

2007 DRAFTING REQUEST

Bill

Received: **09/18/2006**

Received By: **dkennedy**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Milioto**

This file may be shown to any legislator: **NO**

Drafter: **dkennedy**

May Contact:

Addl. Drafters:

Subject: **Health - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to: **robin.ryan@legis.wisconsin.gov**

Pre Topic:

DOA:.....Milioto, BB0027 -

Topic:

Nursing home and C-BRF licensure law changes

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	dkennedy 09/26/2006	kfollett 09/27/2006		_____			S&L
/1	dkennedy		rschluet 09/28/2006	_____	sbasford 09/28/2006		

FE Sent For:

<END>

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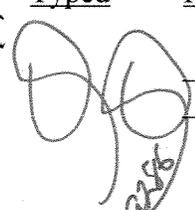
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/?	dkennedy	11/kif 9/27					S&L

FE Sent For:

<END>

2007-09 Budget Bill Statutory Language Drafting Request

- Topic: **Nursing Home Uniform Licensure Law Changes**
- Tracking Code: **BB0027**
- SBO team: Health
- SBO analyst: **Steve Milioto**
 - Phone: 266-8593
 - Email: Steve.Milioto@Wisconsin.gov
- Agency acronym: DHFS
- Agency number: 435

Medium Priority

Nursing Home Uniform Licensure Law Changes

Current Language

Wisconsin's uniform licensure law provides for the licensing, inspection and regulation of nursing homes, assisted living facilities, hospitals, home health agencies and hospices to protect the health and well-being of residents.

Placement of a Monitor

Chapter 50.05 allows the department to place a monitor in a facility under a number of circumstances, including:

- The facility is operating without a license
- The Department has suspended or revoked the existing license of the facility.
- The Department has initiated revocation procedures and has determined that the lives, health, safety or welfare of the residents cannot be assured.
- The facility is closing and adequate arrangements for residents have not been made at least 30 days prior to closure.
- The Department determines that an emergency exists or that the placement of a monitor is necessary to protect the health, safety and welfare of the residents.

A facility is defined in 50.05(1)(d) as "... a nursing home or community-based residential facility."

Deadline for Appeals of Enforcement Actions and Forfeitures

Currently a nursing home must send a written request for a hearing within 10 days of receipt of the notice of an enforcement action. In addition, if the Department assesses a forfeiture for a violation, the nursing home must request a separate written request for a hearing within 10 days of receipt of the contested action.

Proposed Change

Placement of a Monitor

Amend s. 50.05(2) to allow the department to place a monitor in a facility ⁽¹⁾ when financial difficulties are identified or when the licensee has been charged and/or convicted of Medicare or Medicaid fraud or patient abuse/neglect. Include the ability of the monitor to assist in the financial management of the facility.

Deadline for Appeals of Enforcement Actions and Forfeitures

Amend-s. 50.04(4)(e) and s. 50.04(5)(e) to increase the number of days that nursing homes have to request a hearing from 10 days to 60 days.

Background and Rationale for the Change

Placement of a monitor

Changes to provisions regarding the placement of a monitor will strengthen the Department's ability to maintain health and safety in financially troubled or poorly managed homes. Recently, facilities have been experiencing increasing financial difficulties, which may result in poor care and/or safety risks to clients. Placing monitors in financially troubled facilities will allow problems to be addressed earlier and may help avoid costly and disruptive receiverships, forced closings, and the relocation of residents. Because facilities lose their Medicaid certification, receiverships are costly to the Department as the state can no longer claim federal Medicaid reimbursement for approximately 60% of the costs. Planned downsizings and closings of a nursing home are less disruptive for residents.

Deadline for Appeals of Enforcement Actions and Forfeitures

Under state regulations, nursing home providers may appeal citations and the forfeiture amounts to the Department of Administration's Division of Hearings and Appeals (DHA). Wisconsin statutes allow nursing homes 10 days to file an appeal with DHA.

Federal law grants nursing home providers 60 days to request a hearing before an administrative law judge at the Department Health and Human Services to appeal a federal citation which results in penalties.

Should it choose to contest a citation, a nursing home provider may also participate in an informal dispute resolution process. As noted in a report by the Legislative Audit Bureau (LAB), from FY 1998 through FY 2001, nursing homes providers requested informal dispute resolution for an estimated 12.4 percent of all federal citations and 18.0 percent of all state citations.

The report also found that many providers file appeals within the 10 day-statutory deadline simply to preserve their right to appeal while the matter is also examined through the informal dispute resolution process. The majority of appeals are closed before they are heard. In CY 2005, 133 (i.e., 39.5%) of the 336 citations and 38 (i.e., 11%) of the 346 forfeitures were appealed by providers. Only two hearings were actually held. In CY 2004, 124 (i.e., 36.2%) of the 343 citations and 39 (i.e., 11%) of the 347 forfeitures were appealed by providers. Only one hearing was held in CY 2004.

The appeals process entails administrative costs for the providers, the Department and the DHA. LAB recommended that the statutes be modified to allow providers 60 days to file an appeal with the Department. Reducing the number of appeals filed with the Department, has the potential to save providers, the Department, and DHA the costs associated with needless appeals.

Desired Effective Date: Upon passage
Agency: DHFS
Agency Contact: Monique Currie
Phone: 267-5147



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-0244/7

DAK: kjf

DOA:.....Milioto, BB0027 - Nursing home and C-BRF licensure law changes
FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

Do Not Gen

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau
HEALTH AND HUMAN SERVICES

HEALTH

X Currently, DHFS may issue to nursing homes notices of violations of licensure laws and notations in biennial reports; may impose a plan of correction or reject a nursing home's plan of correction; and may assess forfeitures to nursing homes. A nursing home contests these actions by sending, within ten days after receipt of notice, a written request for a hearing to the division of hearings and appeals that is attached to DOA. This bill changes the time period within which a nursing home may contest these DHFS actions to 60 days.

