6) (am), indicates that the person is not ineligible to be permitted to reside at an entity for a reason specified

in par. (b) 1. to 5. and if an entity otherwise has no reason to believe that the person is ineligible to be permitted to reside at an entity for any of those reasons, the entity may permit the person to reside at the entity for not more than 60 days pending receipt of the information sought under sub. (2) (am). An entity shall provide supervision for a person who is employed or contracted with or permitted to reside as permitted under this paragraph.

(5) The department may license, certify, issue a certificate of approval to or register to operate an entity a person who otherwise may not be licensed, certified, issued a certificate of approval or registered for a reason specified in sub. (4m) (a) 1. to 5., and an entity may employ, contract with or permit to reside at the entity a person who otherwise may not be employed, contracted with or permitted to reside at the entity for a reason specified in sub. (4m) (b) 1. to 5., if the person demonstrates to the department, or, in the case of an entity that is located within the boundaries of a reservation, to the person or body designated by the tribe under sub. (5d) (a) 3., by clear and convincing evidence and in accordance with procedures established by the department by rule, or by the tribe, that he or she has been rehabilitated.

(5c) Any person who is permitted but fails under sub. (5) to demonstrate to the department that he or she has been rehabilitated may appeal to the secretary of health and family services or his or her designee. Any person who is adversely affected by a decision of the secretary or his or her designee under this subsection has a right to a contested case hearing under ch. 227.

(5d) (a) Any tribe that chooses to conduct rehabilitation reviews under sub. (5) shall submit to the department a rehabilitation review plan that includes all of the following:

1. The criteria to be used to determine if a person has been rehabilitated.
2. The title of the person or body designated by the tribe to whom a request for review must be made.
3. The title of the person or body designated by the tribe to determine whether a person has been rehabilitated.
- 3m. The title of the person or body designated by the tribe to whom a person may appeal an adverse decision made by the person specified under subd. 3. and whether the tribe provides any further rights of appeal.
4. The manner in which the tribe will submit information relating to a rehabilitation review to the department so that the department may include that information in its report to the legislature required under sub. (5g).
5. A copy of the form to be used to request a review and a copy of the form on which a written decision is to be made regarding whether a person has demonstrated rehabilitation.

(b) If, within 90 days after receiving the plan, the department does not disapprove the plan, the plan shall be considered approved. If, within 90 days after receiving the plan, the department disapproves the plan, the department shall provide notice of that disapproval to the tribe in writing, together with the reasons for the disapproval. The department may not disapprove a plan unless the department finds that the plan is not rationally related to the protection of clients. If the department disapproves the plan, the tribe may, within 30 days after receiving notice of the disapproval, request that the secretary review the department's decision. A final decision under this paragraph is not subject to further review under ch. 227.

(5g) Beginning on January 1, 1999, and annually thereafter, the department shall submit a report to the legislature under s. 13.172 (2) that specifies the number of persons in the previous year who have requested to demonstrate to the department that they have been rehabilitated under sub. (5), the number of persons who successfully demonstrated that they have been rehabilitated under sub. (5) and the reasons for the success or failure of a person who has attempted to demonstrate that he or she has been rehabilitated.

(5m) Notwithstanding s. 111.335, the department may refuse to license, certify or register, or issue a certificate of approval to,

a caregiver and an entity may refuse to employ or contract with a caregiver or to permit a nonclient resident to reside at the entity, if the caregiver or nonclient resident has been convicted of an offense that is not a serious crime, but that is, in the estimation of the department or entity, substantially related to the care of a client.

(6) (a) The department shall require any person who applies for issuance or continuation of a license, certification, certificate of approval or registration to operate an entity to complete a background information form that is provided by the department.

(am) Every 4 years an entity shall require its caregivers and nonclient residents to complete a background information form that is provided to the entity by the department, except that an entity need not require those caregivers to whom par. (b) does not apply to complete the form if the entity requires the caregivers to disclose to the entity, in writing, all information requested on the form and notifies the caregivers annually of the disclosure requirement.

(b) For caregivers who are licensed, issued a certificate of approval or certified by, or registered with, the department, for nonclient residents, and for other persons specified by the department by rule, the entity shall send the background information form to the department.

(c) A person who provides false information on a background information form required under this subsection or a caregiver who fails to report information as required under a disclosure policy described under par. (am) may be required to forfeit not more than \$1,000 and may be subject to other sanctions specified by the department by rule.

(7) The department shall do all of the following:

(c) Conduct throughout the state periodic training sessions that cover criminal background investigations; reporting and investigating misappropriation of property or abuse or neglect of a client; and any other material that will better enable entities to comply with the requirements of this section.

(d) Provide a background information form that requires the person completing the form to include his or her date of birth on the form.

(8) The department may charge a fee for obtaining the information required under sub. (2) (am) or (3) (a) or for providing information to an entity to enable the entity to comply with sub. (2) (b) or (3) (b). No fee may be charged to a nurse's assistant, as defined in s. 146.40 (1) (d), for obtaining or maintaining the information if to do so would be inconsistent with federal law.

History: 1997 a. 27, 105, 237; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2005 a. 25, 184, 277, 351; s. 13.93 (2) (c).

50.07 Prohibited acts. (1) No person may:

(a) Intentionally fail to correct or interfere with the correction of a class "A" or class "B" violation within the time specified on the notice of violation or approved plan of correction under s. 50.04 as the maximum period given for correction, unless an extension is granted and the corrections are made before expiration of extension.

(b) Intentionally prevent, interfere with, or attempt to impede in any way the work of any duly authorized representative of the department in the investigation and enforcement of any provision of this subchapter.

(c) Intentionally prevent or attempt to prevent any such representative from examining any relevant books or records in the conduct of official duties under this subchapter.

(d) Intentionally prevent or interfere with any such representative in the preserving of evidence of any violation of any of the provisions of this subchapter or the rules promulgated under this subchapter.

(e) Intentionally retaliate or discriminate against any resident or employee for contacting or providing information to any state official, including any representative of the office of the long-term care ombudsman under s. 16.009 (4), or for initiating, partici-

pating in, or testifying in an action for any remedy authorized under this subchapter.

(em) Intentionally retaliate or discriminate against any resident or employee on whose behalf another person contacted or provided information to any state official, including any representative of the office of the long-term care ombudsman under s. 16.009 (4), or initiated, participated in or testified in an action for any remedy authorized under this subchapter.

(f) Intentionally destroy, change or otherwise modify an inspector's original report.

(2) Violators of this section may be imprisoned up to 6 months or fined not more than \$1,000 or both for each violation.

(3) (b) Any employee who is discharged or otherwise retaliated or discriminated against in violation of sub. (1) (e) or (em) may file a complaint with the department of workforce development under s. 106.54 (5).

(c) Any person not described in par. (b) who is retaliated or discriminated against in violation of sub. (1) (e) or (em) may commence an action in circuit court for damages incurred as a result of the violation.

History: 1977 c. 170; 1997 a. 131; 1999 a. 82; 2003 a. 33.

Sub. (1) (e) does not provide a remedy to a terminated employee and does not prevent a private action for wrongful termination to an employee who reports abuse. There is a public policy exception to the employment-at-will doctrine in this case. *Hausman v. St. Croix Care Center, Inc.* 214 Wis. 2d 655, 571 N.W.2d 393 (1997), 96-0866.

This section is similar to a patient's bill of rights. Sub. (1) (e) protects both patients and employees. An insurance policy providing coverage to a nursing home for personal injuries interfering with rights provided by a patient's bill of rights was applicable to a wrongful discharge claim alleging interference with the plaintiff's rights under sub. (1) (e). *St. Paul Fire and Marine Insurance Co. v. Hausman*, 231 Wis. 2d 25, 604 N.W.2d 908 (Ct. App. 1999), 99-1125.

50.09 Rights of residents in certain facilities. (1) RESIDENTS' RIGHTS. Every resident in a nursing home or community-based residential facility shall, except as provided in sub. (5), have the right to:

(a) Private and unrestricted communications with the resident's family, physician, advanced practice nurse prescriber, attorney, and any other person, unless medically contraindicated as documented by the resident's physician or advanced practice nurse prescriber in the resident's medical record, except that communications with public officials or with the resident's attorney shall not be restricted in any event. The right to private and unrestricted communications shall include, but is not limited to, the right to:

1. Receive, send and mail sealed, unopened correspondence, and no resident's incoming or outgoing correspondence shall be opened, delayed, held or censored.

2. Reasonable access to a telephone for private communications.

3. Opportunity for private visits.

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

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

(d) Be fully informed, in writing, prior to or at the time of admission of all services included in the per diem rate, other services available, the charges for such services, and be informed, in writing, during the resident's stay of any changes in services available or in charges for services.

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

(f) Physical and emotional privacy in treatment, living arrangements and in caring for personal needs, including, but not limited to:

1. 'Privacy for visits by spouse.' If both spouses are residents of the same facility, they shall be permitted to share a room unless medically contraindicated as documented by the resident's physician or advanced practice nurse prescriber in the resident's medical record.

2. Privacy concerning health care. Case discussion, consultation, examination and treatment are confidential and shall be conducted discreetly. Persons not directly involved in the resident's care shall require the resident's permission to authorize their presence.

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

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

(h) Meet with, and participate in activities of social, religious, and community groups at the resident's discretion, unless medically contraindicated as documented by the resident's physician or advanced practice nurse prescriber in the resident's medical record.

(i) Retain and use personal clothing and effects and to retain, as space permits, other personal possessions in a reasonably secure manner.

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

1. He or she is in need of ongoing care and treatment and has not been accepted for ongoing care and treatment by another facility or through community support services.

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

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

b. The nursing home is found to be an institution for mental diseases, as defined under 42 CFR 435.1009.

(k) Be free from mental and physical abuse, and be free from chemical and physical restraints except as authorized in writing by a physician or advanced practice nurse prescriber for a specified and limited period of time and documented in the resident's medical record. Physical restraints may be used in an emergency when necessary to protect the resident from injury to himself or herself or others or to property. However, authorization for continuing use of the physical restraints shall be secured from a physician or advanced practice nurse prescriber within 12 hours. Any use of physical restraints shall be noted in the resident's medical records. "Physical restraints" includes, but is not limited to, any article, device, or garment that interferes with the free movement of the resident and that the resident is unable to remove easily, and confinement in a locked room.

(L) Receive adequate and appropriate care within the capacity of the facility.

(m) Use the licensed, certified or registered provider of health care and pharmacist of the resident's choice.

(n) Be fully informed of the resident's treatment and care and participate in the planning of the resident's treatment and care.

(2) The department, in establishing standards for nursing homes and community-based residential facilities may establish, by rule, rights in addition to those specified in sub. (1) for residents in such facilities.

(3) If the resident is adjudicated incompetent in this state and not restored to legal capacity, the rights and responsibilities established under this section which the resident is not competent to exercise shall devolve upon the resident's guardian.

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

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

(6) (a) Each facility shall establish a system of reviewing complaints and allegations of violations of residents' rights established under this section. The facility shall designate a specific individual who, for the purposes of effectuating this section, shall report to the administrator.

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

(c) No person who files a report as required in par. (b) or who participates, in good faith, in the review system established under par. (a) shall be liable for civil damages for such acts.

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

History: 1975 c. 119, 199; 1977 c. 170 s. 33; Stats. 1977 s. 50.09; 1979 c. 175, 221; 1987 a. 27; 1989 a. 31; 1991 a. 39; 1997 a. 27, 114, 175; 2005 a. 187, 387.

A resident's right under sub. (1) (e) to be treated with respect is not waived by misbehavior. *Hacker v. DHSS*, 189 Wis. 2d 328, 525 N.W.2d 364 (Ct. App. 1994).

Abuse and Neglect in Long-term Care Facilities: The Civil Justice System's Response. Studinski. Wis. Law. Aug. 2004.

Preventing Abuse and Neglect in Health Care Settings: The Regulatory Agency's Responsibility. Dawson. Wis. Law. Aug. 2004.

Seeking Justice in Death's Waiting Room: Barriers to Effectively Prosecuting Crime in Long-term Care Facilities. Hanrahan. Wis. Law. Aug. 2004.

A Response: Issues Affecting Long-term Care. Purtell. Wis. Law. Oct. 2004.

50.095 Resident's right to know; nursing home reports. (1) Every resident in or prospective resident of a nursing home has the right to know certain information from the nursing home which would aid an individual in assessing the quality of care provided by a nursing home.

(2) The department may request from a nursing home information necessary for preparation of a report under sub. (3), and the nursing home, if so requested, shall provide the information.

(3) By July 1, 1998, and annually thereafter, the department shall provide each nursing home and the office of the long-term care ombudsman with a report that includes the following information for the nursing home:

(am) The ratio of nursing staff available to residents per shift at each skill level for the previous year for the nursing home, under criteria that the department shall promulgate as rules.

(b) The staff replacement rates for full-time and part-time nursing staff, nurse's assistants and administrators for the previous year for the nursing home and for all similar nursing homes in the same geographical area, as determined by the department.

(c) Violations of statutes or rules by the nursing home during the previous year for the nursing home and for all similar nursing homes in the same geographical area, as determined by the department.

(3m) The department shall prepare a simplified summary of the information required under sub. (3) (am) to (c), as specified by rule by the department. The summary shall be on one sheet of paper and shall be in language that is easily understood by laypersons. The summary shall state that a complete copy of the most recent report of inspection of the nursing home is available from the department, upon request, for a minimal fee.

(4) Upon receipt of a report under sub. (3), the nursing home shall make the report available to any person requesting the report. Upon receipt of a summary under sub. (3m), the nursing home shall provide a copy of the summary to every resident of the nursing home and his or her guardian, if any, to every prospective resident of the nursing home, if any, and to every person who accompanies a prospective resident or acts as the prospective resident's representative, as defined in s. 655.001 (12), if any.

History: 1987 a. 27, 127; 1997 a. 114 ss. 20 to 25; 1997 a. 237.

50.097 Registry. Any person may receive, upon specific written request to the department, requested information that is contained in the registry of nurse's assistants and home health aides under s. 146.40 (4g) (a) or that is contained in the registry of hospice aides under s. 146.40 (4g) (a) 1.

History: 1989 a. 31; 1991 a. 39.

50.098 Appeals of transfers or discharges. The department shall promulgate rules establishing a fair mechanism for hearing appeals on transfers and discharges of residents from nursing homes.

History: 1989 a. 31.

50.10 Private cause of action. (1) Any person residing in a nursing home has an independent cause of action to correct conditions in the nursing home or acts or omissions by the nursing home or by the department, that:

(a) The person alleges violate this subchapter or rules promulgated under this subchapter; and

(b) The person alleges are foreseeably related to impairing the person's health, safety, personal care, rights or welfare.

(2) Actions under this section are for mandamus against the department or for injunctive relief against either the nursing home or the department.

History: 1981 c. 121, 391.

This section applies only to residents of a nursing home, which is different from a community based residential facility. Residents of community-based residential facilities do not have a private cause of action for statutory or administrative code violations. *Farr v. Alternative Living Services, Inc.* 2002 WI App 88, 253 Wis. 2d 790, 643 N.W.2d 841, 01-0971.

Wisconsin's private cause of action for nursing home residents. *Bertrand.* Wis. Law. Sep. 1989.

Protecting the Rights of Nursing Home Residents. *Spitzer-Resnick.* Wis. Law. May 1993.

50.11 Cumulative remedies. The remedies provided by this subchapter are cumulative and shall not be construed as restricting any remedy, provisional or otherwise, provided by law for the

benefit of any party, and no judgment under this subchapter shall preclude any party from obtaining additional relief based upon the same facts.

History: 1977 c. 170.

50.12 Waiver of federal requirements. The department shall petition the secretary of the U.S. department of health and human services for a waiver of the requirement that it conduct annual medical assistance surveys of nursing homes, for a waiver of the requirement that it conduct annual independent medical reviews and independent professional reviews, to allow the department under 42 USC 1396a (a) (26) and (31) to conduct biennial surveys and reviews and for any waivers necessary to implement the special requirements promulgated under s. 50.02 (3) (d).

History: 1981 c. 121; 1985 a. 29.

50.13 Fees permitted for a workshop or seminar. If the department develops and provides a workshop or seminar relating to the provision of service by facilities, adult family homes or residential care apartment complexes under this subchapter, the department may establish a fee for each workshop or seminar and impose the fee on registrants for the workshop or seminar. A fee so established and imposed shall be in an amount sufficient to reimburse the department for the costs directly associated with developing and providing the workshop or seminar.

History: 1985 a. 120; 1997 a. 27.

50.135 Licensing and approval fees for inpatient health care facilities. (1) DEFINITION. In this section, "inpatient health care facility" means any hospital, nursing home, county home, county mental hospital or other place licensed or approved by the department under ss. 49.70, 49.71, 49.72, 50.02, 50.03, 50.35, 51.08 and 51.09, but does not include community-based residential facilities.

(2) FEES. (a) The annual fee for any inpatient health care facility except a nursing home is \$18 per bed, based on the number of beds for which the facility is licensed. The annual fee for any nursing home is \$6 per bed, based on the number of beds for which the nursing home is licensed. This fee shall be paid to the department on or before October 1 for the ensuing year. Each new inpatient health care facility shall pay this fee no later than 30 days before it opens.

(b) Any inpatient health care facility that fails to pay its fee on or before the date specified in par. (a) shall pay an additional fee of \$10 per day for every day after the deadline.

(c) The fees collected under par. (a) shall be credited to the appropriation account under s. 20.435 (6) (jm) for licensing, review and certifying activities.

(3) EXEMPTION. The inpatient health care facilities under ss. 45.50, 48.62, 51.05, 51.06, 233.40, 233.41, 233.42 and 252.10 are exempt from this section.

History: 1983 a. 27, 192; 1985 a. 29; 1987 a. 27; 1993 a. 16; 1993 a. 27 s. 257; Stats. 1993 s. 50.135; 1995 a. 27; 1997 a. 27, 35; 1999 a. 9; 2005 a. 22, 25.

Sub. (1) requires that all of the specifically enumerated facilities must be places licensed or approved by DHFS. A VA hospital is not within the definition of inpatient health care facility as it is subject to federal regulation and is not licensed or regulated by the state. *State v. Powers*, 2004 WI App 156, 276 Wis. 2d 107, 687 N.W.2d 50, 03-1514.

50.14 Assessments on licensed beds. (1) In this section:

(a) Notwithstanding s. 50.01 (1m), "facility" means a nursing home or an intermediate care facility for the mentally retarded that is not located outside the state.

(b) "Intermediate care facility for the mentally retarded" has the meaning given under 42 USC 1396d (c) and (d).

(2) For the privilege of doing business in this state, there is imposed on all licensed beds of a facility an assessment that may not exceed \$445 per calendar month per licensed bed of an intermediate care facility for the mentally retarded and an assessment that may not exceed \$75 per calendar month per licensed bed of a nursing home. The assessment moneys collected shall be deposited in the general fund, except amounts in excess of \$13,800,000

shall be deposited in the Medical Assistance trust fund. In determining the number of licensed beds, all of the following apply:

(a) If the amount of the beds is other than a whole number, the fractional part of the amount shall be disregarded unless it equals 50% or more of a whole number, in which case the amount shall be increased to the next whole number.

(b) The number of licensed beds of a nursing home includes any number of beds that have been delicensed under s. 49.45 (6m) (ap) 1. but not deducted from the nursing home's licensed bed capacity under s. 49.45 (6m) (ap) 4. a.

(3) By the end of each month, each facility shall submit to the department the amount due under sub. (2) for each licensed bed of the facility for the month preceding the month during which the payment is being submitted. The department shall verify the number of beds licensed and, if necessary, make adjustments to the payment, notify the facility of changes in the payment owing and send the facility an invoice for the additional amount due or send the facility a refund.

(4) Sections 77.59 (1) to (5m), (6) (intro.), (a) and (c) and (7) to (10), 77.60 (1) to (7), (9) and (10), 77.61 (9) and (12) to (14) and 77.62, as they apply to the taxes under subch. III of ch. 77, apply to the assessment under this section, except that the amount of any assessment collected under s. 77.59 (7) in excess of \$13,800,000 [45 percent] in a fiscal year shall be deposited in the Medical Assistance trust fund.

NOTE: Sub. (4) is shown as affected by 2 acts of the 2005 Wisconsin legislature and as merged by the revisor under s. 13.93 (2) (c). The bracketed language was inserted by 2005 Wis. Act 49 but rendered without effect by 2005 Wis. Act 25. Corrective legislation is pending.

(5) (a) The department shall levy, enforce and collect the assessment under this section and shall develop and distribute forms necessary for levying and collection.

(b) The department shall promulgate rules that establish procedures and requirements for levying the assessment under this section.

(6) (a) An affected facility may contest an action by the department under this section by submitting a written request for a hearing to the department within 30 days after the date of the department's action.

(b) Any order or determination made by the department under a hearing as specified in par. (a) is subject to judicial review as prescribed under ch. 227.

History: 1991 a. 269; 1993 a. 16; 1995 a. 27; 1997 a. 114; 2003 a. 33; 2005 a. 25, 49; s. 13.93 (2) (c).

Cross Reference: See also ch. HFS 15, Wis. adm. code.

SUBCHAPTER II

HOSPITALS

50.32 Hospital regulation and approval act. Sections 50.32 to 50.39 shall constitute the "Hospital Regulation and Approval Act".

History: 1975 c. 413 ss. 4, 18; Stats. 1975 s. 50.32.

Cross Reference: See also ch. HFS 124, Wis. adm. code.

50.33 Definitions. Whenever used in ss. 50.32 to 50.39:

(1g) "Critical access hospital" means a hospital that is designated by the department as meeting the requirements of 42 USC 1395i-4 (c) (2) (B) and is federally certified as meeting the requirements of 42 USC 1395i-4 (e).

(1r) "Governmental unit" means the state, any county, town, city, village, or other political subdivision or any combination thereof, department, division, board or other agency of any of the foregoing.

(2) (a) "Hospital" means any building, structure, institution or place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment of and medical or surgical care for 3 or more unrelated individuals hereinafter designated patients, suffering from illness, disease, injury or disability,

whether physical or mental, and including pregnancy and regularly making available at least clinical laboratory services, and diagnostic X-ray services and treatment facilities for surgery, or obstetrical care, or other definitive medical treatment.

(b) "Hospital" may include, but not in limitation thereof by enumeration, related facilities such as outpatient facilities, nurses', interns' and residents' quarters, training facilities and central service facilities operated in connection with hospitals.

(c) "Hospital" includes "special hospitals" or those hospital facilities that provide a limited type of medical or surgical care, including orthopedic hospitals, children's hospitals, critical access hospitals, mental hospitals, psychiatric hospitals or maternity hospitals.

History: 1975 c. 413 ss. 4, 18; Stats. 1975 s. 50.33; 1977 c. 83 s. 26 (4); 1979 c. 175; 1983 a. 189; 1997 a. 237.

50.34 Purpose. The purpose of ss. 50.32 to 50.39 is to provide for the development, establishment and enforcement of rules and standards for the construction, maintenance and operation of hospitals which, in the light of advancing knowledge, will promote safe and adequate care and treatment of patients in such hospitals.

History: 1975 c. 413 ss. 4, 18; Stats. 1975 s. 50.34.

50.35 Application and approval. Application for approval to maintain a hospital shall be made to the department on forms provided by the department. On receipt of an application, the department shall, except as provided in s. 50.498, issue a certificate of approval if the applicant and hospital facilities meet the requirements established by the department. Except as provided in s. 50.498, this approval shall be in effect until, for just cause and in the manner herein prescribed, it is suspended or revoked. The certificate of approval may be issued only for the premises and persons or governmental unit named in the application and is not transferable or assignable. The department shall withhold, suspend or revoke approval for a failure to comply with s. 165.40 (6) (a) 1. or 2., but, except as provided in s. 50.498, otherwise may not withhold, suspend or revoke approval unless for a substantial failure to comply with ss. 50.32 to 50.39 or the rules and standards adopted by the department after giving a reasonable notice, a fair hearing and a reasonable opportunity to comply. Failure by a hospital to comply with s. 50.36 (3m) shall be considered to be a substantial failure to comply under this section.

History: 1975 c. 413 ss. 4, 18; Stats. 1975 s. 50.35; 1989 a. 37; 1997 a. 93, 237.

50.355 Reporting. Every 12 months, on a schedule determined by the department, an approved hospital shall submit an annual report in the form and containing the information that the department requires, including payment of the fee required under s. 50.135 (2) (a). If a complete annual report is not timely filed, the department shall issue a warning to the holder of the certificate for approval. The department may revoke approval for failure to timely and completely report within 60 days after the report date established under the schedule determined by the department.

History: 1997 a. 27.

50.36 Rules and standards. (1) The department shall promulgate, adopt, amend and enforce such rules and standards for hospitals for the construction, maintenance and operation of the hospitals deemed necessary to provide safe and adequate care and treatment of the patients in the hospitals and to protect the health and safety of the patients and employees; and nothing contained herein shall pertain to a person licensed to practice medicine and surgery or dentistry. The building codes and construction standards of the department of commerce shall apply to all hospitals and the department may adopt additional construction codes and standards for hospitals, provided they are not lower than the requirements of the department of commerce. Except for the construction codes and standards of the department of commerce and except as provided in s. 50.39 (3), the department shall be the sole agency to adopt and enforce rules and standards pertaining to hospitals.

(2) (a) The department shall conduct plan reviews of all capital construction and remodeling projects of hospitals to ensure that the plans comply with building code requirements under ch. 101 and with physical plant requirements under this chapter or under rules promulgated under this chapter.

(b) The department shall promulgate rules that establish a fee schedule for its services in conducting the plan reviews under par. (a). The schedule established under these rules shall set fees for hospital plan reviews in amounts that are less than the sum of the amounts required on September 30, 1995, for fees under this subsection and for fees for examination of hospital plans under s. 101.19 (1) (a), 1993 stats.

(c) The department shall promulgate rules that require that a hospital, before discharging a patient who is aged 65 or older or who has developmental disability or physical disability and whose disability or condition requires long-term care that is expected to last at least 90 days, refer the patient to the resource center under s. 46.283. The rules shall specify that this requirement applies only if the secretary has certified under s. 46.281 (3) that a resource center is available for the hospital and for specified groups of eligible individuals that include persons seeking admission to or patients of the hospital.

(3) (a) Any person licensed to practice medicine and surgery under subch. II of ch. 448 or podiatry under subch. IV of ch. 448 shall be afforded an equal opportunity to obtain hospital staff privileges and may not be denied hospital staff privileges solely for the reason that the person is an osteopathic physician and surgeon or a podiatrist. Each individual hospital shall retain the right to determine whether the applicant's training, experience and demonstrated competence is sufficient to justify the granting of hospital staff privileges or is sufficient to justify the granting of limited hospital staff privileges.

(b) If, as a result of peer investigation or written notice thereof, a hospital staff member who is licensed by the medical examining board or podiatrists affiliated credentialing board, for any reasons that include the quality of or ability to practice, loses his or her hospital staff privileges, has his or her hospital staff privileges reduced or resigns from the hospital staff, the hospital shall so notify the medical examining board or podiatrists affiliated credentialing board, whichever is applicable, within 30 days after the loss, reduction or resignation takes effect. Temporary suspension due to incomplete records need not be reported.

(c) If, as a result of peer investigation or written notice thereof, a hospital staff member who is licensed by the medical examining board or podiatrists affiliated credentialing board, for reasons that do not include the quality of or ability to practice, loses his or her hospital staff privileges for 30 days or more, has his or her hospital staff privileges reduced for 30 days or more or resigns from the hospital staff for 30 days or more, the hospital shall so notify the medical examining board or podiatrists affiliated credentialing board, whichever is applicable, within 30 days after the loss, reduction or resignation takes effect. Temporary suspension due to incomplete records need not be reported.

(3d) (a) A hospital shall develop and maintain a system under which the hospital may grant emergency staff privileges to a health care provider, as defined in s. 146.81 (1), to whom all of the following apply:

1. The health care provider seeks to provide care at the hospital during a period of a state of emergency related to public health declared by the governor under s. 166.03 (1) (b) 1.
2. The health care provider does not have staff privileges at the hospital at the time that the state of emergency related to public health is declared by the governor under s. 166.03 (1) (b) 1.
3. The health care provider has staff privileges at another hospital.

(b) A hospital that grants emergency staff privileges under par. (a) has immunity from civil liability for acts or omissions by a health care provider who is granted emergency staff privileges under par. (a).

(3g) (a) In this subsection:

1. "Mental illness" has the meaning given in s. 51.01 (13) (a).
2. "Psychologist" means a licensed psychologist, as defined in s. 455.01 (4).

(b) A hospital that admits patients for treatment of mental illness may grant to a psychologist who is listed or eligible to be listed in the national register of health services providers in psychology or who is certified by the American board of professional psychology an opportunity to obtain hospital staff privileges to admit, treat and discharge patients. Each hospital may determine whether the applicant's training, experience and demonstrated competence are sufficient to justify the granting of hospital staff privileges or of limited hospital staff privileges.

(c) If a hospital grants a psychologist hospital staff privileges or limited hospital staff privileges under par. (b), the psychologist or the hospital shall, prior to or at the time of hospital admission of a patient, identify an appropriate physician with admitting privileges at the hospital who shall be responsible for the medical evaluation and medical management of the patient for the duration of his or her hospitalization.

(3m) The department shall require a hospital that is accredited as a hospital by a private accrediting organization to submit to the department a copy of the summary accreditation recommendation and may require the hospital to submit to the department copies of all correspondence sent or received on or after August 30, 1989, including survey results, between the hospital and the accrediting organization. Accreditation letters, reports and related correspondence submitted to the department, except those submitted by a county mental health complex under s. 51.08, under this subsection are not subject to inspection, copying or receipt under s. 19.35 (1) and may not be released by the department.

(4) The department shall make or cause to be made such inspections and investigation, as are reasonably deemed necessary to obtain compliance with the rules and standards. It shall afford an opportunity for representatives of the hospitals to consult with members of the staff of the department concerning compliance and noncompliance with rules and standards.

History: 1971 c. 211; 1975 c. 383 s. 4; 1975 c. 413 ss. 4, 18; 1975 c. 421; Stats. 1975 s. 50.36; 1977 c. 29; 1979 c. 34; 1981 c. 135; 1985 a. 340; 1989 a. 37; 1991 a. 129; 1993 a. 16, 30, 270; 1995 a. 27 ss. 3245, 3246, 9116 (5); 1997 a. 175; 1999 a. 9; 2001 a. 109.

Cross Reference: See also ch. HFS 124, Wis. adm. code.

A hospital owes a duty to its patients to exercise reasonable care in the selection of medical staff and in granting special privileges. *Johnson v. Misericordia Community Hospital*, 99 Wis. 2d 708, 301 N.W.2d 156 (1981).

50.37 Notification to accrediting organization. The department shall notify a private accrediting organization that has accredited a hospital and the board of governors of the injured patients and families compensation fund under s. 619.04 (3) if the department has done any of the following:

- (1) Suspended or revoked the hospital's approval under s. 50.35.
- (2) Issued an order to the hospital.
- (3) Suspended new admissions to the hospital under s. 50.39 (5).

(4) Recommended to the federal health care financing administration that the hospital be decertified from the federal medicare program under 42 USC 1395 to 1395ccc or the federal medicaid program under 42 USC 1396 to 1396r-3 for failure to meet a condition of participation under the program.

History: 1989 a. 37; 2003 a. 111.

50.38 Forfeitures. (1) Whoever violates rules promulgated under s. 50.36 (2) (c) may be required to forfeit not more than \$500 for each violation.

(2) The department may directly assess forfeitures provided for under sub. (1). If the department determines that a forfeiture should be assessed for a particular violation, the department shall send a notice of assessment to the hospital. The notice shall specify the amount of the forfeiture assessed, the violation and the stat-

ute or rule alleged to have been violated, and shall inform the hospital of the right to a hearing under sub. (3).

(3) A hospital may contest an assessment of a forfeiture by sending, within 10 days after receipt of notice under sub. (2), 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.

(4) All forfeitures shall be paid to the department within 10 days after receipt of notice of assessment or, if the forfeiture is contested under sub. (3), 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 secretary of administration for deposit in the school fund.

(5) 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.

History: 1999 a. 9; 2003 a. 33.

50.39 Exemptions and enforcement. (1) Sections 50.32 to 50.39 and the rules promulgated pertaining thereto shall apply to all facilities coming under the definition of a “hospital” which are not specifically exempt by ss. 50.32 to 50.39.

(2) The use of the title “hospital” to represent or identify any facility which does not meet the definition of a “hospital” as provided herein or is not subject to approval under ss. 50.32 to 50.39 is prohibited, except that institutions governed by s. 51.09 are exempt.

(3) Facilities governed by ss. 45.50, 48.62, 49.70, 49.72, 50.02, 51.09, and 252.10, juvenile correctional facilities as defined in s. 938.02 (10p), correctional institutions governed by the department of corrections under s. 301.02, and the offices and clinics of persons licensed to treat the sick under chs. 446, 447, and 448 are exempt from ss. 50.32 to 50.39. Sections 50.32 to 50.39 do not abridge the rights of the medical examining board, physical therapists affiliated credentialing board, podiatrists affiliated credentialing board, dentistry examining board, pharmacy examining board, chiropractic examining board, and board of nursing in carrying out their statutory duties and responsibilities.

NOTE: Sub. (3) is shown as affected by 2 acts of the 2005 Wisconsin legislature and as merged by the revisor under s. 13.93 (2) (c).

(4) All orders issued by the department pursuant to ss. 50.32 to 50.39 shall be enforced by the attorney general. The circuit court of Dane County shall have jurisdiction to enforce such orders by injunctive and other appropriate relief.

(5) (a) The department may, in the event of an emergency condition that imminently threatens the health or safety of patients of a hospital, suspend new admissions to all or a part of the hospital until such time as the department decides that the hospital has removed or corrected the causes or deficiencies creating the emergency.

(b) Immediately upon the suspension of new admissions under par. (a), the department shall notify the hospital in writing. Notice of the suspension shall include a clear and concise statement of the causes or deficiencies creating the emergency condition on which the suspension is based and notice of the opportunity for a hearing on the suspension or on rescission of the suspension under s. 227.44. If the hospital desires to contest the suspension, it shall provide written notice to the department of a request for a hearing within

10 days after receipt of the notice of suspension. If the hospital desires to contest failure by the department to rescind the suspension, it shall provide written notice to the department of a request for a hearing.

(6) In addition to any other remedies provided by law, any person suffering a pecuniary loss because of a violation of s. 50.36 (3) (a) may bring a civil action in any court of competent jurisdiction to recover the amount of the pecuniary loss, together with costs and disbursements, including reasonable attorney fees.

History: 1971 c. 164; 1975 c. 39; 1975 c. 413 ss. 4, 18; 1975 c. 430 s. 80; Stats. 1975 s. 50.39; 1977 c. 203; 1979 c. 89, 221, 337, 355; 1985 a. 332 s. 251 (1); 1989 a. 31, 37, 107; 1991 a. 39; 1993 a. 27, 30, 107; 1995 a. 27, 77; 1997 a. 175; 1999 a. 9; 2005 a. 22, 344; 13.93 (2) (c).

Cross Reference: See also ch. HFS 124, Wis. adm. code.

50.49 Licensing and regulation of home health agencies. (1) DEFINITIONS. AS used in this section, unless a different meaning appears from the context:

(a) “Home health agency” means an organization that:

1. Primarily provides skilled nursing and other therapeutic services;

2. Has policies established by a professional group including at least one physician and at least one registered nurse to govern services, and provides for supervision of these services by a physician or a registered nurse; and

3. Maintains clinical records on all patients.

(b) “Home health services” means the following items and services that are furnished to an individual, who is under the care of a physician or advanced practice nurse prescriber, by a home health agency, or by others under arrangements made by the home health agency, that are under a plan for furnishing those items and services to the individual that is established and periodically reviewed by a physician or advanced practice nurse prescriber and that are, except as provided in subd. 6., provided on a visiting basis in a place of residence used as the individual’s home:

1. Part–time or intermittent nursing care provided by or under the supervision of a registered professional nurse;

2. Physical or occupational therapy or speech–language pathology;

3. Medical social services under the direction of a physician;

4. Medical supplies, other than drugs and biologicals, and the use of medical appliances, while under such a plan;

5. In the case of a home health agency which is affiliated or under common control with a hospital, medical services provided by an intern or resident–in–training of such hospital, under an approved teaching program of such hospital; and

6. Any of the foregoing items and services which are provided on an outpatient basis, under arrangements made by the home health agency, at a hospital or extended care facility, or at a rehabilitation center which meets such standards as may be prescribed by rule, and the furnishing of which involves the use of equipment of such a nature that the items and services cannot readily be made available to the individual in such place of residence, or which are furnished at such facility while the individual is there to receive any such item or service, but not including transportation of the individual in connection with any such item or service.

(c) “Patient” means individuals cared for or treated by home health agencies.

(2) **RULES.** (a) The department may develop, establish and enforce standards for the care, treatment, health, safety, welfare and comfort of patients by home health agencies and for the maintenance and operation of home health agencies which, in the light of advancing knowledge, will promote safe and adequate care and treatment of such patients by home health agencies.

(b) The department shall, by rule, set a license fee to be paid by home health agencies.

(3) **ADMINISTRATION.** The administration of this section shall be under the department which shall make or cause to be made such inspections and investigations as it deems necessary.

(4) LICENSING, INSPECTION AND REGULATION. Except as provided in sub. (6m), the department may register, license, inspect and regulate home health agencies as provided in this section. The department shall ensure, in its inspections of home health agencies, that a sampling of records from private pay patients are reviewed. The department shall select the patients who shall receive home visits as a part of the inspection. Results of the inspections shall be made available to the public at each of the regional offices of the department.

(5) APPLICATION FOR REGISTRATION AND LICENSE. (a) Registration shall be in writing in such form and contain such information as the department requires.

(b) The application for a license shall be in writing upon forms provided by the department and shall contain such information as it requires.

(6) ISSUANCE OF LICENSE; INSPECTION AND INVESTIGATION; ANNUAL REPORT; NONTRANSFERABILITY; CONTENT. (a) Except as provided in s. 50.498, the department shall issue a home health agency license if the applicant is fit and qualified, and if the home health agency meets the requirements established by this section. The department, or its designated representatives, shall make such inspections and investigations as are necessary to determine the conditions existing in each case and file written reports. Each licensee shall annually file a report with the department.

(b) A home health agency license is valid until suspended or revoked, except as provided in s. 50.498.

(c) Each license shall be issued only for the home health agency named in the application and is not transferable or assignable. Any license granted shall state such additional information and special limitations as the department, by rule, prescribes.

(d) Every 12 months, on a schedule determined by the department, a licensed home health agency shall submit an annual report in the form and containing the information that the department requires, including payment of the fee required under sub. (2) (b). If a complete annual report is not timely filed, the department shall issue a warning to the licensee. The department may revoke the license for failure to timely and completely report within 60 days after the report date established under the schedule determined by the department.

(6m) EXCEPTIONS. None of the following is required to be licensed as a home health agency under sub. (4), regardless of whether any of the following provides services that are similar to services provided by a home health agency:

(a) A care management organization, as defined in s. 46.2805 (1).

(b) A program specified in s. 46.2805 (1) (a).

(c) A demonstration program specified in s. 46.2805 (1) (b).

(7) DENIAL, SUSPENSION OR REVOCATION OF LICENSE; NOTICE. The department after notice to the applicant or licensee is authorized to deny, suspend or revoke a license in any case in which it finds that there has been a substantial failure to comply with the requirements of this section and the rules established hereunder.

(8) FAILURE TO REGISTER OR OPERATING WITHOUT LICENSE; PENALTY. It is unlawful for any person, acting jointly or severally with any other person, to conduct, maintain, operate, or permit to be maintained or operated, or to participate in the conducting, maintenance or operating of a home health agency, unless, it is licensed as a home health agency by the department. Any person who violates this section shall be fined not more than \$100 for the first offense and not more than \$200 for each subsequent offense, and each day of violation after the first conviction shall constitute a separate offense.

(9) RIGHT OF INJUNCTION. All orders issued by the department under this section shall be enforced by the attorney general. The circuit court of Dane County shall have jurisdiction to enforce such orders by injunctive and other appropriate relief.

(10) PROVISIONAL LICENSES. Except as provided in s. 50.498, a provisional license if approved by the department may be issued

to any home health agency, the facilities of which are in use or needed for patients, but which is temporarily unable to conform to all the rules established under this section. A provisional license may not be issued for more than one year.

History: 1981 c. 93 ss. 162 to 166, 184; 1989 a. 31, 316; 1993 a. 27 s. 279; Stats. 1993 s. 50.49; 1993 a. 482; 1995 a. 225; 1997 a. 27, 237; 1999 a. 9, 83; 2005 a. 187.

Cross Reference: See also ch. HFS 133, Wis. adm. code.

50.495 Fees permitted for a workshop or seminar. If the department develops and provides a workshop or seminar relating to the provision of services by hospitals and home health agencies under this subchapter, the department may establish a fee for each workshop or seminar and impose the fee on registrants for the workshop or seminar. A fee so established and imposed shall be in an amount sufficient to reimburse the department for the costs directly associated with developing and providing the workshop or seminar.

History: 1997 a. 27.

50.498 Denial, nonrenewal and revocation of license, certification or registration based on tax delinquency.

(1) Except as provided in sub. (1m), the department shall require each applicant to provide the department with his or her social security number, if the applicant is an individual, or the applicant's federal employer identification number, if the applicant is not an individual, as a condition of issuing any of the following:

(a) A certificate of approval under s. 50.35.

(b) A license under s. 50.49 (6) (a).

(c) A provisional license under s. 50.49 (10).

(1m) If an individual who applies for a certificate of approval, license or provisional license under sub. (1) does not have a social security number, the individual, as a condition of obtaining the certificate of approval, license or provisional license, shall submit a statement made or subscribed under oath or affirmation to the department that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of workforce development. A certificate of approval, license or provisional license issued in reliance upon a false statement submitted under this subsection is invalid.

(2) The department may not disclose any information received under sub. (1) to any person except to the department of revenue for the sole purpose of requesting certifications under s. 73.0301.

(3) Except as provided in sub. (1m), the department shall deny an application for the issuance of a certificate of approval, license or provisional license specified in sub. (1) if the applicant does not provide the information specified in sub. (1).

(4) The department shall deny an application for the issuance of a certificate of approval, license or provisional license specified in sub. (1) or shall revoke a certificate of approval, license or provisional license specified in sub. (1), if the department of revenue certifies under s. 73.0301 that the applicant for or holder of the certificate of approval, license or provisional license is liable for delinquent taxes.

(5) An action taken under sub. (3) or (4) is subject to review only as provided under s. 73.0301 (2) (b) and (5).

History: 1997 a. 237; 1999 a. 9.

SUBCHAPTER III

RURAL MEDICAL CENTERS

50.50 Definitions. In this subchapter:

(1) "Ambulatory surgery center" has the meaning given in 42 CFR 416.2.

(1m) "Critical access hospital" has the meaning given in s. 50.33 (1g).

(2) "End-stage renal disease services" has the meaning given under 42 CFR 405.2102.

(3) "Health care services" means any of the following:

- (a) Care that is provided in or by any of the following:
1. A hospital.
 2. A nursing home.
 3. A hospice.
 4. A rural health clinic.
 5. An ambulatory surgery center.
 6. A critical access hospital.
- (b) Home health services.
- (c) Outpatient physical therapy services.
- (cm) Outpatient occupational therapy services.
- (d) End-stage renal disease services.
- (e) Services that are specified in rules that the department promulgates.
- (4)** “Home health services” has the meaning given in s. 50.49 (1) (b).
- (5)** “Hospice” has the meaning given in s. 50.90 (1).
- (6)** “Hospital” has the meaning given in s. 50.33 (2) (a) or (b), except that “hospital” does not include a critical access hospital.
- (7)** “Medicare” has the meaning given in s. 49.45 (3) (L) 1. b.
- (7m)** “Occupational therapy” has the meaning given in s. 448.96 (5).
- (8)** “Outpatient physical therapy services” has the meaning given under 42 USC 1395x (p).
- (9)** “Patient” means an individual who receives services from a rural medical center.
- (10)** “Rural health clinic” has the meaning given under 42 USC 1395x (aa) (2).
- (11)** “Rural medical center” means an arrangement of facilities, equipment, services and personnel that is all of the following:
- (a) Organized under a single governing and corporate structure.
 - (b) Capable of providing or assuring health care services, including appropriate referral, treatment and follow-up services, at one or more locations in a county, city, town or village that has a population of less than 15,000 and that is in an area that is not an urbanized area, as defined by the federal bureau of the census.
 - (c) A provider of at least 2 health care services under the arrangement or through a related corporate entity.
- History:** 1995 a. 98; 1997 a. 237, 252; 1999 a. 180.

50.51 Departmental powers. The department shall do all of the following:

- (1)** Provide uniform, statewide licensing, inspection and regulation of rural medical centers as specified in this subchapter.
- (2)** Promulgate rules that establish all of the following:
- (a) For the operation of licensed rural medical centers, standards that are designed to protect and promote the health, safety, rights and welfare of patients who receive health care services in rural medical centers.
 - (b) Minimum requirements for issuance of a provisional license or a regular license to rural medical centers.
 - (c) Fees for rural medical center provisional licensure and regular licensure. The amounts of the fees shall be based on the health care services provided by the rural medical center.
 - (d) A procedure and criteria for waiver of or variance from standards under par. (a) or minimum requirements under par. (b).
- History:** 1995 a. 98; 1997 a. 27.
- Cross Reference:** See also ch. HFS 127, Wis. adm. code.

50.52 Licensing procedure and requirements. (1) No person may be required to obtain licensure as a rural medical center, except that no person may conduct, maintain, operate or permit to be conducted, maintained or operated health care services as a rural medical center unless the rural medical center is licensed by the department.

(2) The department shall issue a provisional license or a regular license as a rural medical center to an applicant if all of the following are first done:

(a) The applicant pays the appropriate license fee, as established under s. 50.51 (2) (c). Fees collected under this paragraph shall be credited to the appropriation under s. 20.435 (6) (jm) for licensing and inspection activities.

(b) Except as provided in par. (c), the department inspects the health care services provided by the applying rural medical center and finds that the applicant is fit and qualified and meets the requirements and standards of this subchapter and the rules promulgated under this subchapter.

(c) In lieu of conducting the inspection under par. (b), the department accepts evidence that an applicant meets one of the following requirements:

1. Has applicable current, valid state licensure or approval as a hospital, a nursing home, a hospice or a home health agency.
2. Has an applicable, current agreement to participate as an eligible provider in medicare.
3. Is a critical access hospital.
4. Satisfies qualifications that are specified by the department by rule.

(3) Each license shall bear the name of the owner of the rural medical center, the name and address of the rural medical center and the health care services that the department licenses the rural medical center to provide.

(4) A regular license issued to a rural medical center is valid until it is suspended or revoked. A provisional license issued to a rural medical center is valid for 6 months from the date of issuance.

(5) Each license shall be issued only for the rural medical center and owner that are named in the license application and may not be transferred or assigned.

History: 1995 a. 98; 1997 a. 27, 237.

50.53 Inspections and investigations. (1) The department may conduct unannounced inspections or investigations of a rural medical center as the department considers necessary.

(2) A rural medical center that is inspected or investigated under this section shall provide the department with access to patient health care records, regardless of the source of patient health care payment, to fulfill the purpose of any inspections or investigations that the department conducts.

History: 1995 a. 98

50.535 Reporting. Every 24 months, on a schedule determined by the department, a licensed rural medical center shall submit a biennial report in the form and containing the information that the department requires, including payment of the fee required under s. 50.51 (2) (c). If a complete annual report is not timely filed, the department shall issue a warning to the licensee. The department may revoke the license for failure to timely and completely report within 60 days after the report date established under the schedule determined by the department.

History: 1997 a. 27.

50.54 Prohibitions. (1) An entity that is not licensed as a rural medical center under this subchapter may not designate itself as a “rural medical center” or use the phrase “rural medical center” to represent or tend to represent the entity as a rural medical center or services provided by the entity as health care services provided by a rural medical center.

(2) No person may do any of the following:

(a) Intentionally prevent, interfere with or impede an investigation by the department of an alleged violation or enforcement by the department of a requirement of this subchapter or the rules promulgated under this subchapter.

(b) Intentionally retaliate or discriminate against a patient or rural medical center employee for doing any of the following:

1. Contacting or providing information to a state agency, as defined in s. 16.004 (12) (a).
2. Initiating, participating in or testifying in an action to enforce any provision of this subchapter or rules promulgated under this subchapter.

(c) Intentionally destroy or modify the original report of an inspection that the department conducts under this subchapter or the rules promulgated under this subchapter.

History: 1995 a. 98

50.55 Penalties and remedies. (1) FORFEITURES. (a) Any person who violates this subchapter or any rule promulgated under this subchapter, except s. 50.54 (2), may be required to forfeit not less than \$100 nor more than \$500 for each offense. Each day of continued violation constitutes a separate offense.

(b) In determining whether a forfeiture is to be imposed and in fixing the amount of the forfeiture to be imposed, if any, for a violation, the department shall consider all of the following factors:

1. The gravity of the violation.
2. Good faith exercised by the licensee.
3. Any previous violations committed by the licensee.
4. The financial benefit to the rural medical center of committing or continuing to commit the violation.

(c) 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 or for failure to correct it, the department shall send a notice of assessment to the rural medical center. 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 licensee of the right to a hearing under par. (d).

(d) A rural medical center may contest an assessment of forfeiture by sending, within 10 days after receipt of notice under par. (c), a written request for hearing under s. 227.44 to the division of hearings and appeals under s. 15.103 (1). The division shall commence the hearing within 30 days after receipt of the request for 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.

(e) 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. (d), within 10 days after receipt of the final decision, unless the final decision is appealed and the decision is in favor of the appellant. The department shall remit all forfeitures paid to the secretary of administration for deposit in the school fund.

(2) OTHER PENALTY. Whoever violates s. 50.54 (2) may be fined not more than \$1,000 or imprisoned for not more than 6 months or both.

(3) INJUNCTION. The department may, upon the advice of the attorney general, who shall represent the department in all proceedings under this subsection, institute an action in the name of the state in the circuit court for Dane County for injunctive relief or other process against any licensee, owner, operator, administrator or representative of any owner of a rural medical center for the violation of any of the provisions of this subchapter or rules promulgated under this subchapter if the department determines that the violation seriously affects the care, treatment, health, safety, rights, welfare or comfort of patients.

History: 1995 a. 98; 2003 a. 33.

50.56 Applicability. (1) Any of the following facilities or entities is not required to obtain licensure or a certificate of approval under the following statutes or to pay license fees under the following statutes if all of the services of the facility or entity are provided as a part of a rural medical center that holds a valid license under this subchapter:

- (a) A hospital, under ss. 50.135 (2) (a) and (b) and 50.35.

- (b) A nursing home, under ss. 50.03 (1) and 50.135 (2) (a) and (b).
- (c) A hospice, under ss. 50.92 (1) and 50.93 (1) (c).
- (d) A home health agency, under s. 50.49 (2) (b) and (8).

(2) Subsection (1) may not be construed to apply to limit the authority of the department to develop, establish or enforce any statutes and rules for the care, treatment, health, safety, rights, welfare and comfort of patients or residents of facilities or entities that are specified in sub. (1) (a) to (d) and for the construction, general hygiene, maintenance or operation of those facilities or entities.

(3) Notwithstanding sub. (2), insofar as a conflict exists between this subchapter, or the rules promulgated under this subchapter, and subch. I, II or IV, or the rules promulgated under subch. I, II or IV, the provisions of this subchapter and the rules promulgated under this subchapter control.

(4) This subchapter may not be construed to limit a health care service that is included in a rural medical center from any tax-exempt financing or reimbursement, insurance, payment for services or other advantage for which a health care service that is not included in a rural medical center is eligible.

History: 1995 a. 98; 1997 a. 27, 237.

50.57 Fees permitted for a workshop or seminar. If the department develops and provides a workshop or seminar relating to the provision of services by rural medical centers under this subchapter, the department may establish a fee for each workshop or seminar and impose the fee on registrants for the workshop or seminar. A fee so established and imposed shall be in an amount sufficient to reimburse the department for the costs directly associated with developing and providing the workshop or seminar.

History: 1997 a. 27.

SUBCHAPTER IV

HOSPICES

50.90 Definitions. In this subchapter:

(1) “Hospice” means any of the following:

(a) An organization that primarily provides palliative care and supportive care to an individual with terminal illness where he or she lives or stays and, if necessary to meet the needs of an individual with terminal illness, arranges for or provides short-term inpatient care and treatment or provides respite care.

(b) A program, within an organization, that primarily provides palliative care and supportive care to an individual with terminal illness where he or she lives or stays, that uses designated staff time and facility services, that is distinct from other programs of care provided, and, if necessary to meet the needs of an individual with terminal illness, that arranges for or provides short-term inpatient care and treatment or respite care.

(c) A place, including a freestanding structure or a separate part of a structure in which other services are provided, that primarily provides palliative and supportive care and a place of residence to individuals with terminal illness and provides or arranges for short-term inpatient care as needed.

(1m) “Managing employee” means a general manager, business manager, administrator, director or other individual who exercises operational or managerial control over, or who directly or indirectly conducts, the operation of the hospice.

(2) “Organization” means a public agency, as defined in s. 46.856 (1) (b), a nonprofit corporation, a for-profit stock corporation, a cooperative, an unincorporated cooperative association, a partnership, a limited liability company or a sole proprietorship.

(3) “Palliative care” means management and support provided for the reduction or abatement of pain, for other physical symptoms and for psychosocial or spiritual needs of individuals with terminal illness and includes physician services, skilled nursing care, medical social services, services of volunteers and

bereavement services. “Palliative care” does not mean treatment provided in order to cure a medical condition or disease or to artificially prolong life.

(3g) “Respite care” means care provided to a terminally ill individual in order to provide temporary relief to the primary caregiver.

(3m) “Short-term care” means care provided to a terminally ill individual in an inpatient setting for brief periods of time for the purpose of pain control or acute or chronic symptom management.

(4) “Supportive care” means services provided during the final stages of an individual’s terminal illness and dying and after the individual’s death to meet the psychosocial, social and spiritual needs of family members of the terminally ill individual and other individuals caring for the terminally ill individual. “Supportive care” includes personal adjustment counseling, financial counseling, respite services, bereavement counseling and follow-up services provided by volunteers or other persons.

(5) “Terminal illness” means a medical prognosis that an individual’s life expectancy is less than 12 months.

History: 1989 a. 199; 1993 a. 112; 2003 a. 33; 2005 a. 441.

50.91 Departmental powers and duties. The department shall provide uniform, statewide licensing, inspection and regulation of hospices as specified in this subchapter.

History: 1989 a. 199.

50.92 Licensing requirements. (1) No person may conduct, maintain, operate or otherwise participate in conducting, maintaining or operating a hospice unless the hospice is licensed by the department.

(2) The department shall issue a license if the department finds that the applicant is fit and qualified and that the hospice meets the requirements of this subchapter and the rules promulgated under this subchapter.

(3) The department or the department’s designated representative shall inspect or investigate a hospice prior to issuance of a license for the hospice except as provided in sub. **(4)** and may inspect or investigate a hospice as the department deems necessary, including conducting home visits or a review of health care records of any individuals with terminal illness served by the hospice, to determine if any person is in violation of this subchapter.

(4) (a) In lieu of inspecting or investigating a hospice under sub. **(3)** prior to issuance of a license, the department may accept evidence that a hospice applying for licensure under s. **50.93** has been inspected under and is currently certified as meeting the conditions for medicare participation under **42 USC 1395 to 1395ccc**. If a hospice fails to meet the conditions for medicare participation under **42 USC 1395 to 1395ccc**, the department shall inspect or investigate the hospice under sub. **(3)** before initially issuing a license for the hospice.

(b) In lieu of inspecting or investigating a hospice under sub. **(3)** prior to issuance of a license, the department may accept evidence that a hospice applying for licensure under s. **50.93** has been inspected under and is currently in compliance with the hospice requirements of the joint commission for the accreditation of health organizations. A hospice shall provide the department with a copy of the report by the joint commission for the accreditation of health organizations of each periodic review the association conducts of the hospice.

(5) The past record of violations of applicable laws or regulations of the United States or of state statutes or rules of this or any other state, in the operation of any health-related organization, by an operator, managing employee or direct or indirect owner of a hospice or of an interest of a hospice is relevant to the issue of the fitness of an applicant for a license. The department or the department’s designated representative shall inspect and investigate as necessary to determine the conditions existing in each case under

this subsection and shall prepare and maintain a written report concerning the investigation and inspection.

History: 1989 a. 199; 1997 a. 27.

50.925 Use of name or advertising prohibited. No entity that is not a hospice licensed under this subchapter or an applicant for a license or a provisional license under this subchapter may designate itself as a “hospice” or use the word “hospice” to represent or tend to represent the entity as a hospice or services provided by the entity as services provided by a hospice.

History: 1989 a. 199.

50.93 Licensing procedure. (1) APPLICATION. The application for a license or for a provisional license shall:

(a) Be in writing on a form provided by the department.

(b) Contain such information as the department requires.

(c) Include licensing fee payment, unless the licensing fee is waived by the department on a case-by-case basis under criteria for determining financial hardship established in rules promulgated by the department. An initial licensing fee is \$300, except that, for a hospice that is a nonprofit corporation and that is served entirely by uncompensated volunteers or employs persons in not more than 1.5 positions at 40 hours of employment per week, the initial licensing fee is \$25. The annual fee thereafter is an amount equal to 0.15% of the net annual income of the hospice, based on the most recent annual report of the hospice under sub. **(3m)**, or \$200, whichever is greater, and if the amount equal to 0.15% of the net annual income of the hospice is greater than \$1,000, the fee is \$1,000, except that for a hospice that is a nonprofit corporation and that is served entirely by uncompensated volunteers or employs persons in not more than 1.5 positions at 40 hours of employment per week the annual fee is \$10. The amount of the provisional licensing fee shall be established under s. **50.95 (2)**. The initial licensing fee for a hospice, including the initial licensing fee for a hospice that is a nonprofit corporation and that is served entirely by uncompensated volunteers or employs persons in not more than 1.5 positions at 40 hours of employment per week, issued after September 1 may be prorated.

(2) ISSUANCE OF LICENSE. (a) A hospice license is valid until suspended or revoked.

(c) Each license shall be issued only for the applicant named in the application and may not be transferred or assigned.

(d) Any license granted under special limitations prescribed by the department shall state the limitations.

(3) PROVISIONAL LICENSE. If the applicant has not been previously licensed under this subchapter or if the hospice is not in operation at the time that application is made, the department may issue a provisional license. Unless sooner suspended or revoked under sub. **(4)**, a provisional license shall be valid for 24 months from the date of issuance. Within 30 days prior to the termination of a provisional license, the department shall fully and completely inspect the hospice and, if the hospice meets the applicable requirements for licensure, shall issue a regular license under sub. **(2)**. If the department finds that the hospice does not meet the requirements for licensure, the department may not issue a regular license under sub. **(2)**.

(3m) REPORTING. Every 12 months, on a schedule determined by the department, a licensed hospice shall submit an annual report in the form and containing the information that the department requires, including payment of the fee required under sub. **(1) (c)**, evidence of current certification as meeting the conditions for medicare participation under **42 USC 1395 to 1395ccc** and evidence of current compliance with the hospice requirements of the joint commission for the accreditation of health organizations. If a complete annual report is not timely filed, the department shall issue a warning to the licensee. The department may revoke the license for failure to timely and completely report within 60 days after the report date established under the schedule determined by the department.

(4) **SUSPENSION AND REVOCATION.** (a) The department, after notice to the applicant or licensee, may suspend or revoke a license in any case in which the department finds that there has been a substantial failure to comply with the requirements of this subchapter or the rules promulgated under this subchapter. No state or federal funds passing through the state treasury may be paid to a hospice not having a valid license issued under this section.

(b) Notice under this subsection shall include a clear and concise statement of the violations on which the revocation is based, the statute or rule violated and notice of the opportunity for an evidentiary hearing under par. (c).

(c) If a hospice desires to contest the revocation of a license, the hospice shall, within 10 days after receipt of notice under par. (b), notify the department in writing of its request for a hearing under s. 227.44.

(d) 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 ch. 227, whichever is later.

3. The department may extend the effective date of license revocation in any case in order to permit orderly removal and relocation of individuals served by the hospice.

History: 1989 a. 199; 1991 a. 39; 1997 a. 27.

50.94 Admission to and care in a hospice for certain incapacitated persons. (1) In this section:

(a) “Hospice care” means palliative care, respite care, short-term care or supportive care.

(b) “Incapacitated” means unable to receive and evaluate information effectively or to communicate decisions to such an extent that a person lacks the capacity to manage his or her health care decisions.

(c) “Physician” means a person licensed to practice medicine and surgery under ch. 448.

(d) “Terminal condition” means an incurable condition caused by injury, disease or illness that according to reasonable medical judgment will produce death within 6 months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care.

(2) A person who is determined to be incapacitated under the requirements of sub. (8), does not have a valid living will or valid power of attorney for health care, and has not been adjudicated incompetent in this state may be admitted to a hospice under this section only if all of the following requirements are met:

(a) An individual who is specified in sub. (3) signs all of the following:

1. On behalf of the person who is incapacitated, an informed consent for the receipt of hospice care by the person who is incapacitated.

2. A statement certifying that it is his or her belief, to the best of his or her knowledge, that, if able to do so, the person who is incapacitated would have selected hospice care.

(b) A physician certifies that the person who is incapacitated has a terminal condition and that the physician believes that the individual under par. (a) is acting in accordance with the views or beliefs of the person who is incapacitated.

(3) The following individuals, in the following order of priority, may act under sub. (2) (a):

(a) The spouse of the person who is incapacitated.

(b) An adult child of the person who is incapacitated.

(c) A parent of the person who is incapacitated.

(d) An adult sibling of the person who is incapacitated.

(e) A close friend or a relative of the person who is incapacitated, other than as specified in pars. (a) to (d), to whom all of the following apply:

1. The close friend or other relative is aged at least 18 and has maintained sufficient regular contact with the person who is incapacitated to be familiar with the person’s activities, health and beliefs.

2. The close friend or other relative has exhibited special care and concern for the incapacitated person.

(4) The individual who acts under sub. (2) (a) may make all health care decisions related to receipt of hospice care by the person who is incapacitated.

(5) The person who is incapacitated or the individual under sub. (4) may object to or revoke the election of hospice care at any time.

(6) A person who disagrees with a hospice decision made under this section may apply under s. 54.50 for temporary guardianship of the person who is incapacitated. In applying for the temporary guardianship, such a person has the burden of proving that the person who is incapacitated would not have consented to admission to a hospice or hospice care.

(7) The individual who acts under sub. (2) (a) shall, if feasible, provide to all other individuals listed under sub. (3) notice of the proposed admission of the person who is incapacitated to a hospice and of the right to apply for temporary guardianship under sub. (6). If it is not feasible for the individual to provide this notice before admission of the person who is incapacitated to a hospice, the individual who acts under sub. (2) (a) shall exercise reasonable diligence in providing the notice within 48 hours after the admission.

(8) A determination that a person is incapacitated may be made only by 2 physicians or by one physician and one licensed psychologist, as defined in s. 455.01 (4), who personally examine the person and sign a statement specifying that the person is incapacitated. Mere old age, eccentricity or physical disabilities, singly or together, are insufficient to determine that a person is incapacitated. Whoever determines that the person is incapacitated may not be a relative, as defined in s. 242.01 (11), of the person or have knowledge that he or she is entitled to or has claim on any portion of the person’s estate. A copy of the statement shall be included in the records of the incapacitated person in the hospice to which he or she is admitted.

History: 1999 a. 9; 2005 a. 387.

50.95 Rule-making authority. The department shall promulgate all of the following rules:

(1) Standards for the care, treatment, health, safety, rights, welfare and comfort of individuals with terminal illness, their families and other individuals who receive palliative care or supportive care from a hospice and the maintenance, general hygiene and operation of a hospice, which will permit the use of advancing knowledge to promote safe and adequate care and treatment for these individuals. These standards shall permit provision of services directly, as required under 42 CFR 418.56, or by contract under which overall coordination of hospice services is maintained by hospice staff members and the hospice retains the responsibility for planning and coordination of hospice services and care on behalf of a hospice client and his or her family, if any.

(2) Provisional hospice licensure fees or the methods of computation of those fees.

(3) Inspection or investigation procedures that the department or the department’s designated representative may use to assure the provision of care and treatment that is commensurate with the standards established under sub. (1).

(4) Criteria for determining financial hardship for the waiver of licensure fees.

(5) Criteria for determining that the applicant for licensure is fit and qualified.

(6) A procedure for waiver of and variance from standards under sub. (1) or criteria under sub. (5). The department may limit the duration of the waiver or variance.

History: 1989 a. 199; 1997 a. 27.

Cross Reference: See also ch. HFS 131, Wis. adm. code.

50.97 Right of injunction. The department may, upon the advice of the attorney general, who shall represent the department in all proceedings under this section, institute an action in the name of the state in the circuit court for Dane County for injunctive relief or other process against any licensee, owner, operator, administrator or representative of any owner of a hospice for the violation of any of the provisions of this subchapter or rules promulgated under this subchapter if the violation affects the health, safety or welfare of individuals with terminal illness.

History: 1989 a. 199.

50.98 Forfeitures. (1) Any person who violates this subchapter or rules promulgated under this subchapter may be required to forfeit not more than \$100 for the first violation and may be required to forfeit not more than \$200 for the 2nd or any later violation within a year. The period shall be measured using the dates of issuance of citations of the violations. Each day of violation constitutes a separate violation.

(2) In determining whether a forfeiture is to be imposed and in fixing the amount of the forfeiture to be imposed, if any, for a violation, the following factors shall be considered:

(a) The gravity of the violation, including the probability that death or serious physical or psychological harm to a resident will result or has resulted; the severity of the actual or potential harm; and the extent to which the provisions of the applicable statutes or rules were violated.

(b) Good faith exercised by the licensee. Indications of good faith include, but are not limited to, awareness of the applicable statutes and regulation and reasonable diligence in complying with such requirements, prior accomplishments manifesting the licensee's desire to comply with the requirements, efforts to correct and any other mitigating factors in favor of the licensee.

(c) Any previous violations committed by the licensee.

(d) The financial benefit to the hospice of committing or continuing the violation.

(3) The department may directly assess forfeitures provided for under sub. (1). If the department determines that a forfeiture

should be assessed for a particular violation or for failure to correct it, it shall send a notice of assessment to the hospice. 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 licensee of the right to a hearing under sub. (4).

(4) A hospice may contest an assessment of forfeiture, by sending, within 10 days after receipt of notice under sub. (3), a written request for 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 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.

(5) All forfeitures shall be paid to the department within 10 days after receipt of notice of assessment or, if the forfeiture is contested under sub. (4), 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 the same terms and conditions as found in s. 50.03 (11). The department shall remit all forfeitures paid to the secretary of administration for deposit in the school fund.

(6) 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.

History: 1989 a. 199; 2003 a. 33.

50.981 Fees permitted for a workshop or seminar. If the department develops and provides a workshop or seminar relating to the provision of services by hospices under this subchapter, the department may establish a fee for each workshop or seminar and impose the fee on registrants for the workshop or seminar. A fee so established and imposed shall be in an amount sufficient to reimburse the department for the costs directly associated with developing and providing the workshop or seminar.

History: 1997 a. 27