

2011 DRAFTING REQUEST

Bill

Received: 02/07/2011

Received By: tdodge

Wanted: As time permits

Companion to LRB: -2968

For: Daniel Knodl (608) 266-3796

By/Representing: BJ Dernbach

May Contact:

Drafter: tdodge

Subject: Health - facility licensure

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Rep.Knodl@legis.wisconsin.gov

Carbon copy (CC:) to: fern.knepp@legis.wisconsin.gov
tamara.dodge@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Regulation of nursing homes including appeals, penalties, and suspension of admissions

Instructions:

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*at intro
10-4-11*

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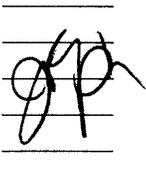
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For: **Dan Kapanke (608) 266-5490**

By/Representing: **Rose Smyrski**

May Contact:

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Subject: **Health - facility licensure**

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1 cjs 6/20/11
[Signature]

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In: 3/9/11 soon

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2003 - 2004 LEGISLATURE

TJD

LRB-2032/7

DAK: [unclear] rs

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Tues 3/15 AM

RMNR

2003 ASSEMBLY BILL 842

PWF Donev

February 16, 2004 - Introduced by Representatives PETTIS, RHOADES, M. WILLIAMS, GRONEMUS, HINES, JOHNSRUD, MUSSER, ALBERS, GROTHMAN, HAHN, LEMAHIEU, HUNDERTMARK, KRAWCZYK, OLSEN, PETROWSKI, OTT, VAN ROY, JESKEWITZ, NISCHKE, SERATTI, STONE, SUDER, J. WOOD and D. MEYER, cosponsored by Senators HARSDFORF and REYNOLDS. Referred to Committee on Aging and Long-Term Care.

SA 11 ✓
09 ✓
07 ✓
05 ✓
03 ✓
X-ref ✓

Regen.

1 AN ACT *to repeal* 50.04 (5) (a) 5m.; *to renumber and amend* 50.04 (5) (a) 6.;
2 *to amend* 50.03 (5) (a), 50.04 (4) (b) 4., 50.04 (4) (d) 2., 50.04 (4) (e) 1., 50.04 (5)
3 (title), 50.04 (5) (a) (intro.), 50.04 (5) (a) 1., 2. and 3. (intro.), 50.04 (5) (a) 4., 50.04
4 (5) (a) 5. a., b. and d., 50.04 (5) (b) (intro.), 50.04 (5) (c), 50.04 (5) (d) (title), 50.04
5 (5) (d) 1., 50.04 (5) (d) 2. (intro.), 50.04 (5) (dm) (intro.), 50.04 (5) (e), 50.04 (5)
6 (f), 50.04 (5) (fm), 50.04 (5) (fr) and 50.04 (5) (g); *to repeal and recreate* 50.04
7 (4) (d) 1. a., 50.04 (4) (d) 1. b. and 50.04 (6) (a); and *to create* 20.435 (6) (ge),
8 50.01 (1k), 50.01 (1nd), 50.01 (1ng), 50.04 (4) (am) and 50.15 of the statutes;
9 **relating to:** regulation of nursing homes, requiring the exercise of
10 rule-making authority, and making an appropriation.

Analysis by the Legislative Reference Bureau

Federal and state requirements for nursing homes

Under current law, a nursing home that receives Medicaid or Medicare funding for the care of a resident is subject to both federal and state requirements. The Department of Health and Family Services (DHFS) enforces both federal and state requirements for nursing homes. Currently, for nursing homes that are Medicaid

ASSEMBLY BILL 842

and Medicare providers, DHFS may issue both federal and state citations for the same practice and may recommend federal remedies and impose state sanctions. This bill prohibits DHFS from issuing a notice of violation of a state requirement to a nursing home that is a Medical Assistance or Medicare provider if DHFS has, in a statement of deficiency, cited the nursing home for a violation of a federal requirement that is based on the same facts.

Appeals

Currently, in order to appeal a DHFS finding that the nursing home violated a state requirement, a nursing home must request a hearing on the finding within ten days of receiving notice of the violation. If DHFS assesses a forfeiture for the violation and the nursing home wishes to appeal the forfeiture, the nursing home must request a separate hearing on the forfeiture within ten days of receiving notice of a contested action. Upon request of the nursing home, the hearing on the finding of violation may be stayed until DHFS assesses a forfeiture so that the hearing on the finding of violation and the hearing on the forfeiture may be consolidated.

The bill extends the deadline for a nursing home to request a hearing on a finding that the nursing home violated a state requirement to 60 days after receipt of the notice of violation. The bill also extends the deadline for requesting a hearing on a forfeiture to 60 days after receipt of notice of the forfeiture. The bill further provides that, if a nursing home timely appeals both a finding of violation and a forfeiture, the hearings on the violation and the forfeiture will be consolidated.

Monetary penalties

and penalty assessment use 2x

Under current law, DHFS may assess a forfeiture against a nursing home for a violation of a state requirement. The maximum amount of the forfeiture varies according to the classification of the violation and ranges from \$500 to \$10,000. There is no time limit for DHFS to assess a forfeiture for a violation. Nursing homes must pay forfeitures to DHFS within ten days after receipt of notice of imposition of the forfeiture or after receipt of the final decision after exhaustion of administrative review. If a nursing home does not contest a notice of violation and a forfeiture and pays the forfeiture within ten days after receipt of the notice, DHFS must reduce the forfeiture amount by 35 percent. Forfeitures collected for violations of state requirements are deposited in the school fund.

The bill reduces the maximum forfeiture amounts permitted for violations of state requirements and requires that DHFS impose a penalty assessment on a nursing home whenever DHFS assesses a forfeiture for a violation of a state requirement. The bill further requires DHFS to impose a forfeiture and penalty assessment within 120 days of notifying a nursing home of a violation or ~~lose the authority to impose a forfeiture and penalty assessment.~~ The bill changes to 60 days

a ~~the time period by which~~ nursing home must pay forfeitures and penalty assessments to DHFS after receipt of the notice of imposition or the final decision after exhaustion of administrative review, and also changes to 60 days the time period within which a nursing home may pay a forfeiture and penalty assessment and have the forfeiture and penalty assessment amounts reduced by 35 percent. The bill allocates moneys collected from the penalty assessments for nursing home quality-of-care improvement grants.

move

DHS

ASSEMBLY BILL 842***Conditional licenses***

Currently, in addition to the right to impose a forfeiture on a nursing home for violations, DHFS may issue a conditional license to a nursing home in which DHFS finds that a class "A" or a class "B" violation continues to exist. (A class "A" violation creates a condition or occurrence relating to the operation and maintenance of a nursing home that presents a substantial probability that death or serious mental or physical harm to a nursing home resident will result. A class "B" violation creates a condition or occurrence relating to the operation and maintenance of a nursing home that directly threatens the health, safety, or welfare of a nursing home resident.) Issuing a conditional license revokes any outstanding license held by the nursing home.

This bill expands the standard for issuance by DHFS of a conditional license for a nursing home to also include a continuing violation of federal law that constitutes immediate jeopardy, high risk of death, substantial harm, or actual harm not involving immediate jeopardy to a nursing home resident or that directly threatens, as defined in the bill, such a resident.

Suspension of admissions

Under current law, DHFS must suspend new admissions to a nursing home if the nursing home received notices of a class "A" violation or three or more class "B" violations in the previous 12 months; and if the nursing home received notices of a class "A" violation or three or more class "B" violations in any 12-month period during the three years immediately preceding the previous 12 months. Suspension of admissions begins 90 days after a nursing home receives its last notice of a class "A" or class "B" violation if DHFS determines that the violation is uncorrected or on the day that DHFS makes a return visit to the nursing home and determines that the violation has not been corrected. A suspension must remain in effect until DHFS determines that the nursing home has corrected all class "A" and class "B" violations.

This bill expands the standard for suspension of new admissions to a nursing home to include circumstances under which a nursing home received written notice of a violation that involved immediate jeopardy or high risk of death or substantial harm to a resident; a class "A" violation; or three or more class "B" violations or situations that either constituted actual harm not involving immediate jeopardy to a resident or directly threatened, as defined in the bill, a resident. These circumstances must have occurred both in the previous 15 months and in any 15-month period during the 36 months immediately preceding the previous 15 months. Under the bill, suspension of admissions must remain in effect until DHFS determines that the nursing home has corrected the violation in question.

Suspension or revocation of licensure

Currently, DHFS may, after providing notice to a nursing home applicant or licensee, suspend or revoke the license if DHFS finds that the nursing home substantially failed to comply with applicable state statutes or rules. No state or federal funds passing through the state treasury may be paid to a nursing home that does not have a valid license. This bill also permits DHFS to suspend or revoke a nursing home license if the nursing home has substantially failed to comply with

ASSEMBLY BILL 842

specified state law or with federal requirements related to the operation of a nursing home.

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.** 20.435 (6) (ge) of the statutes is created to read:

2 20.435 (6) (ge) *Nursing home improvement grants*. All moneys received from
3 penalty assessments imposed by the department under s. 50.04 (5), for nursing home
4 improvement grants under s. 50.15.

5 **SECTION 2.** 50.01 (1k) of the statutes is created to read:

6 50.01 (1k) “Directly threatened” means created a condition or occurrence
7 relating to nursing home operation and maintenance that could reasonably be
8 expected to lead to injury or impairment of a resident or to harm to the health, safety,
9 or welfare of a resident.

10 **SECTION 3.** 50.01 (1nd) of the statutes is created to read:

11 50.01 (1nd) “High risk of death or substantial harm” means a condition or
12 occurrence relating to nursing home operation and maintenance that presents a
13 substantial probability of the death or serious mental or physical injury, harm, or
14 impairment of a resident.

15 **SECTION 4.** 50.01 (1ng) of the statutes is created to read:

16 50.01 (1ng) “Immediate jeopardy” means a situation in which a nursing home’s
17 noncompliance with one or more federal requirements related to the operation of a
18 nursing home has caused, or is likely to cause, death or serious injury, harm, or
19 impairment to a resident.

20 **SECTION 5.** 50.03 (5) (a) of the statutes is amended to read:

ASSEMBLY BILL 842

1 50.03 (5) (a) *Power of department.* The department, after notice to a nursing
2 home applicant or licensee, may suspend or revoke a license in any case in which the
3 department finds that the nursing home has substantially failed to comply with the
4 applicable requirements of this subchapter and the rules promulgated under this
5 subchapter, with s. 49.498, or with federal requirements related to the operation of
6 a nursing home. No state or federal funds passing through the state treasury may
7 be paid to a nursing home that does not have a valid license issued under this section.

8 SECTION 6. 50.04 (4) (am) of the statutes is created to read:

9 50.04 (4) (am) *Dual federal and state violations.* If an act or omission
10 constitutes a violation of this subchapter or the rules promulgated under this
11 subchapter, s. 49.498, or federal requirements related to the operation of a nursing
12 home, the department may not issue under s. 50.04 (4) (a) a notice of violation of this
13 subchapter, the rules promulgated under this subchapter, or s. 49.498 if the
14 department has, in a statement of deficiency, cited the nursing home for the violation
15 under federal requirements related to the operation of a nursing home.

16 SECTION 7. 50.04 (4) (b) 4. of the statutes is amended to read:

17 50.04 (4) (b) 4. Each day of violation constitutes a separate violation. Except
18 as provided in sub. (5) (a) 4., the department shall have the burden of showing that
19 a violation existed on each day for which a forfeiture and penalty assessment is
20 assessed imposed. No forfeiture or penalty assessment may be assessed imposed for
21 a condition for which the nursing home has received a variance or waiver of a
22 standard.

23 SECTION 8. 50.04 (4) (d) 1. a. of the statutes is repealed and recreated to read:

24 50.04 (4) (d) 1. a. In the previous 15 months, the nursing home received written
25 notice of a violation of a state statute or rule or a federal statute or regulation that

ASSEMBLY BILL 842**SECTION 8**

1 involved either immediate jeopardy or a high risk of death or substantial harm to a
2 resident; a class “A” violation; or 3 or more class “B” violations or situations that
3 either constituted actual harm not involving immediate jeopardy to a resident or
4 directly threatened a resident.✓

5 **SECTION 9.** ✓ 50.04 (4) (d) 1. b. of the statutes is repealed and recreated to read:

6 50.04 (4) (d) 1. b. In any 15-month period during the 36 months immediately
7 preceding the period specified in subd. 1. a.✓, the nursing home received written notice
8 of a violation of a state statute or rule or a federal statute or regulation that involved
9 either immediate jeopardy or a high risk of death or substantial harm to a resident;
10 a class “A” violation; or 3 or more class “B” violations or situations that either
11 constituted actual harm not involving immediate jeopardy to a resident or directly
12 threatened a resident.✓

13 **SECTION 10.** ✓ 50.04 (4) (d) 2. of the statutes is amended to read:

14 50.04 (4) (d) 2. A suspension of admissions under subd. 1. shall begin 90 days
15 after a nursing home received its last notice of violation for a class “A” or class “B”
16 violation or situation specified in subd. 1. a.✓ if the department determines that the
17 violation or situation remains uncorrected 90 days after the nursing home received
18 the last notice of the violation or situation. If the nursing home earlier indicates to
19 the department that the violation or situation has been corrected, ~~but the~~
20 ~~department is unable to verify that the violation has been corrected,~~ a suspension of
21 admissions under subd. 1. shall begin on the day that the department makes a return
22 visit to the nursing home and determines that the violation or situation has not been
23 corrected.✓ A suspension of admissions under subd. 1. shall remain in effect until the
24 department determines that ~~all class “A” and class “B” violations by the nursing~~
25 ~~home have been~~ has corrected the violation or situation.✓ Admission of a new resident

ASSEMBLY BILL 842

1 during the period for which admissions have been suspended constitutes a class "B"
2 violation. ✓

3 **SECTION 11.** ✓ 50.04 (4) (e) 1. of the statutes is amended to read:

4 50.04 (4) (e) 1. If a nursing home desires to contest any department action
5 under this subsection, it shall send a written request for a hearing under s. 227.44
6 to the division of hearings and appeals created under s. 15.103 (1) within ~~40~~ 60 days
7 of receipt of notice of the contested action. Department action that is subject to a
8 hearing under this subsection includes service of a notice of a violation of this
9 subchapter or rules promulgated under this subchapter, a notation in the report
10 under sub. (3) (b), imposition of a plan of correction, and rejection of a nursing home's
11 plan of correction, but does not include a correction order. Upon the request of the
12 nursing home, the division shall grant a stay of the hearing under this paragraph
13 until the department assesses a forfeiture and penalty assessment, so that its
14 hearing under this paragraph is consolidated with the forfeiture and penalty
15 assessment appeal hearing held under sub. (5) (e). ✓ All agency action under this
16 subsection arising out of a violation, deficiency, or rejection and imposition of a plan
17 of correction shall be the subject of a single hearing. Unless a stay is granted under
18 this paragraph, the division shall commence the hearing within 30 days of the
19 request for hearing, within 30 days of the department's acceptance of a nursing
20 home's plan of correction, or within 30 days of the department's imposition of a plan
21 of correction, whichever is later. The division shall send notice to the nursing home
22 in conformance with s. 227.44. Issues litigated at the hearing may not be relitigated
23 at subsequent hearings under this paragraph arising out of the same violation or
24 deficiency. ✓

25 **SECTION 12.** ✓ 50.04 (5) (title) of the statutes is amended to read:

ASSEMBLY BILL 842

1 50.04 (5) (title) FORFEITURES AND PENALTY ASSESSMENTS.[✓]

2 SECTION 13. 50.04 (5) (a) (intro.) of the statutes is amended to read:

3 50.04 (5) (a) *Amounts*. (intro.) Any operator or owner of a nursing home ~~which~~
4 that is in violation of this subchapter or any rule promulgated ~~thereunder~~ under this
5 subchapter[✓] may be subject to the forfeitures specified in this section. If the
6 department imposes a forfeiture under this subsection,[✓] the department shall also
7 impose a penalty assessment under this subsection.[✓] ←

8 SECTION 14. 50.04 (5) (a) 1., 2. and 3. (intro.) of the statutes are amended to
9 read:

10 50.04 (5) (a) 1. A class "A" violation may be subject to a forfeiture of ~~not more~~
11 than \$250 and a penalty assessment of not more than \$10,000 for each violation.[✓]

12 2. A class "B" violation may be subject to a forfeiture of ~~not more than~~ \$125 and
13 a penalty assessment of not more than \$5,000 for each violation.[✓]

14 3. (intro.) A class "C" violation may be subject to a forfeiture of ~~not more than~~
15 \$60 and a penalty assessment of not more than \$500. No forfeiture or penalty
16 assessment may be assessed imposed for a class "C" violation unless at least one of
17 the following applies:[✓]

18 SECTION 15. 50.04 (5) (a) 4. of the statutes is amended to read:

19 50.04 (5) (a) 4. Notwithstanding subs. 1., 2. and 3., if the violation or group
20 of violations results from inadequate staffing, the combined amount of the forfeiture
21 and penalty assessment that the department may ~~assess~~ impose shall be no less than
22 the difference between the cost of the staff actually employed and the estimated cost
23 of the staff required. The number of staff required shall be determined by the
24 provider contract, the court order, or the department, by rule, whichever is greatest.

ASSEMBLY BILL 842

1 The inadequate staff shall be presumed to exist from the date of the notice of
2 violation. ✓

3 SECTION 16. ✓ 50.04 (5) (a) 5. a., b. and d. of the statutes are amended to read:

4 50.04 (5) (a) 5. a. A nursing home that violates a statute or rule resulting in a
5 class "A" violation and that has received a notice of violation for a class "A" "A" ← plain
6 violation within the previous 3-year period involving the same situation shall be
7 subject to a forfeiture 3 times the forfeiture amount authorized for a class "A"
8 violation and a penalty assessment 3 times the penalty assessment amount
9 authorized for a class "A" violation. ✓

10 b. Except as provided in subd. 5. a., a nursing home that violates a statute or
11 rule resulting in a class "A" or class "B" violation and that has received a notice of a
12 class "A" or class "B" violation of the same statute or rule within the previous 3-year
13 period may be subject to a forfeiture 3 times the forfeiture amount authorized for the
14 most recent class of violation involved and a penalty assessment 3 times the penalty
15 assessment amount authorized for the most recent class of violation involved. ✓

16 d. The forfeiture ~~amount~~ and penalty assessment amounts that is are tripled
17 under this subdivision shall be the ~~amount assessed~~ forfeiture and penalty
18 assessment amounts imposed after all appeals have been exhausted. ✓ If an
19 ~~assessment imposition~~ of a forfeiture and penalty assessment is not contested and
20 the forfeiture is and penalty assessment are paid as provided in par. (fm), the
21 forfeiture ~~amount~~ and penalty assessment amounts that is are tripled is are the
22 ~~amount assessed~~ amounts imposed after the reduction specified in par. (fm). ✓

23 SECTION 17. ✓ 50.04 (5) (a) 5m. of the statutes is repealed. ✓

24 SECTION 18. ✓ 50.04 (5) (a) 6. of the statutes is renumbered 50.04 (5) (a) 6. (intro.)

25 and amended to read:

ASSEMBLY BILL 842

1 50.04 (5) (a) 6. (intro.) If a licensee fails to correct a violation within the time
2 specified in the notice of violation or approved plan of correction, or within the
3 extended correction time granted under sub. (4) (c) 4., or if a violation continues after
4 a report of correction, the department may assess upon the licensee ~~a~~ for each day
5 of the continuing violation whichever of the following is applicable: ✓

6 a. A separate forfeiture of not more than \$10,000 \$250 and a separate penalty
7 assessment of not more than \$10,000 for a class "A" violations, and may assess a
8 violation. ✓

9 b. A separate forfeiture of not more than \$5,000 \$125 and a separate penalty
10 assessment of not more than \$5,000 for a class "B" violations, for each day of
11 continuing violation. ✓

12 SECTION 19. 50.04 (5) (b) (intro.) of the statutes is amended to read:

13 50.04 (5) (b) *Factors in assessment imposition of forfeitures and penalty*
14 *assessments.* ✓ (intro.) In determining whether to impose a forfeiture ~~is to be imposed~~ ✓
15 and penalty assessment for a violation and in fixing the amount of the ~~forfeiture to~~
16 ~~be imposed~~ penalty assessment, if any, ~~for a violation~~, the following factors shall be
17 considered: ✓

18 SECTION 20. 50.04 (5) (c) of the statutes is amended to read:

19 50.04 (5) (c) *Assessment Imposition of forfeitures and penalty assessments:*
20 *powers and duties of department.* ✓ The department may directly assess impose
21 forfeitures and penalty assessments provided for under par. (a). ✓ If the department
22 determines that a forfeiture and penalty assessment should be assessed imposed for
23 a particular violation or for failure to correct it, ~~it~~ the department shall send a notice
24 of assessment imposition of forfeiture and penalty assessment to the nursing home. ✓

25 The notice shall specify the ~~amount~~ amounts of the forfeiture assessed and penalty

ASSEMBLY BILL 842

1 assessment imposed, the violation, and the statute or rule alleged to have been
2 violated, and shall inform the licensee of the right to hearing under par. (e). If the
3 department does not issue a notice of forfeiture and penalty assessment within 120
4 days after the date on which a nursing home receives the notice of a violation, the
5 department may not impose a forfeiture or penalty assessment for the violation.

6 **SECTION 21.** 50.04 (5) (d) (title) of the statutes is amended to read:

7 50.04 (5) (d) (title) *Forfeiture and penalty assessment period.*

8 **SECTION 22.** 50.04 (5) (d) 1. of the statutes is amended to read:

9 50.04 (5) (d) 1. In the case of a class "B" violation, no forfeiture or penalty
10 assessment may be assessed imposed for the violation from the day following the
11 date of discovery until the date of notification. If the department fails to approve or
12 reject a plan of correction within 15 days after its receipt of a complete plan, no
13 forfeiture or penalty assessment may be imposed for the period beginning with the
14 15th day after receipt and ending when notice of approval or rejection is received by
15 the home. If a plan of correction is approved and carried out, no forfeiture or penalty
16 assessment may be assessed imposed during the time period specified in the
17 approved plan of correction, commencing on the day the plan of correction is received
18 by the department.

19 **SECTION 23.** 50.04 (5) (d) 2. (intro.) of the statutes is amended to read:

20 50.04 (5) (d) 2. (intro.) In the case of a class "C" violation for which a notice of
21 violation has been served, a forfeiture and penalty assessment may be assessed
22 imposed for whichever of the following periods is applicable:

23 **SECTION 24.** 50.04 (5) (dm) (intro.) of the statutes is amended to read:

ASSEMBLY BILL 842

SECTION 24

1 50.04 (5) (dm) (intro.) *Forfeiture and penalty assessment imposition date.* In
2 the case of a class “B” violation, the department may not ~~assess~~ impose a forfeiture
3 or a penalty assessment upon a nursing home until:

4 SECTION 25. [✓]50.04 (5) (e) of the statutes is amended to read:

5 50.04 (5) (e) *Forfeiture and penalty assessment appeal hearing.* [✓]A nursing
6 home may contest an ~~assessment~~ imposition of a forfeiture and penalty assessment
7 by sending, within ~~40~~ 60 days after receipt of notice of ~~a contested action~~ the
8 imposition of the forfeiture and penalty assessment, a written request for hearing
9 under s. 227.44 to the division of hearings and appeals created under s. 15.103 (1).
10 The administrator of the division may designate a hearing examiner to preside over
11 the case and recommend a decision to the administrator under s. 227.46. The
12 decision of the administrator of the division shall be the final administrative
13 decision. The division shall commence the hearing within 30 days of receipt of the
14 request for hearing and shall issue a final decision within 15 days after the close of
15 the hearing. Proceedings before the division are governed by ch. 227. In any petition
16 for judicial review of a decision by the division, the party, other than the petitioner,
17 who was in the proceeding before the division shall be the named respondent. If,
18 after receipt of notice of imposition of a forfeiture and penalty assessment, a nursing
19 home that has timely requested a hearing under sub. (4) (e) [✓]on the notice of violation
20 under sub. (4) [✓]for which the forfeiture and penalty assessment were imposed
21 requests a hearing under this paragraph [✓]on the imposition of the forfeiture and
22 penalty assessment, the hearing on the notice of violation under sub. (4) [✓]and the
23 hearing on the imposition of the forfeiture and penalty assessment shall be
24 consolidated. [✓]

ASSEMBLY BILL 842

1 SECTION 26. [✓] 50.04 (5) (f) of the statutes, as affected by 2003 Wisconsin Act 33,
2 is amended to read:

3 50.04 (5) (f) *Forfeitures and penalty assessments paid within ~~10~~ 60 days.* [✓] All
4 forfeitures and penalty assessments shall be paid to the department within ~~10~~ 60
5 days of receipt of notice of ~~assessment~~ imposition of the forfeiture and penalty
6 assessment or, if the forfeiture or penalty assessment is contested under par. (e),
7 within ~~10~~ 60 days of receipt of the final decision after exhaustion of administrative
8 review, unless the final decision is appealed and the order is stayed by court order
9 under s. 50.03 (11). The department shall remit all forfeitures paid to the secretary
10 of administration for deposit in the school fund. All moneys collected as penalty
11 assessments under this subsection shall be credited to the appropriation account
12 under s. 20.435 (6) (ge). [✓]

13 SECTION 27. [✓] 50.04 (5) (fm) of the statutes is amended to read:

14 50.04 (5) (fm) *Forfeiture and penalty assessment [✓] reduction for timely payment.*
15 If a nursing home does not contest a notice of violation under sub. (4) (e) and does not
16 contest an ~~assessment~~ imposition of a forfeiture and penalty assessment under par.
17 (e) for a class "A" or class "B" violation and pays the forfeiture and penalty
18 assessment to the department within ~~10~~ 60 days after receipt of the notice of
19 ~~assessment~~ imposition of the forfeiture and penalty assessment, the department
20 shall reduce the amount of the ~~assessment~~ forfeiture and penalty assessment by ~~35%~~
21 35 percent. [✓]

22 SECTION 28. [✓] 50.04 (5) (fr) of the statutes is amended to read:

23 50.04 (5) (fr) *Report to the legislature.* Annually, the department shall submit
24 a report to the legislature under s. 13.172 (2) that specifies for the previous year the
25 number of class "A" violations, the ~~amount~~ amounts of the forfeiture ~~assessment~~ and

ASSEMBLY BILL 842

SECTION 28

1 penalty assessment imposed for each of those violations and, if known, the ~~amount~~
2 amounts of the forfeiture and penalty assessment actually paid and collected with
3 respect to those violations. The report shall also include an explanation for any
4 ~~assessment that was~~ imposition of a forfeiture and penalty assessment that totaled
5 less than \$2,500 for the violations specified in the report. ✓

6 SECTION 29. ✓ 50.04 (5) (g) of the statutes is amended to read:

7 50.04 (5) (g) *Enforcement by attorney general.* The attorney general may bring
8 an action in the name of the state to collect any forfeiture or penalty assessment
9 imposed under this section if the forfeiture or penalty assessment has not been paid
10 following the exhaustion of all administrative and judicial reviews. The only issue
11 to be contested in any such action shall be whether the forfeiture or penalty
12 assessment has been paid. ✓

13 SECTION 30. ✓ 50.04 (6) (a) of the statutes is repealed and recreated to read:

14 50.04 (6) (a) *Power of department.* 1. In addition to the right to impose
15 forfeitures and penalty assessments under sub. (5), ✓ the department may issue a
16 conditional license to any nursing home if the department finds that any of the
17 following is true: ✓

18 a. A class "A" or class "B" violation, as defined in sub. (4), ✓ continues to exist in
19 the nursing home. ✓

20 b. A federal violation continues to exist that constitutes immediate jeopardy,
21 high risk of death, substantial harm, or actual harm not involving immediate
22 jeopardy to a resident, or that directly threatens a resident. ✓

23 2. The issuance of a conditional license shall revoke any outstanding license
24 held by the nursing home. ✓

ASSEMBLY BILL 842

1 3. The nursing home may seek review of a decision to issue a conditional license
2 as provided in s. 50.03 (5).

3 **SECTION 31.** 50.15 of the statutes is created to read:

4 **50.15 Nursing home improvement grants.** From the appropriation
5 account under s. 20.435 (6) (ge), the department shall make grants to nursing homes
6 to fund quality-of-care improvement projects. The department shall promulgate
7 rules that specify the eligibility criteria and application procedures for receipt of a
8 grant under this section.

9 **SECTION 32. Nonstatutory provisions.**

10 (1) **NURSING HOME IMPROVEMENT GRANTS.** The department of health and family
11 services shall submit in proposed form the rules required under section 50.15 of the
12 statutes, as created by this act, to the legislative council staff under section 227.15
13 (1) of the statutes no later than the first day of the 13th month beginning after the
14 effective date of this subsection.

15 **SECTION 33. Initial applicability.**

16 (1) **HEARING REQUESTS.** The treatment of section 50.04 (4) (e) 1. and (5) (e) of the
17 statutes first applies to requests for hearings related to a notice of violation, a report
18 notation, a plan ^{of} correction, or a rejection of a plan ^{of} correction that is issued on the
19 effective date of this subsection.

20 (2) **CONDITIONAL LICENSURE.** The treatment of sections 50.01 (1k), (1nd), and
21 (1ng) and 50.04 (6) (a) of the statutes first applies to violations that continue to exist
22 on the effective date of this subsection.

23 (3) **SUSPENSION OF ADMISSIONS.** The treatment of sections 50.01 (1k), (1nd), and
24 (1ng) and 50.04 (4) (d) 1. a. and b. and (d) 2. of the statutes first applies to written
25 notice of violations received on the effective date of this subsection.

ASSEMBLY BILL 842

SECTION 33

1 (4) SUSPENSION OR REVOCATION OF LICENSURE. The treatment of section 50.03 (5)

2 (a) of the statutes first applies to findings made by the department of health and

3 family services on the effective date of this subsection.

4 (END)

Dodge, Tamara

From: Benesh, Patricia A - DHS [Patricia.Benesh@dhs.wisconsin.gov]
Sent: Tuesday, April 12, 2011 10:48 AM
To: Dodge, Tamara
Cc: Smyrski, Rose; Woods, Otis L - DHS
Subject: RE: LRB 1332/P1 Suggested additions

Hi Tami,

In response to your comments regarding our question to the drafter below, the federal rule reference would be:

"42 CFR 483 related to the operation of a nursing home"

Thanks, Pat.

Question for the drafter:

Is the language in LRB 1332/P1 adequate or should the reference to the federal requirements include the federal CFR cite. The current language in the bill reads "compliance with federal requirements related to the operation of a nursing home." We question if the cite should be more specific and use the 42 CFR reference.

From: Benesh, Patricia A - DHS
Sent: Monday, April 04, 2011 2:20 PM
To: Smyrski, Rose - LEGIS; Dodge, Tamara - LEGIS
Subject: LRB 1332/P1 Suggested additions

Hello Rose and Tami,

The Department of Health Services has identified the following provisions in Chapter 50 that we would like to reference compliance with federal requirements, similar to the reference added to conditional licenses and imposing a monitor or a receiver. We also have a question and a note to the drafter. Please let me know if you have questions regarding this request. I can be reached at 264-9896. Thank you for your consideration. Pat.

Below are the suggested additions to LRB 1332/P1 for the drafter.

- Ins 4-19* 1. 50.03 (4m) (a) Probationary license. Add compliance with the federal requirements related to the operation of a nursing home.
2. 50.03 (5) ^{Ins 5-9} (a) and (b) Suspension and revocation of nursing home licenses. Add compliance with the federal requirements related to the operation of a nursing home.
- Ins 5-9* 3. 50.03 (7) (a) Right of injunction. Add federal requirements related to the operation of a nursing home.
- Ins 5-9* 4. 50.03 (13) (a) Transfer of ownership. Add federal requirements related to the operation of a nursing home.
- ~~*Ins 5-9*~~ 5. 50.03 (13) (c) Transfer of ownership. Add federal requirements related to the operation of a nursing home.
- Ins 5-24* 6. 50.04 (4) (c) Correction. Add or immediate jeopardy is not abated or eliminated.

4/13/2011

Ins 14-25 7. 50.05 (2) (c) Condition for placement of a monitor or appointment of a receiver. Add compliance with the federal requirements related to the operation of a nursing home.

Ins 14-25 8. 50.05 (2) (f) 2. Condition for placement of a monitor or appointment of a receiver. Add compliance with the federal requirements related to the operation of a nursing home.

Question for the drafter:

Is the language in LRB 1332/P1 adequate or should the reference to the federal requirements include the federal CFR cite. The current language in the bill reads "compliance with federal requirements related to the operation of a nursing home." We question if the cite should be more specific and use the 42 CFR reference.

Note to the draft:

LRB-1332/P1 is meant to apply only to nursing homes. The term "nursing home" in Chapter 50, Subchapter I, includes Facilities serving people with developmental disabilities, licensed under DHS 134. The language at Section 6, 50.04 (4) (am), of the bill should be reviewed to ensure that 50.04 (4) (am) only applies to nursing homes and not Facilities serving people with developmental disabilities.

Pat Benesh, Quality Assurance Program Spec-Senior
Division of Quality Assurance
1 West Wilson St., Room 534
Madison, WI 53701
Phone: 608-264-9896
patricia.benesh@wisconsin.gov

4/27
Voice mail from Rose in Sen. Kapanke's office (6-5490)
Incorporate the changes suggested by DHS (approved).
Incorporate "self-reporting" language drafted by
Dick Sweet in 2007 session.

Sweet, Richard

From: Sweet, Richard
Sent: Friday, October 05, 2007 10:00 AM
To: Smyrski, Rose
Subject: RE: Meeting

Rose,

The solution we discussed at the meeting was to amend s. 50.04(4)(a)2.b., Stats. as follows (I'm showing the whole subdivision even though only subd. par. b. would be amended, because that way you can see how the whole thing will read.):

Ins 5-9

50.04(4)(a)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, or the nursing home has corrected the violation.**

(I think Tom Ramsey gets credit for coming up with the language.)

If this looks okay to everyone, Debora Kennedy would be the LRB drafting attorney to forward it to for formal drafting.

Dick Sweet

Richard Sweet
Senior Staff Attorney
Wisconsin Legislative Council
(608)266-2982
richard.sweet@legis.wisconsin.gov

From: Smyrski, Rose
Sent: Thursday, October 04, 2007 5:09 PM
To: Sweet, Richard
Subject: RE: Meeting

Thanks Dick!

From: Sweet, Richard

10/05/2007

Sent: Thursday, October 04, 2007 5:02 PM
To: Smyrski, Rose
Subject: RE: Meeting

No problem. I'll follow up with you tomorrow on this.

Dick

From: Smyrski, Rose
Sent: Thursday, October 04, 2007 4:52 PM
To: Sweet, Richard
Subject: FW: Meeting

Dick would mind helping us identify the Drafter and crafting language for the proposed changes to Ch 50. Senator Kapanke and I would really appreciate it! THANK YOU!

Rose

From: John Sauer [mailto:jsauer@wahsa.org]
Sent: Thursday, October 04, 2007 12:45 PM
To: Smyrski, Rose; Woods, Otis L - DHFS; ldawson@reinhartlaw.com
Cc: tomr@bsjcorp.com; dasannes@mwt.net
Subject: FW: Meeting

Good afternoon,

Our office has had conversations with the George Potaracke on the proposed Chapter 50 changes. He has indicated that his office would not oppose amending CH 50 to give DQA the discretion on whether to cite incidents which are both self-reported and corrected by facility.

This is certainly good news.

Rose, how should we proceed? Would you like to schedule another meeting in the upcoming month/s to discuss the next steps/review of DQA enforcement options.