X X Currently, DHFS may place a monitor in, and the secretary of health and family services may petition for appointment of a receiver for, a nursing home or community-based residential facility (C-BRF) when any of several conditions (for example, operating without a license or in the event of an emergency) exist. This bill specifies two additional conditions for placement of a monitor or petitioning for appointment of a receiver: (1) DHFS or the nursing home or C-BRF determines that estimated operating expenses of the nursing home or C-BRF significantly exceed anticipated revenues; and (2) the nursing home or C-BRF or its operator has been charged with or convicted of Medical Assistance (MA) fraud, fraud under the federal Medicare Program, or the abuse or neglect of patients or residents of the nursing home or C-BRF. The bill also permits a monitor placed in a nursing home or C-BRF to assist in financial management.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

✓
1 **SECTION 1.** 50.04 (4) (e) 1. of the statutes is amended to read:

2 50.04 (4) (e) 1. If a nursing home desires to contest any department action
3 under this subsection, it shall send a written request for a hearing under s. 227.44
4 to the division of hearings and appeals created under s. 15.103 (1) within ~~10~~ [✓]60 days
5 of receipt of notice of the contested action. Department action that is subject to a
6 hearing under this subsection includes service of a notice of a violation of this
7 subchapter or rules promulgated under this subchapter, a notation in the report
8 under sub. (3) (b), imposition of a plan of correction and rejection of a nursing home's
9 plan of correction, but does not include a correction order. Upon the request of the
10 nursing home, the division shall grant a stay of the hearing under this paragraph
11 until the department assesses a forfeiture, so that its hearing under this paragraph
12 is consolidated with the forfeiture appeal hearing held under sub. (5) (e). All agency
13 action under this subsection arising out of a violation, deficiency or rejection and
14 imposition of a plan of correction shall be the subject of a single hearing. Unless a
15 stay is granted under this paragraph, the division shall commence the hearing
16 within 30 days of the request for hearing, within 30 days of the department's
17 acceptance of a nursing home's plan of correction or within 30 days of the
18 department's imposition of a plan of correction, whichever is later. The division shall
19 send notice to the nursing home in conformance with s. 227.44. Issues litigated at

1 the hearing may not be relitigated at subsequent hearings under this paragraph
2 arising out of the same violation or deficiency.

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. 114, 237, 252, 280; 1999 a. 9, 32, 103; 2003 a. 33.

3 **SECTION 2.** 50.04 (5) (e) of the statutes is amended to read:

4 50.04 (5) (e) *Forfeiture appeal hearing.* A nursing home may contest an
5 assessment of forfeiture by sending, within ~~10~~ 60 days after receipt of notice of a
6 contested action, a written request for hearing under s. 227.44 to the division of
7 hearings and appeals created under s. 15.103 (1). The administrator of the division
8 may designate a hearing examiner to preside over the case and recommend a decision
9 to the administrator under s. 227.46. The decision of the administrator of the
10 division shall be the final administrative decision. The division shall commence the
11 hearing within 30 days of receipt of the request for hearing and shall issue a final
12 decision within 15 days after the close of the hearing. Proceedings before the division
13 are governed by ch. 227. In any petition for judicial review of a decision by the
14 division, the party, other than the petitioner, who was in the proceeding before the
15 division shall be the named respondent.

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.

16 **SECTION 3.** 50.05 (1) (dg) of the statutes is created to read:

17 50.05 (1) (dg) "Medicare" means 42 USC 1395 to 1395hhh.

18 **SECTION 4.** 50.05 (2) (g) of the statutes is created to read:

19 50.05 (2) (g) The department or the facility determines that estimated
20 operating expenditures of the facility significantly exceed anticipated revenues for
21 the facility.

22 **SECTION 5.** 50.05 (2) (h) of the statutes is created to read:

OK
P.P.
DAK

Kennedy, Debora

From: Currie, Monique [CurriM1@dhfs.state.wi.us]
Sent: Thursday, October 05, 2006 10:17 AM
To: Kennedy, Debora
Cc: Johnston, James; Milioto, Steve; Eakins, Janet; Walters, Jane; Coughlin, Kevin; Bursinger, Debra; Forsaith, Andrew; Lorence, Catherine
Subject: DHFS review of LRB 07-0244/1 Topic: Nursing home and C-BRF licensure law changes
Attachments: 07-02441.pdf



07-02441.pdf (25
KB)

Dear Debora:

Thank you for the opportunity to review the draft of LRB 07-0244/. We have reviewed the draft and have no comments regarding the proposed statutory language.

It was noted by staff that the introductory material used "C-BRF" as the acronym for community-based residential facility. Our Department uses CBRF.

However, I recognize that your office may have different conventions for acronyms.

Sincerely,

Monique Currie
Budget and Policy Analyst
Office of Strategic Finance
Wisconsin Department of Health and Family Services
1 West Wilson Street
Madison, WI 53707
608.267-5147
currim1@dhfs.state.wi.us



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-0244/1

DAK:kjf:rs

DOA:.....Milioto, BB0027 - Nursing home and C-BRF licensure law changes
FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

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17 50.05 (2) (g) The department or the facility determines that estimated
18 operating expenditures of the facility significantly exceed anticipated revenues for
19 the facility.

20 **SECTION 5.** 50.05 (2) (h) of the statutes is created to read:

21 50.05 (2) (h) The facility or facility's operator has been charged with or
22 convicted of an offense specified under s. 49.49 or 940.295, or a Medicare violation
23 under 42 USC 1320a-7a, 1320a-7b, or 1320a-8.

24 **SECTION 6.** 50.05 (3) of the statutes is amended to read:

