

2009 DRAFTING REQUEST

Bill

Received: **12/30/2008**

Received By: **rryan**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Fox**

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

Drafter: **dkennedy**

May Contact:

Addl. Drafters:

Subject: **Health - facility licensure**

Extra Copies: **TJD**

Submit via email: **NO**

Pre Topic:

DOA:.....Fox, BB0318 -

Topic:

Nursing homes and CBRFs; contesting actions and receiverships

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>
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/1			rschluet 01/13/2009	_____ _____	cduerst 01/13/2009		

FE Sent For:

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/?	rryan			_____			

FE Sent For:

<END>

2009-11 Budget Bill Statutory Language Drafting Request

- Topic: Nursing Home and CBRFS – Contesting Actions and Receiverships
- Tracking Code: *BB0318*
- SBO team: Health and Insurance
- SBO analyst: Sabrina Fox
 - Phone: 266-8593
 - Email: Sabrina.Fox@wisconsin.gov
- Agency acronym: DHS
- Agency number: 435
- Priority (Low, Medium, High): High

Intent:

- (1) Allow the Department to place a monitor in a nursing facility when financial difficulties are identified or when the licensee has been charged and/or convicted of Medicare or Medicaid fraud or patient abuse/neglect.
- (2) Increase the time limit for nursing homes to request a hearing regarding enforcement actions from 10 days to 60 days.

See attached stat language draft from 07-09 budget. LRB-0244/1.



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1288/1

DAK:....

D-NOTE

Jld

DOA:.....Fox, BB0318 - Nursing homes and CBRFs; contesting actions and receiverships

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

LPS-
PWF
please

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

Analysis by the Legislative Reference Bureau

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

2

(END)

Jld

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

X
do not gen
1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau
HEALTH AND HUMAN SERVICES
HEALTH

Currently, DHHS 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 DHHS actions to 60 days.

Currently, DHHS 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~~B~~RF) 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) DHHS or the nursing home or C~~B~~RF determines that estimated operating expenses of the nursing home or C~~B~~RF significantly exceed anticipated revenues; and 2) the nursing home or C~~B~~RF 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~~B~~RF. The bill also permits a monitor placed in a nursing home or C~~B~~RF 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:

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

50.04 (4) (e) 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 10³ 60 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 correction³ 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, deficiency² or rejection³ 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 correction³ 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.

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

2 50.04 (5) (e) *Forfeiture appeal hearing.* A nursing home may contest an
3 assessment of forfeiture by sending, within 10 60 ✓ days after receipt of notice of a
4 contested action, a written request for hearing under s. 227.44 to the division of
5 hearings and appeals created under s. 15.103 (1). The administrator of the division
6 may designate a hearing examiner to preside over the case and recommend a decision
7 to the administrator under s. 227.46. The decision of the administrator of the
8 division shall be the final administrative decision. The division shall commence the
9 hearing within 30 days of receipt of the request for hearing and shall issue a final
10 decision within 15 days after the close of the hearing. Proceedings before the division
11 are governed by ch. 227. In any petition for judicial review of a decision by the
12 division, the party, other than the petitioner, who was in the proceeding before the
13 division shall be the named respondent.

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

15 50.05 (1) (dg) "Medicare" means 42 USC 1395 to 1395hhh.

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

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:

to the department ✓

1 50.05 (3) MONITOR. In any situation described in sub. (2), the department may
 2 place a person to act as monitor in the facility. The monitor shall observe operation
 3 of the facility, assist the facility by advising it on how to comply with state
 4 regulations, and shall ^{periodically} submit a written report ~~periodically to the department~~ ^{← strike} on the
 5 operation of the facility. The monitor may assist in the financial management of the
 6 facility. ✓ The department may require payment by the operator or controlling person
 7 of the facility for the costs of placement of a person to act as monitor in the facility.

8 SECTION ~~032~~ ⁹³²² [ⓑ]. Initial applicability; Health and Family Services. ✓

9 (1) NURSING HOME CONTESTED ACTION OR FORFEITURE TIME LIMITS. ✓ The treatment
 10 of sections 50.04 (4) (e) 1. ✓ and (5) (e) ✓ of the statutes first applies to a violation of
 11 subchapter I of chapter 50 ✓ of the statutes or of a rule promulgated under subchapter
 12 I of chapter 50 ✓ of the statutes that is committed on the effective date of this
 13 subsection. ✓

(END)

D-NOTE

D-NOTE

Fox

To Sabrina Fox:

Note that s. 50.04 (5) (fm), stats., is unchanged by this draft. That paragraph rewards a nursing

home that does not contest an assessment of 50.04

forfeiture under s. 50.04 (5) (e), stats., and pays DHS within ten days after receipt of the notice of assessment; the reward is

an assessment reduction of 35 percent. I have not changed } s. 50.04 (5) (fm), stats., to

60 days, to correspond to the time limit

change to s. 50.04 (5) (e), stats., in this bill.

In this drafting decision what you want?

DAK

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1288/1dn
DAK:jld:rs

January 13, 2009

To Sabrina Fox:

Note that s. 50.04 (5) (fm), stats., is unchanged by this draft. That paragraph rewards a nursing home that does not contest an assessment of forfeiture under s. 50.04 (5) (e), stats., and pays DHS within ten days after receipt of the notice of assessment; the reward is an assessment reduction of 35 percent. I have not changed the time limit under s. 50.04 (5) (fm), stats., to 60 days, to correspond to the time limit change to s. 50.04 (5) (e), stats., in this bill. Is this drafting decision what you want?

Debra A. Kennedy
Managing Attorney
Phone: (608) 266-0137
E-mail: debra.kennedy@legis.wisconsin.gov

-1288

Kennedy, Debora

From: Fox, Sabrina E - DOA [Sabrina.Fox@wisconsin.gov]
Sent: Tuesday, January 13, 2009 2:35 PM
To: Kennedy, Debora
Subject: FW: LRB Draft: 09-1288/1 Nursing homes and CBRFs; contesting actions and receiverships
Attachments: 09-1288/1.pdf; 09-1288/1dn.pdf

Hello Deborah:

Just a note to let you know that we do not have any recommended changes for this draft. Thank you. sabrina

From: Schlueter, Ron [mailto:Ron.Schlueter@legis.wisconsin.gov]
Sent: Tuesday, January 13, 2009 9:26 AM
To: Fox, Sabrina E - DOA
Cc: Gauger, Michelle C - DOA; Hanaman, Cathlene - LEGIS; Beadles, Kathleen - DOA
Subject: LRB Draft: 09-1288/1 Nursing homes and CBRFs; contesting actions and receiverships

Following is the PDF version of draft 09-1288/1.



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1288/1

DAK:jld:rs

DOA:.....Fox, BB0318 - Nursing homes and CBRFs; contesting actions and receiverships

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

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

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