John Sauer
WAHSA

From: John Sauer [mailto:jsauer@wahsa.org]
Sent: Friday, September 21, 2007 6:14 PM
To: 'Potaracke, George - BOALTC'; 'Heather.Bruemmer@Wisconsin.gov'; 'Otis Woods'; 'Paul Peshek'
Cc: 'ldawson@reinhartlaw.com'; 'tramsey@wahsa.org'; 'mpekarsk@reinhartlaw.com'; 'Tom Moore'
Subject: Meeting

George and Heather,

WAHSA representatives (Sauer , Tom Rand, Linda Dawson...) recently met with DQA and

10/05/2007

Sen. Kapanke to talk about quality improvement and survey/enforcement issues.

In our conversations, it was noted that a current law provision on facility self-reports provides for a strange regulatory result with respect to certain self reports: If the incident reported by the facility is *corrected* by the facility, then DQA *MUST* issue a violation. However, if the facility is *UNABLE* to correct the self-reported incident due to circumstances beyond its control, DQA has the statutory discretion on whether to issue a cite.

Our goal is to also provide DQA with the *OPTION* of issuing a cite for self-reported incidents that are CORRECTED. Our goal is to encourage self-reporting of incidents, thereby advancing quality improvement within the facility (better to acknowledge and address problems and issues, than to ignore them....). We would like to meet with you to discuss your thoughts on amending CH 50 to give DQA the discretion on whether to cite incidents which are both self-reported and corrected by facility.

Would you be available to meet next week? I am free to meet on Tuesday morning between 9 and noon. Please let me know if you are free to meet in person or via conference call. I anticipate being able to fully address this issue in about 30 minutes or so. Thanks,

John

608-444-9295



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-1332/P1
TJD:nwn:ph

In. 5/3/11 Due 5/4 end of day

AMNR P2

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

& cjs

Ger Cat

STW

1 AN ACT *to repeal* 50.04 (5) (a) 5m.; *to renumber and amend* 50.04 (5) (a) 6.;

2 *to amend* 50.03 (5) (a), 50.04 (4) (b) 4., 50.04 (4) (d) 2., 50.04 (4) (e) 1., 50.04 (5)

3 (title), 50.04 (5) (a) (intro.), 50.04 (5) (a) 1., 2. and 3. (intro.), 50.04 (5) (a) 4., 50.04

4 (5) (a) 5. a., b. and d., 50.04 (5) (b) (intro.), 50.04 (5) (c), 50.04 (5) (d) (title), 50.04

5 (5) (d) 1., 50.04 (5) (d) 2. (intro.), 50.04 (5) (dm) (intro.), 50.04 (5) (e), 50.04 (5)

6 (f), 50.04 (5) (fm), 50.04 (5) (fr) and 50.04 (5) (g); *to repeal and recreate* 50.04

7 (4) (d) 1. a., 50.04 (4) (d) 1. b. and 50.04 (6) (a); and *to create* 20.435 (6) (ge),

8 50.01 (1k), 50.01 (1nd), 50.01 (1ng), 50.04 (4) (am) and 50.15 of the statutes;

9 **relating to:** regulation of nursing homes, requiring the exercise of

10 rule-making authority, and making an appropriation.

Analysis by the Legislative Reference Bureau

Federal and state requirements for nursing homes

Under current law, a nursing home that receives Medicaid or Medicare funding for the care of a resident is subject to both federal and state requirements. The Department of Health Services (DHS) enforces both federal and state requirements for nursing homes. Currently, for nursing homes that are Medicaid and Medicare

providers, DHS may issue both federal and state citations for the same practice and may recommend federal remedies and impose state sanctions. This bill prohibits DHS from issuing a notice of violation of a state requirement to a nursing home that is a Medical Assistance or Medicare provider if DHS has, in a statement of deficiency, cited the nursing home for a violation of a federal requirement that is based on the same facts.

CSA-1
→
Monetary penalties

Under current law, DHS may assess a forfeiture against a nursing home for a violation of a state requirement. The maximum amount of the forfeiture varies according to the classification of the violation and ranges from \$500 to \$10,000. There is no time limit for DHS to assess a forfeiture for a violation. Nursing homes must pay forfeitures to DHS within ten days after receipt of notice of imposition of the forfeiture or after receipt of the final decision after exhaustion of administrative review. If a nursing home does not contest a notice of violation and a forfeiture and pays the forfeiture within ten days after receipt of the notice, DHS must reduce the forfeiture amount by 35 percent. Forfeitures collected for violations of state requirements are deposited in the school fund.

The bill reduces the maximum forfeiture amounts permitted for violations of state requirements and requires that DHS impose a penalty assessment on a nursing home whenever DHS assesses a forfeiture for a violation of a state requirement. The bill further requires DHS to impose a forfeiture and penalty assessment within 120 days of notifying a nursing home of a violation or DHS loses the authority to impose a forfeiture and penalty assessment. The bill changes to 60 days the time period by which a nursing home must pay forfeitures and penalty assessments to DHS after receipt of the notice of imposition or the final decision after exhaustion of administrative review, and also changes to 60 days the time period within which a nursing home may pay a forfeiture and penalty assessment and have the forfeiture and penalty assessment amounts reduced by 35 percent. The bill allocates moneys collected from the penalty assessments for nursing home quality-of-care improvement grants.

Appeals

Currently, in order to appeal a DHS finding that the nursing home violated a state requirement, a nursing home must request a hearing on the finding within ten days of receiving notice of the violation. If DHS assesses a forfeiture for the violation and the nursing home wishes to appeal the forfeiture, the nursing home must request a separate hearing on the forfeiture within ten days of receiving notice of a contested action. Upon request of the nursing home, the hearing on the finding of violation may be stayed until DHS assesses a forfeiture so that the hearing on the finding of violation and the hearing on the forfeiture may be consolidated.

The bill extends the deadline for a nursing home to request a hearing on a finding that the nursing home violated a state requirement to 60 days after receipt of the notice of violation. The bill also extends the deadline for requesting a hearing on a forfeiture and penalty assessment to 60 days after receipt of notice of the forfeiture. The bill further provides that, if a nursing home timely appeals both a

(E)(B)

and probationary

finding of violation and a forfeiture, the hearings on the violation and the forfeiture and penalty assessment will be consolidated.

Conditional licenses

Currently, in addition to the right to impose a forfeiture on a nursing home for violations, DHS may issue a conditional license to a nursing home in which DHS finds that a class "A" or a class "B" violation continues to exist. (A class "A" violation creates a condition or occurrence relating to the operation and maintenance of a nursing home that presents a substantial probability that death or serious mental or physical harm to a nursing home resident will result. A class "B" violation creates a condition or occurrence relating to the operation and maintenance of a nursing home that directly threatens the health, safety, or welfare of a nursing home resident.) Issuing a conditional license revokes any outstanding license held by the nursing home.

Insert A-2
This bill expands the standard for issuance by DHS of a conditional license for a nursing home to also include a continuing violation of federal law that constitutes immediate jeopardy, high risk of death, substantial harm, or actual harm not involving immediate jeopardy to a nursing home resident or that directly threatens, as defined in the bill, such a resident.

Suspension of admissions

Under current law, DHS must suspend new admissions to a nursing home if the nursing home received notices of a class "A" violation or three or more class "B" violations in the previous 12 months; and if the nursing home received notices of a class "A" violation or three or more class "B" violations in any 12-month period during the three years immediately preceding the previous 12 months. Suspension of admissions begins 90 days after a nursing home receives its last notice of a class "A" or class "B" violation if DHS determines that the violation is uncorrected or on the day that DHS makes a return visit to the nursing home and determines that the violation has not been corrected. A suspension must remain in effect until DHS determines that the nursing home has corrected all class "A" and class "B" violations.

This bill expands the standard for suspension of new admissions to a nursing home to include circumstances under which a nursing home received written notice of a violation that involved immediate jeopardy or high risk of death or substantial harm to a resident; a class "A" violation; or three or more class "B" violations or situations that either constituted actual harm not involving immediate jeopardy to a resident or directly threatened a resident. These circumstances must have occurred both in the previous 15 months and in any 15-month period during the 36 months immediately preceding the previous 15 months. Under the bill, suspension of admissions must remain in effect until DHS determines that the nursing home has corrected the violation in question.

Suspension or revocation of licensure

Currently, DHS may, after providing notice to a nursing home applicant or licensee, suspend or revoke the license if DHS finds that the nursing home substantially failed to comply with applicable state statutes or rules. No state or federal funds passing through the state treasury may be paid to a nursing home that does not have a valid license. This bill also permits DHS to suspend or revoke a

Insert A-3

nursing home license if the nursing home has substantially failed to comply with specified state law or with federal requirements related to the operation of a nursing home.

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:

add space before the fiscal estimate

1 SECTION 1. 20.435 (6) (ge) of the statutes is created to read:

2 20.435 (6) (ge) *Nursing home improvement grants*. All moneys received from
3 penalty assessments imposed by the department under s. 50.04 (5), for nursing home
4 improvement grants under s. 50.15.

5 SECTION 2. 50.01 (1k) of the statutes is created to read:

6 50.01 (1k) "Directly threatened" means created a condition or occurrence
7 relating to nursing home operation and maintenance that could reasonably be
8 expected to lead to injury or impairment of a resident or to harm to the health, safety,
9 or welfare of a resident.

10 SECTION 3. 50.01 (1nd) of the statutes is created to read:

11 50.01 (1nd) "High risk of death or substantial harm" means a condition or
12 occurrence relating to nursing home operation and maintenance that presents a
13 substantial probability of the death or serious mental or physical injury, harm, or
14 impairment of a resident.

Under 42 CFR 483 ✓

15 SECTION 4. 50.01 (1ng) of the statutes is created to read:

16 50.01 (1ng) "Immediate jeopardy" means a situation in which a nursing home's
17 noncompliance with one or more (federal) requirements, related to the operation of a
18 nursing home has caused, or is likely to cause, death or serious injury, harm, or
19 impairment to a resident.

Insert 4-19

Under 42 CFR 483

1 SECTION 5. 50.03 (5) (a) of the statutes is amended to read:

2 50.03 (5) (a) *Power of department.* The department, after notice to a nursing
3 home applicant or licensee, may suspend or revoke a license in any case in which the
4 department finds that the nursing home has substantially failed to comply with the
5 applicable requirements of this subchapter and the rules promulgated under this
6 subchapter, with s. 49.498, or with (federal) requirements related to the operation of
7 a nursing home. No state or federal funds passing through the state treasury may
8 be paid to a nursing home that does not have a valid license issued under this section.

Ins 5-9

Use 2A

9 SECTION 6. 50.04 (4) (am) of the statutes is created to read:

Under 42 CFR 483

Ins 5-10

(12)

10 50.04 (4) (am) *Dual federal and state violations.* If an act or omission
11 constitutes a violation of this subchapter or the rules promulgated under this
12 subchapter, s. 49.498, or (federal) requirements related to the operation of a nursing
13 home, the department may not issue under s. 50.04 (4) (a) a notice of violation of this
14 subchapter, the rules promulgated under this subchapter, or s. 49.498 if the
15 department has, in a statement of deficiency, cited the nursing home for the violation
16 under (federal) requirements related to the operation of a nursing home.

17 SECTION 7. 50.04 (4) (b) 4. of the statutes is amended to read:

18 50.04 (4) (b) 4. Each day of violation constitutes a separate violation. Except
19 as provided in sub. (5) (a) 4., the department shall have the burden of showing that
20 a violation existed on each day for which a forfeiture and penalty assessment is
21 assessed imposed. No forfeiture or penalty assessment may be assessed imposed for
22 a condition for which the nursing home has received a variance or waiver of a
23 standard.

Ins 5-24

24 SECTION 8. 50.04 (4) (d) 1. a. of the statutes is repealed and recreated to read:

1 50.04 (4) (d) 1. a. In the previous 15 months, the nursing home received written
2 notice of a violation of a state statute or rule or a federal statute or regulation that
3 involved either immediate jeopardy or a high risk of death or substantial harm to a
4 resident; a class "A" violation; or 3 or more class "B" violations or situations that
5 either constituted actual harm not involving immediate jeopardy to a resident or
6 directly threatened a resident.

7 **SECTION 9.** 50.04 (4) (d) 1. b. of the statutes is repealed and recreated to read:

8 50.04 (4) (d) 1. b. In any 15-month period during the 36 months immediately
9 preceding the period specified in subd. 1. a., the nursing home received written notice
10 of a violation of a state statute or rule or a federal statute or regulation that involved
11 either immediate jeopardy or a high risk of death or substantial harm to a resident;
12 a class "A" violation; or 3 or more class "B" violations or situations that either
13 constituted actual harm not involving immediate jeopardy to a resident or directly
14 threatened a resident.

15 **SECTION 10.** 50.04 (4) (d) 2. of the statutes is amended to read:

16 50.04 (4) (d) 2. A suspension of admissions under subd. 1. shall begin 90 days
17 after a nursing home received its last notice of violation for a class "A" or class "B"
18 violation or situation specified in subd. 1. a. if the department determines that the
19 violation or situation remains uncorrected 90 days after the nursing home received
20 the last notice of the violation or situation. If the nursing home earlier indicates to
21 the department that the violation or situation has been corrected, ~~but the~~
22 ~~department is unable to verify that the violation has been corrected,~~ a suspension of
23 admissions under subd. 1. shall begin on the day that the department makes a return
24 visit to the nursing home and determines that the violation or situation has not been
25 corrected. A suspension of admissions under subd. 1. shall remain in effect until the

1 department determines that ~~all class "A" and class "B" violations~~ by the nursing
2 home ~~have been~~ has corrected the violation or situation. Admission of a new resident
3 during the period for which admissions have been suspended constitutes a class "B"
4 violation.

5 **SECTION 11.** 50.04 (4) (e) 1. of the statutes is amended to read:

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

1 at subsequent hearings under this paragraph arising out of the same violation or
2 deficiency.

3 **SECTION 12.** 50.04 (5) (title) of the statutes is amended to read:

4 50.04 (5) (title) FORFEITURES AND PENALTY ASSESSMENTS.

5 **SECTION 13.** 50.04 (5) (a) (intro.) of the statutes is amended to read:

6 50.04 (5) (a) *Amounts.* (intro.) Any operator or owner of a nursing home ~~which~~
7 that is in violation of this subchapter or any rule promulgated ~~thereunder~~ under this
8 subchapter may be subject to the forfeitures specified in this section. If the
9 department imposes a forfeiture under this subsection, the department shall also
10 impose a penalty assessment under this subsection.

11 **SECTION 14.** 50.04 (5) (a) 1., 2. and 3. (intro.) of the statutes are amended to
12 read:

13 50.04 (5) (a) 1. A class "A" violation may be subject to a forfeiture of ~~not more~~
14 than \$250 and a penalty assessment of not more than \$10,000 for each violation.

15 2. A class "B" violation may be subject to a forfeiture of ~~not more than \$125 and~~
16 a penalty assessment of not more than \$5,000 for each violation.

17 3. (intro.) A class "C" violation may be subject to a forfeiture of ~~not more than~~
18 \$60 and a penalty assessment of not more than \$500. No forfeiture or penalty
19 assessment may be assessed imposed for a class "C" violation unless at least one of
20 the following applies:

21 **SECTION 15.** 50.04 (5) (a) 4. of the statutes is amended to read:

22 50.04 (5) (a) 4. Notwithstanding subs. 1., 2. and 3., if the violation or group
23 of violations results from inadequate staffing, the combined amount of the forfeiture
24 and penalty assessment that the department may assess impose shall be no less than
25 the difference between the cost of the staff actually employed and the estimated cost

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

5 **SECTION 16.** 50.04 (5) (a) 5. a., b. and d. of the statutes are amended to read:

6 50.04 (5) (a) 5. a. A nursing home that violates a statute or rule resulting in a
7 class "A" violation and that has received a notice of violation for a class "A" violation
8 within the previous 3-year period involving the same situation shall be subject to a
9 forfeiture 3 times the forfeiture amount authorized for a class "A" violation and a
10 penalty assessment 3 times the penalty assessment amount authorized for a class
11 "A" violation.

12 b. Except as provided in subd. 5. a., a nursing home that violates a statute or
13 rule resulting in a class "A" or class "B" violation and that has received a notice of a
14 class "A" or class "B" violation of the same statute or rule within the previous 3-year
15 period may be subject to a forfeiture 3 times the forfeiture amount authorized for the
16 most recent class of violation involved and a penalty assessment 3 times the penalty
17 assessment amount authorized for the most recent class of violation involved.

18 d. The forfeiture ~~amount~~ and penalty assessment amounts that is are tripled
19 under this subdivision shall be the ~~amount assessed~~ forfeiture and penalty
20 assessment amounts imposed after all appeals have been exhausted. If an
21 assessment imposition of a forfeiture and penalty assessment is not contested and
22 the forfeiture is and penalty assessment are paid as provided in par. (fm), the
23 forfeiture ~~amount~~ and penalty assessment amounts that is are tripled is are the
24 ~~amount assessed~~ amounts imposed after the reduction specified in par. (fm).

25 **SECTION 17.** 50.04 (5) (a) 5m. of the statutes is repealed.

1 **SECTION 18.** 50.04 (5) (a) 6. of the statutes is renumbered 50.04 (5) (a) 6. (intro.)
2 and amended to read:

3 50.04 (5) (a) 6. (intro.) If a licensee fails to correct a violation within the time
4 specified in the notice of violation or approved plan of correction, or within the
5 extended correction time granted under sub. (4) (c) 4., or if a violation continues after
6 a report of correction, the department may assess upon the licensee ~~a~~ for each day
7 of the continuing violation whichever of the following is applicable:

8 a. A separate forfeiture of not more than \$10,000 \$250 and a separate penalty
9 assessment of not more than \$10,000 for a class "A" violations, and may assess a
10 violation.

11 b. A separate forfeiture of not more than \$5,000 \$125 and a separate penalty
12 assessment of not more than \$5,000 for a class "B" violations, for each day of
13 continuing violation.

14 **SECTION 19.** 50.04 (5) (b) (intro.) of the statutes is amended to read:

15 50.04 (5) (b) *Factors in assessment imposition of forfeitures and penalty*
16 *assessments.* (intro.) In determining whether to impose a forfeiture ~~is to be imposed~~
17 and penalty assessment for a violation and in fixing the amount of the ~~forfeiture to~~
18 ~~be imposed~~ penalty assessment, if any, ~~for a violation~~, the following factors shall be
19 considered:

20 **SECTION 20.** 50.04 (5) (c) of the statutes is amended to read:

21 50.04 (5) (c) *Assessment Imposition of forfeitures and penalty assessments;*
22 *powers and duties of department.* The department may directly assess impose
23 forfeitures and penalty assessments provided for under par. (a). If the department
24 determines that a forfeiture and penalty assessment should be assessed imposed for
25 a particular violation or for failure to correct it, ~~it~~ the department shall send a notice

1 of ~~assessment~~ imposition of forfeiture and penalty assessment to the nursing home.
2 The notice shall specify the ~~amount~~ amounts of the forfeiture ~~assessed~~ and penalty
3 assessment imposed, the violation, and the statute or rule alleged to have been
4 violated, and shall inform the licensee of the right to hearing under par. (e). If the
5 department does not issue a notice of forfeiture and penalty assessment within 120
6 days after the date on which a nursing home receives the notice of a violation, the
7 department may not impose a forfeiture or penalty assessment for the violation.

8 **SECTION 21.** 50.04 (5) (d) (title) of the statutes is amended to read:

9 50.04 (5) (d) (title) *Forfeiture and penalty assessment period.*

10 **SECTION 22.** 50.04 (5) (d) 1. of the statutes is amended to read:

11 50.04 (5) (d) 1. In the case of a class "B" violation, no forfeiture or penalty
12 assessment may be ~~assessed~~ imposed for the violation from the day following the
13 date of discovery until the date of notification. If the department fails to approve or
14 reject a plan of correction within 15 days after its receipt of a complete plan, no
15 forfeiture or penalty assessment may be imposed for the period beginning with the
16 15th day after receipt and ending when notice of approval or rejection is received by
17 the home. If a plan of correction is approved and carried out, no forfeiture or penalty
18 assessment may be ~~assessed~~ imposed during the time period specified in the
19 approved plan of correction, commencing on the day the plan of correction is received
20 by the department.

21 **SECTION 23.** 50.04 (5) (d) 2. (intro.) of the statutes is amended to read:

22 50.04 (5) (d) 2. (intro.) In the case of a class "C" violation for which a notice of
23 violation has been served, a forfeiture and penalty assessment may be assessed
24 imposed for whichever of the following periods is applicable:

25 **SECTION 24.** 50.04 (5) (dm) (intro.) of the statutes is amended to read:

1 50.04 (5) (dm) (intro.) *Forfeiture and penalty assessment imposition date*. In
2 the case of a class "B" violation, the department may not ~~assess~~ impose a forfeiture
3 or a penalty assessment upon a nursing home until:

4 **SECTION 25.** 50.04 (5) (e) of the statutes is amended to read:

5 50.04 (5) (e) *Forfeiture and penalty assessment appeal hearing*. A nursing
6 home may contest an ~~assessment~~ imposition of a forfeiture and penalty assessment
7 by sending, within ~~10~~ 60 days after receipt of notice of ~~a contested action~~ the
8 imposition of the forfeiture and penalty assessment, a written request for hearing
9 under s. 227.44 to the division of hearings and appeals created under s. 15.103 (1).
10 The administrator of the division may designate a hearing examiner to preside over
11 the case and recommend a decision to the administrator under s. 227.46. The
12 decision of the administrator of the division shall be the final administrative
13 decision. The division shall commence the hearing within 30 days of receipt of the
14 request for hearing and shall issue a final decision within 15 days after the close of
15 the hearing. Proceedings before the division are governed by ch. 227. In any petition
16 for judicial review of a decision by the division, the party, other than the petitioner,
17 who was in the proceeding before the division shall be the named respondent. If,
18 after receipt of notice of imposition of a forfeiture and penalty assessment, a nursing
19 home that has timely requested a hearing under sub. (4) (e) on the notice of violation
20 under sub. (4) for which the forfeiture and penalty assessment were imposed
21 requests a hearing under this paragraph on the imposition of the forfeiture and
22 penalty assessment, the hearing on the notice of violation under sub. (4) and the
23 hearing on the imposition of the forfeiture and penalty assessment shall be
24 consolidated.

25 **SECTION 26.** 50.04 (5) (f) of the statutes is amended to read:

1 50.04 (5) (f) *Forfeitures and penalty assessments paid within ~~10~~ 60 days.* All
2 forfeitures and penalty assessments shall be paid to the department within ~~10~~ 60
3 days of receipt of notice of assessment imposition of the forfeiture and penalty
4 assessment or, if the forfeiture or penalty assessment is contested under par. (e),
5 within ~~10~~ 60 days of receipt of the final decision after exhaustion of administrative
6 review, unless the final decision is appealed and the order is stayed by court order
7 under s. 50.03 (11). The department shall remit all forfeitures paid to the secretary
8 of administration for deposit in the school fund. All moneys collected as penalty
9 assessments under this subsection shall be credited to the appropriation account
10 under s. 20.435 (6) (ge).

11 **SECTION 27.** 50.04 (5) (fm) of the statutes is amended to read:

12 50.04 (5) (fm) *Forfeiture and penalty assessment reduction for timely payment.*
13 If a nursing home does not contest a notice of violation under sub. (4) (e) and does not
14 contest an assessment imposition of a forfeiture and penalty assessment under par.
15 (e) for a class "A" or class "B" violation and pays the forfeiture and penalty
16 assessment to the department within ~~10~~ 60 days after receipt of the notice of
17 assessment imposition of the forfeiture and penalty assessment, the department
18 shall reduce the amount of the assessment forfeiture and penalty assessment by ~~35%~~
19 35 percent.

20 **SECTION 28.** 50.04 (5) (fr) of the statutes is amended to read:

21 50.04 (5) (fr) *Report to the legislature.* Annually, the department shall submit
22 a report to the legislature under s. 13.172 (2) that specifies for the previous year the
23 number of class "A" violations, the ~~amount~~ amounts of the forfeiture assessment and
24 penalty assessment imposed for each of those violations and, if known, the ~~amount~~
25 amounts of the forfeiture and penalty assessment actually paid and collected with

1 respect to those violations. The report shall also include an explanation for any
2 ~~assessment that was~~ imposition of a forfeiture and penalty assessment that totaled
3 less than \$2,500 for the violations specified in the report.

4 **SECTION 29.** 50.04 (5) (g) of the statutes is amended to read:

5 50.04 (5) (g) *Enforcement by attorney general.* The attorney general may bring
6 an action in the name of the state to collect any forfeiture or penalty assessment
7 imposed under this section if the forfeiture or penalty assessment has not been paid
8 following the exhaustion of all administrative and judicial reviews. The only issue
9 to be contested in any such action shall be whether the forfeiture or penalty
10 assessment has been paid.

11 **SECTION 30.** 50.04 (6) (a) of the statutes is repealed and recreated to read:

12 50.04 (6) (a) *Power of department.* 1. In addition to the right to impose
13 forfeitures and penalty assessments under sub. (5), the department may issue a
14 conditional license to any nursing home if the department finds that any of the
15 following is true:

16 a. A class "A" or class "B" violation, as defined in sub. (4), continues to exist in
17 the nursing home.

18 b. A federal violation continues to exist that constitutes immediate jeopardy,
19 high risk of death, substantial harm, or actual harm not involving immediate
20 jeopardy to a resident, or that directly threatens a resident.

21 2. The issuance of a conditional license shall revoke any outstanding license
22 held by the nursing home.

23 3. The nursing home may seek review of a decision to issue a conditional license
24 as provided in s. 50.03 (5).

25 **SECTION 31.** 50.15 of the statutes is created to read:

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24

1 **50.15 Nursing home improvement grants.** From the appropriation
2 account under s. 20.435 (6) (ge), the department shall make grants to nursing homes
3 to fund quality-of-care improvement projects. The department shall promulgate
4 rules that specify the eligibility criteria and application procedures for receipt of a
5 grant under this section.

6 **SECTION 32. Nonstatutory provisions.**

7 (1) NURSING HOME IMPROVEMENT GRANTS. The department of health services
8 shall submit in proposed form the rules required under section 50.15 of the statutes,
9 as created by this act, to the legislative council staff under section 227.15 (1) of the
10 statutes no later than the first day of the 13th month beginning after the effective
11 date of this subsection.

12 **SECTION 33. Initial applicability.**

13 (1) HEARING REQUESTS. The treatment of section 50.04 (4) (e) 1. and (5) (e) of the
14 statutes first applies to requests for hearings related to a notice of violation, a report
15 notation, a of plan correction, or a rejection of a plan of correction that is issued on
16 the effective date of this subsection.

17 (2) CONDITIONAL LICENSURE. The treatment of sections 50.01 (1k), (1nd), and
18 (1ng) and 50.04 (6) (a) of the statutes first applies to violations that continue to exist
19 on the effective date of this subsection.

20 (3) SUSPENSION OF ADMISSIONS. The treatment of sections 50.01 (1k), (1nd), and
21 (1ng) and 50.04 (4) (d) 1. a. and b. and (d) 2. of the statutes first applies to written
22 notice of violations received on the effective date of this subsection.

and (b)

1 (4) SUSPENSION OR REVOCATION OF LICENSURE. The treatment of section 50.03 (5)
2 (a) of the statutes first applies to findings made by the department of health services
3 on the effective date of this subsection.

4 (END)

9 # (5) PROVISIONAL LICENSE. The treatment of section
50.03(4m)(a) of the statutes first applies to
inspections made by the department of health
services on the effective date of this subsection.

9 # (6) INJUNCTIONS. The treatment of section
50.03(7)(a) of the statutes first applies to an
action for injunction filed by the department
of health services on the effective date of this
subsection.

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1 INSERT A-1

Under current law, DHS may seek an injunction in court to enjoin the repeated violation of the state's nursing home statutes or a rule promulgated under the authority of the state's nursing home statutes. The bill allows DHS to seek an injunction to enjoin repeated violation of certain federal requirements related to the operation of a nursing home.

(END INSERT A-1)

2 INSERT A-2

Under current law, an applicant for a nursing home license that has not been previously licensed to operate a nursing home or whose nursing home is not operating at the time of application is issued a probationary license. To obtain a regular license, DHS inspects the nursing home to determine whether the nursing home meets the requirements for licensure. The bill specifies that a nursing home operating under a probationary license must also comply with requirements under certain federal regulations related to the operation of a nursing home in order to obtain a regular license.

(END INSERT A-2)

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3 INSERT A-3

Notices of violation

In certain circumstances under current law, DHS is required to provide a notice of violation to a nursing home, such as the presence in a nursing home of a current class "A" or "B" violation. The department currently is not required to serve a notice of violation if the nursing home reports the violation to DHS and the violation occurs and remains uncorrected despite the nursing home's every reasonable effort to prevent and correct the violation. This bill expands the circumstances under which DHS is not required to serve a notice of violation to include situations in which a nursing home reports the violation to DHS and has corrected the violation.

(END INSERT A-3)

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4 INSERT 4-14

5 **SECTION 1.** 50.03 (4m) (a) of the statutes is amended to read:

6 50.03 (4m) (a) If the applicant for licensure as a nursing home has not been
7 previously licensed under this subchapter or if the nursing home is not in operation

~~4~~ ~~***~~ Note: Do you think it is necessary to add
the language regarding compliance with 42 CFR 483
to s. 50.03(4)(a) 1. a.?

1 at the time application is made, the department shall issue a probationary license.
2 A probationary license shall be valid for 12 months from the date of issuance unless
3 sooner suspended or revoked under sub. (5). Prior to the expiration of a probationary
4 license, the department shall inspect the nursing home and, if the nursing home
5 meets the applicable requirements for licensure and complies with requirements
6 under 42 CFR 483 related to the operation of a nursing home, shall issue a regular
7 license under sub. (4) (a) 1. a. If the department finds that the nursing home does
8 not meet the requirements for licensure or does not comply with requirements under
9 42 CFR 483 related to the operation of a nursing home, the department may not issue
10 a regular license under sub. (4) (a) 1. a.

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; 2007 a. 20 s. 9121 (6) (a); 2007 a. 92; 2009 a. 28.

(END INSERT 4-14)

11 INSERT 5-9

12 **SECTION 2.** 50.03 (5) (b) of the statutes is amended to read:

13 50.03 (5) (b) *Form of notice.* Notice under this subsection shall include a clear
14 and concise statement of the violations on which the revocation is based, the statute
15 ~~or~~, rule, or federal requirement violated and notice of the opportunity for an
16 evidentiary hearing under par. (c).

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; 2007 a. 20 s. 9121 (6) (a); 2007 a. 92; 2009 a. 28.

17 **SECTION 3.** 50.03 (7) (a) of the statutes is amended to read:

18 50.03 (7) (a) *Licensed facility.* Notwithstanding the existence or pursuit of any
19 other remedy, the department may, upon the advice of the attorney general, maintain
20 an action in the name of the state in the circuit court for injunction or other process
21 against any licensee, owner, operator, administrator or representative of any owner
22 of a facility to restrain and enjoin the repeated violation of any of the provisions of

1 this subchapter ~~or~~, rules promulgated by the department under this subchapter, or
2 requirements under 42 CFR 483 related to the operation of a nursing home where
3 the violation affects the health, safety or welfare of the residents.

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; 2007 a. 20 s. 9121 (6) (a); 2007 a. 92; 2009 a. 28.

4 **SECTION 4. 50.03 (13) (a)** of the statutes is amended to read:

5 **50.03 (13) (a) *New license.*** Whenever ownership of a facility is transferred from
6 the person or persons named in the license to any other person or persons, the
7 transferee must obtain a new license. The license may be a probationary license.
8 Penalties under sub. (1) shall apply to violations of this subsection. The transferee
9 shall notify the department of the transfer, file an application under sub. (3) (b), and
10 apply for a new license at least 30 days prior to final transfer. Retention of any
11 interest required to be disclosed under sub. (3) (b) after transfer by any person who
12 held such an interest prior to transfer may constitute grounds for denial of a license
13 where violations of this subchapter, or of requirements of 42 CFR 483 related to the
14 operation of a nursing home, for which notice had been given to the transferor are
15 outstanding and uncorrected, if the department determines that effective control
16 over operation of the facility has not been transferred. If the transferor was a
17 provider under s. 49.43 (10), the transferee and transferor shall comply with s. 49.45
18 (21).

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; 2007 a. 20 s. 9121 (6) (a); 2007 a. 92; 2009 a. 28.

****NOTE: I did not add the citation to the federal regulations in s. 50.03 (13) (c).
That provision refers to violations cited on a departmental inspection report, and
therefore, the source of law of the violation is not specified in that provision as it would
be contained in the provision regarding inspection reports. Adding the citation only to the
federal regulations would be confusing as it would appear that only violations of federal
regulations would pertain to the transferee.

19 **SECTION 5. 50.04 (4) (a) 2. b.** of the statutes is amended to read:

x

1 50.04 (4) (a) 2. b. The nursing home has made every reasonable effort to prevent
2 and correct the violation, but the violation occurred and remains uncorrected due to
3 circumstances beyond the nursing home's control, or the nursing home has corrected
4 the violation.

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; 2007 a. 20, 153; 2009 a. 28.

(END INSERT 5-9)

5 ⁵⁻¹⁰
INSERT ~~5-16~~



6 1. Notwithstanding s. 50.01 (3), in this paragraph, "nursing home" does not
7 include a facility serving people with developmental disabilities.

(END INSERT ~~5-16~~ ⁵⁻¹⁰)

8 INSERT 5-24

9 **SECTION 6.** 50.04 (4) (c) 1. of the statutes is amended to read:

10 50.04 (4) (c) 1. The situation, condition or practice constituting a class "A"
11 violation or immediate jeopardy shall be abated or eliminated immediately unless
12 a fixed period of time, as determined by the department and specified in the notice
13 of violation, is required for correction. If the class "A" violation or immediate
14 jeopardy is not abated or eliminated within the specified time period, the department
15 shall maintain an action in circuit court for injunction or other process against the
16 licensee, owner, operator, administrator or representative of the facility to restrain
17 and enjoin violation of applicable rules, regulations and statutes.

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; 2007 a. 20, 153; 2009 a. 28.

****NOTE: Please confirm that these are the places you wanted the phrase "or immediate jeopardy" inserted.

(END INSERT 5-24)

18 INSERT 14-25

19 **SECTION 7.** 50.05 (2) (f) (intro.) of the statutes is amended to read:

facility

1 50.05 (2) (f) (intro.) The facility is a nursing facility that is in violation of s.
 2 49.498 or, a rule promulgated under s. 49.498, or a requirement under 42 CFR 483
 3 related to the operation of a nursing home, meets the criteria established by rule
 4 under s. 49.498 (14) (c) for placement of a monitor or appointment of a receiver, and
 5 there is a need for placement of a monitor or appointment of a receiver during the
 6 period that any of the following applies:

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.

7 **SECTION 8.** 50.05 (2) (f) 2. of the statutes is amended to read:

8 50.05 (2) (f) 2. The nursing facility institutes improvements in order to bring
 9 the nursing facility into compliance with the requirements of s. 49.498 or, a rule
 10 promulgated under s. 49.498, or a requirement under 42 CFR 483 related to the
 11 operation of a nursing home facility

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.

****NOTE: I do not believe it is necessary to include the specific reference to federal regulations in s. 50.05 (2) (c) because the violation of federal regulations is one of the bases for revocation under s. 50.03 (5). I did, however, feel that it was needed to add the citation to the introduction for s. 50.05 (2) (f) so it followed with the addition of the citation to s. 50.05 (2) (f) 2.

(END INSERT 14-25)

12

(END)

DHS Response

LRB 11-1332/P2 – Topic: Regulation of nursing homes including appeals, penalties, and suspension of admissions.

LRB 11-1332/P2 location	Topic	Drafter's question	DQA response/comment
Bill analysis p. 4, Notices of violation, second line.	Notices of violation		Recommend deleting the word "current" the second time it is used in the first sentence of the paragraph. See suggested edit below. "In certain circumstances under current law, DHS is required to provide a notice of violation to the nursing home, such as the presence in the nursing home of a current class "A" or "B" violation."
p. 6, line 2	Probationary license	Is it necessary to add language regarding compliance with 42 CFR 483 to s. 50.03 (4) (a) 1.a.?	Yes.
p. 7, line 17	Transfer of ownership	Didn't add federal regulation in s. 50.03 (13) (c).	We agree with your analysis.
p. 9, line 2	Correction	Confirm placement of "immediate jeopardy".	The placements are correct.
p. 18, line 16	Condition for placement of a monitor or appointment of a receiver	Did not include reference to federal regulation in s. 50.05 (2) (c). Added the citation to s. 50.05 (2) (f).	We agree with your analysis. We agree with your analysis.
p. 18, lines 20 through 22	Nursing home improvement grants.		The Department believes that DHS 132.16, effective September 1, 2007, covers the required rule-making specified in s. 50.15. Recommend deleting the last sentence from 50.15 that requires rule-making by the Department.
p. 19, lines 1 through 6	Nursing Home Improvement Grants.		Recommend deleting this subsection based on the information provided above.

5/11/11

Dodge, Tamara

From: Smyrski, Rose
Sent: Thursday, May 19, 2011 4:35 PM
To: Dodge, Tamara
Subject: FW: Dual Enforcement draft
Attachments: Dual Enforcement Preliminary Draft (needs changes).pdf

Tammy

Attached is a marked up version of the draft – however it was a bit aggressive and some sections were inadvertently crossed off. Hence, see the part below: any questions please let me know

- The marked-up draft should not change the treatment of ICFs-MR and the federal and state enforcement systems (with respect to ICFs-MR, the P2 draft is okay and shouldn't be changed as indicated in the marked-up version). The dual system should be maintained for ICFs-MR because the federal enforcement options are very limited.



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to repeal* 50.04 (5) (a) 5m.; *to renumber and amend* 50.04 (5) (a) 6.;
2 *to amend* 50.03 (4m) (a), 50.03 (5) (a), 50.03 (5) (b), 50.03 (7) (a), 50.03 (13) (a),
3 50.04 (4) (a) 2. b., 50.04 (4) (b) 4., 50.04 (4) (c) 1., 50.04 (4) (d) 2., 50.04 (4) (e) 1.,
4 50.04 (5) (title), 50.04 (5) (a) (intro.), 50.04 (5) (a) 1., 2. and 3. (intro.), 50.04 (5)
5 (a) 4., 50.04 (5) (a) 5. a., b. and d., 50.04 (5) (b) (intro.), 50.04 (5) (c), 50.04 (5) (d)
6 (title), 50.04 (5) (d) 1., 50.04 (5) (d) 2. (intro.), 50.04 (5) (dm) (intro.), 50.04 (5)
7 (e), 50.04 (5) (f), 50.04 (5) (fm), 50.04 (5) (fr), 50.04 (5) (g), 50.05 (2) (f) (intro.)
8 and 50.05 (2) (f) 2.; *to repeal and recreate* 50.04 (4) (d) 1. a., 50.04 (4) (d) 1.
9 b. and 50.04 (6) (a); and *to create* 20.435 (6) (ge), 50.01 (1k), 50.01 (1nd), 50.01
10 (1ng), 50.04 (4) (am) and 50.15 of the statutes; **relating to:** regulation of
11 nursing homes, requiring the exercise of rule-making authority, and making
12 an appropriation.

***Analysis by the Legislative Reference Bureau
Federal and state requirements for nursing homes***

Under current law, a nursing home that receives Medicaid or Medicare funding for the care of a resident is subject to both federal and state requirements. The

Department of Health Services (DHS) enforces both federal and state requirements for nursing homes. Currently, for nursing homes that are Medicaid and Medicare providers, DHS may issue both federal and state citations for the same practice and may recommend federal remedies and impose state sanctions. This bill prohibits DHS from issuing a notice of violation of a state requirement to a nursing home that is a Medical Assistance or Medicare provider if DHS has, in a statement of deficiency, cited the nursing home for a violation of a federal requirement that is based on the same facts.

Under current law, DHS may seek an injunction in court to enjoin the repeated violation of the state's nursing home statutes or a rule promulgated under the authority of the state's nursing home statutes. The bill allows DHS to seek an injunction to enjoin repeated violation of certain federal requirements related to the operation of a nursing home.

Monetary penalties

Under current law, DHS may assess a forfeiture against a nursing home for a violation of a state requirement. The maximum amount of the forfeiture varies according to the classification of the violation and ranges from \$500 to \$10,000. There is no time limit for DHS to assess a forfeiture for a violation. Nursing homes must pay forfeitures to DHS within ten days after receipt of notice of imposition of the forfeiture or after receipt of the final decision after exhaustion of administrative review. If a nursing home does not contest a notice of violation and a forfeiture and pays the forfeiture within ten days after receipt of the notice, DHS must reduce the forfeiture amount by 35 percent. Forfeitures collected for violations of state requirements are deposited in the school fund.

The bill reduces the maximum forfeiture amounts permitted for violations of state requirements and requires that DHS impose a penalty assessment on a nursing home whenever DHS assesses a forfeiture for a violation of a state requirement. The bill further requires DHS to impose a forfeiture and penalty assessment within 120 days of notifying a nursing home of a violation or DHS loses the authority to impose a forfeiture and penalty assessment. The bill changes to 60 days the time period by which a nursing home must pay forfeitures and penalty assessments to DHS after receipt of the notice of imposition or the final decision after exhaustion of administrative review, and also changes to 60 days the time period within which a nursing home may pay a forfeiture and penalty assessment and have the forfeiture and penalty assessment amounts reduced by 35 percent. The bill allocates moneys collected from the penalty assessments for nursing home quality-of-care improvement grants.

Appeals

Currently, in order to appeal a DHS finding that the nursing home violated a state requirement, a nursing home must request a hearing on the finding within ten days of receiving notice of the violation. If DHS assesses a forfeiture for the violation and the nursing home wishes to appeal the forfeiture, the nursing home must request a separate hearing on the forfeiture within ten days of receiving notice of a contested action. Upon request of the nursing home, the hearing on the finding of violation may

No
Penalty
Assessment

be stayed until DHS assesses a forfeiture so that the hearing on the finding of violation and the hearing on the forfeiture may be consolidated.

The bill extends the deadline for a nursing home to request a hearing on a finding that the nursing home violated a state requirement to 60 days after receipt of the notice of violation. The bill also extends the deadline for requesting a hearing on a forfeiture and penalty assessment to 60 days after receipt of notice of the forfeiture. The bill further provides that, if a nursing home timely appeals both a finding of violation and a forfeiture, the hearings on the violation and the forfeiture and penalty assessment will be consolidated.

Conditional and probationary licenses

Currently, in addition to the right to impose a forfeiture on a nursing home for violations, DHS may issue a conditional license to a nursing home in which DHS finds that a class "A" or a class "B" violation continues to exist. (A class "A" violation creates a condition or occurrence relating to the operation and maintenance of a nursing home that presents a substantial probability that death or serious mental or physical harm to a nursing home resident will result. A class "B" violation creates a condition or occurrence relating to the operation and maintenance of a nursing home that directly threatens the health, safety, or welfare of a nursing home resident.) Issuing a conditional license revokes any outstanding license held by the nursing home.

This bill expands the standard for issuance by DHS of a conditional license for a nursing home to also include a continuing violation of federal law that constitutes immediate jeopardy, high risk of death, substantial harm, or actual harm not involving immediate jeopardy to a nursing home resident or that directly threatens, as defined in the bill, such a resident.

Under current law, an applicant for a nursing home license that has not been previously licensed to operate a nursing home or whose nursing home is not operating at the time of application is issued a probationary license. To obtain a regular license, DHS inspects the nursing home to determine whether the nursing home meets the requirements for licensure. The bill specifies that a nursing home operating under a probationary license must also comply with requirements under certain federal regulations related to the operation of a nursing home in order to obtain a regular license.

Suspension of admissions

Under current law, DHS must suspend new admissions to a nursing home if the nursing home received notices of a class "A" violation or three or more class "B" violations in the previous 12 months; and if the nursing home received notices of a class "A" violation or three or more class "B" violations in any 12-month period during the three years immediately preceding the previous 12 months. Suspension of admissions begins 90 days after a nursing home receives its last notice of a class "A" or class "B" violation if DHS determines that the violation is uncorrected or on the day that DHS makes a return visit to the nursing home and determines that the violation has not been corrected. A suspension must remain in effect until DHS determines that the nursing home has corrected all class "A" and class "B" violations.

This bill expands the standard for suspension of new admissions to a nursing home to include circumstances under which a nursing home received written notice of a violation that involved immediate jeopardy or high risk of death or substantial harm to a resident; a class "A" violation; or three or more class "B" violations or situations that either constituted actual harm not involving immediate jeopardy to a resident or directly threatened a resident. These circumstances must have occurred both in the previous 15 months and in any 15-month period during the 36 months immediately preceding the previous 15 months. Under the bill, suspension of admissions must remain in effect until DHS determines that the nursing home has corrected the violation in question.

Suspension or revocation of licensure

Currently, DHS may, after providing notice to a nursing home applicant or licensee, suspend or revoke the license if DHS finds that the nursing home substantially failed to comply with applicable state statutes or rules. No state or federal funds passing through the state treasury may be paid to a nursing home that does not have a valid license. This bill also permits DHS to suspend or revoke a nursing home license if the nursing home has substantially failed to comply with specified state law or with federal requirements related to the operation of a nursing home.

Notices of violation

In certain circumstances under current law, DHS is required to provide a notice of violation to a nursing home, such as the presence in a nursing home of a current class "A" or "B" violation. The department currently is not required to serve a notice of violation if the nursing home reports the violation to DHS and the violation occurs and remains uncorrected despite the nursing home's every reasonable effort to prevent and correct the violation. This bill expands the circumstances under which DHS is not required to serve a notice of violation to include situations in which a nursing home reports the violation to DHS and has corrected the violation.

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. 20.435 (6) (ge) of the statutes is created to read:~~
- 2 ~~20.435 (6) (ge) Nursing home improvement grants. All moneys received from~~
- 3 ~~penalty assessments imposed by the department under s. 50.04 (5), for nursing home~~
- 4 ~~improvement grants under s. 50.15.~~
- 5 SECTION 2. 50.01 (1k) of the statutes is created to read:

1 50.01 (1k) "Directly threatened" means created a condition or occurrence
2 relating to nursing home operation and maintenance that could reasonably be
3 expected to lead to injury or impairment of a resident or to harm to the health, safety,
4 or welfare of a resident.

5 **SECTION 3.** 50.01 (1nd) of the statutes is created to read:

6 50.01 (1nd) "High risk of death or substantial harm" means a condition or
7 occurrence relating to nursing home operation and maintenance that presents a
8 substantial probability of the death or serious mental or physical injury, harm, or
9 impairment of a resident.

10 **SECTION 4.** 50.01 (1ng) of the statutes is created to read:

11 50.01 (1ng) "Immediate jeopardy" means a situation in which a nursing home's
12 noncompliance with one or more requirements under 42 CFR 483 related to the
13 operation of a nursing home has caused, or is likely to cause, death or serious injury,
14 harm, or impairment to a resident.

15 **SECTION 5.** 50.03 (4m) (a) of the statutes is amended to read:

16 50.03 (4m) (a) If the applicant for licensure as a nursing home has not been
17 previously licensed under this subchapter or if the nursing home is not in operation
18 at the time application is made, the department shall issue a probationary license.
19 A probationary license shall be valid for 12 months from the date of issuance unless
20 sooner suspended or revoked under sub. (5). Prior to the expiration of a probationary
21 license, the department shall inspect the nursing home and, if the nursing home
22 meets the applicable requirements for licensure and complies with requirements
23 under 42 CFR 483 related to the operation of a nursing home, shall issue a regular
24 license under sub. (4) (a) 1. a. If the department finds that the nursing home does
25 not meet the requirements for licensure or does not comply with requirements under

1 42 CFR 483 related to the operation of a nursing home, the department may not issue
2 a regular license under sub. (4) (a) 1. a.

***NOTE: Do you think it is necessary to add the language regarding compliance
with 42 CFR 483 to s. 50.03 (4) (a) 1. a.?

3 SECTION 6. 50.03 (5) (a) of the statutes is amended to read:

4 50.03 (5) (a) *Power of department.* The department, after notice to a nursing
5 home applicant or licensee, may suspend or revoke a license in any case in which the
6 department finds that the nursing home has substantially failed to comply with the
7 applicable requirements of this subchapter and the rules promulgated under this
8 subchapter, with s. 49.498, or with requirements under 42 CFR 483 related to the
9 operation of a nursing home. No state or federal funds passing through the state
10 treasury may be paid to a nursing home that does not have a valid license issued
11 under this section.

12 SECTION 7. 50.03 (5) (b) of the statutes is amended to read:

13 50.03 (5) (b) *Form of notice.* Notice under this subsection shall include a clear
14 and concise statement of the violations on which the revocation is based, the statute
15 ~~or~~ rule, or federal requirement violated and notice of the opportunity for an
16 evidentiary hearing under par. (c).

17 SECTION 8. 50.03 (7) (a) of the statutes is amended to read:

18 50.03 (7) (a) *Licensed facility.* Notwithstanding the existence or pursuit of any
19 other remedy, the department may, upon the advice of the attorney general, maintain
20 an action in the name of the state in the circuit court for injunction or other process
21 against any licensee, owner, operator, administrator or representative of any owner
22 of a facility to restrain and enjoin the repeated violation of any of the provisions of
23 this subchapter ~~or~~ rules promulgated by the department under this subchapter, or

1 requirements under 42 CFR 483 related to the operation of a nursing home where
2 the violation affects the health, safety or welfare of the residents.

3 SECTION 9. 50.03 (13) (a) of the statutes is amended to read:

4 50.03 (13) (a) *New license*. Whenever ownership of a facility is transferred from
5 the person or persons named in the license to any other person or persons, the
6 transferee must obtain a new license. The license may be a probationary license.
7 Penalties under sub. (1) shall apply to violations of this subsection. The transferee
8 shall notify the department of the transfer, file an application under sub. (3) (b), and
9 apply for a new license at least 30 days prior to final transfer. Retention of any
10 interest required to be disclosed under sub. (3) (b) after transfer by any person who
11 held such an interest prior to transfer may constitute grounds for denial of a license
12 where violations of this subchapter, or of requirements of 42 CFR 483 related to the
13 operation of a nursing home, for which notice had been given to the transferor are
14 outstanding and uncorrected, if the department determines that effective control
15 over operation of the facility has not been transferred. If the transferor was a
16 provider under s. 49.43 (10), the transferee and transferor shall comply with s. 49.45
17 (21).

****NOTE: I did not add the citation to the federal regulations in s. 50.03 (13) (c).
That provision refers to violations cited on a departmental inspection report, and
therefore, the source of law of the violation is not specified in that provision as it would
be contained in the provision regarding inspection reports. Adding the citation only to the
federal regulations would be confusing as it would appear that only violations of federal
regulations would pertain to the transferee.

18 SECTION 10. 50.04 (4) (a) 2. b. of the statutes is amended to read:

19 50.04 (4) (a) 2. b. The nursing home has made every reasonable effort to prevent
20 and correct the violation, but the violation occurred and remains uncorrected due to
21 circumstances beyond the nursing home's control, or the nursing home has corrected
22 the violation.

1 SECTION 11. 50.04 (4) (am) of the statutes is created to read:

2 50.04 (4) (am) *Dual federal and state violations.* 1. Notwithstanding s. 50.01
3 (3), in this paragraph, "nursing home" does not include a facility serving people with
4 developmental disabilities. *OR CLARIFY THAT A NURSING HOME DOES INCLUDE*
A FOO

5 2. If an act or omission constitutes a violation of this subchapter or the rules
6 promulgated under this subchapter, s. 49.498, or requirements under 42 CFR 483
7 related to the operation of a nursing home, the department may not issue under s.
8 50.04 (4) (a) a notice of violation of this subchapter, the rules promulgated under this
9 subchapter, or s. 49.498 if the department has, in a statement of deficiency, cited the
10 nursing home for the violation under requirements under 42 CFR 483 related to the
11 operation of a nursing home.

12 SECTION 12. 50.04 (4) (b) 4. of the statutes is amended to read:

13 50.04 (4) (b) 4. Each day of violation constitutes a separate violation. Except
14 as provided in sub. (5) (a) 4., the department shall have the burden of showing that
15 a violation existed on each day for which a forfeiture and penalty assessment is
16 assessed imposed. No forfeiture or penalty assessment may be assessed imposed for
17 a condition for which the nursing home has received a variance or waiver of a
18 standard.

19 SECTION 13. 50.04 (4) (c) 1. of the statutes is amended to read:

20 50.04 (4) (c) 1. The situation, condition or practice constituting a class "A"
21 violation or immediate jeopardy shall be abated or eliminated immediately unless
22 a fixed period of time, as determined by the department and specified in the notice
23 of violation, is required for correction. If the class "A" violation or immediate
24 jeopardy is not abated or eliminated within the specified time period, the department
25 shall maintain an action in circuit court for injunction or other process against the

1 licensee, owner, operator, administrator or representative of the facility to restrain
2 and enjoin violation of applicable rules, regulations and statutes.

****NOTE: Please confirm that these are the places you wanted the phrase "or immediate jeopardy" inserted.

3 SECTION 14. 50.04 (4) (d) 1. a. of the statutes is repealed and recreated to read:

4 50.04 (4) (d) 1. a. In the previous 15 months, the nursing home received written
5 notice of a violation of a state statute or rule or a federal statute or regulation that
6 involved either immediate jeopardy or a high risk of death or substantial harm to a
7 resident; a class "A" violation; or 3 or more class "B" violations or situations that
8 either constituted actual harm not involving immediate jeopardy to a resident or
9 directly threatened a resident.

10 SECTION 15. 50.04 (4) (d) 1. b. of the statutes is repealed and recreated to read:

11 50.04 (4) (d) 1. b. In any 15-month period during the 36 months immediately
12 preceding the period specified in subd. 1. a., the nursing home received written notice
13 of a violation of a state statute or rule or a federal statute or regulation that involved
14 either immediate jeopardy or a high risk of death or substantial harm to a resident;
15 a class "A" violation; or 3 or more class "B" violations or situations that either
16 constituted actual harm not involving immediate jeopardy to a resident or directly
17 threatened a resident.

18 SECTION 16. 50.04 (4) (d) 2. of the statutes is amended to read:

19 50.04 (4) (d) 2. A suspension of admissions under subd. 1. shall begin 90 days
20 after a nursing home received its last notice of violation for a class "A" or class "B"
21 violation or situation specified in subd. 1. a. if the department determines that the
22 violation or situation remains uncorrected 90 days after the nursing home received
23 the last notice of the violation or situation. If the nursing home earlier indicates to

1 the department that the violation or situation has been corrected, ~~but the~~
2 ~~department is unable to verify that the violation has been corrected~~, a suspension of
3 admissions under subd. 1. shall begin on the day that the department makes a return
4 visit to the nursing home and determines that the violation or situation has not been
5 corrected. A suspension of admissions under subd. 1. shall remain in effect until the
6 department determines that ~~all class "A" and class "B" violations by the nursing~~
7 ~~home have been~~ has corrected the violation or situation. Admission of a new resident
8 during the period for which admissions have been suspended constitutes a class "B"
9 violation.

10 SECTION 17. 50.04 (4) (e) 1. of the statutes is amended to read:

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

1 request for hearing, within 30 days of the department's acceptance of a nursing
2 home's plan of correction, or within 30 days of the department's imposition of a plan
3 of correction, whichever is later. The division shall send notice to the nursing home
4 in conformance with s. 227.44. Issues litigated at the hearing may not be relitigated
5 at subsequent hearings under this paragraph arising out of the same violation or
6 deficiency.

7 SECTION 18. 50.04 (5) (title) of the statutes is amended to read:

8 50.04 (5) (title) FORFEITURES AND PENALTY ASSESSMENTS.

9 SECTION 19. 50.04 (5) (a) (intro.) of the statutes is amended to read:

10 50.04 (5) (a) *Amounts.* (intro.) Any operator or owner of a nursing home which
11 that is in violation of this subchapter or any rule promulgated thereunder under this
12 subchapter may be subject to the forfeitures specified in this section. If the
13 department imposes a forfeiture under this subsection, the department shall also
14 impose a penalty assessment under this subsection.

15 SECTION 20. 50.04 (5) (a) 1., 2. and 3. (intro.) of the statutes are amended to
16 read:

17 50.04 (5) (a) 1. A class "A" violation may be subject to a forfeiture of ~~not more~~
18 than \$250 and a penalty assessment of not more than \$10,000 for each violation.

19 2. A class "B" violation may be subject to a forfeiture of ~~not more than \$125 and~~
20 a penalty assessment of not more than \$5,000 for each violation.

21 3. (intro.) A class "C" violation may be subject to a forfeiture of ~~not more than~~
22 \$60 and a penalty assessment of not more than \$500. No forfeiture or penalty
23 assessment may be assessed imposed for a class "C" violation unless at least one of
24 the following applies:

25 SECTION 21. 50.04 (5) (a) 4. of the statutes is amended to read:

1 50.04 (5) (a) 4. Notwithstanding subds. 1., 2., and 3., if the violation or group
2 of violations results from inadequate staffing, the combined amount of the forfeiture
3 and penalty assessment that the department may ~~assess~~ impose shall be no less than
4 the difference between the cost of the staff actually employed and the estimated cost
5 of the staff required. The number of staff required shall be determined by the
6 provider contract, the court order, or the department, by rule, whichever is greatest.
7 The inadequate staff shall be presumed to exist from the date of the notice of
8 violation.

9 SECTION 22. 50.04 (5) (a) 5. a., b. and d. of the statutes are amended to read:

10 50.04 (5) (a) 5. a. A nursing home that violates a statute or rule resulting in a
11 class "A" violation and that has received a notice of violation for a class "A" violation
12 within the previous 3-year period involving the same situation shall be subject to a
13 forfeiture 3 times the forfeiture amount authorized for a class "A" violation and a
14 penalty assessment 3 times the penalty assessment amount authorized for a class
15 "A" violation.

16 b. Except as provided in subd. 5. a., a nursing home that violates a statute or
17 rule resulting in a class "A" or class "B" violation and that has received a notice of a
18 class "A" or class "B" violation of the same statute or rule within the previous 3-year
19 period may be subject to a forfeiture 3 times the forfeiture amount authorized for the
20 most recent class of violation involved and a penalty assessment 3 times the penalty
21 assessment amount authorized for the most recent class of violation involved.

22 d. The forfeiture amount and penalty assessment amounts that is are tripled
23 under this subdivision shall be the amount-assessed forfeiture and penalty
24 assessment amounts imposed after all appeals have been exhausted. If an
25 assessment imposition of a forfeiture and penalty assessment is not contested and

1 the forfeiture ~~is~~ and penalty assessment are paid as provided in par. (fm), the
2 forfeiture ~~amount~~ and penalty assessment amounts that ~~is~~ are tripled ~~is~~ are the
3 amount assessed amounts imposed after the reduction specified in par. (fm).

4 SECTION 23. 50.04 (5) (a) 5m. of the statutes is repealed. *LINE IN*

5 SECTION 24. 50.04 (5) (a) 6. of the statutes is renumbered 50.04 (5) (a) 6. (intro.)
6 and amended to read:

7 50.04 (5) (a) 6. (intro.) If a licensee fails to correct a violation within the time
8 specified in the notice of violation or approved plan of correction, or within the
9 extended correction time granted under sub. (4) (c) 4., or if a violation continues after
10 a report of correction, the department may assess upon the licensee ~~a~~ for each day
11 of the continuing violation whichever of the following is applicable:

12 a. A separate forfeiture of not more than \$10,000 \$250 and a separate penalty
13 assessment of not more than \$10,000 for a class "A" violations, and may assess a
14 violation.

15 b. A separate forfeiture of not more than \$5,000 \$125 and a separate penalty
16 assessment of not more than \$5,000 for a class "B" violations, for each day of
17 continuing violation.

18 SECTION 25. 50.04 (5) (b) (intro.) of the statutes is amended to read:

19 50.04 (5) (b) *Factors in assessment imposition of forfeitures and penalty*
20 assessments. (intro.) In determining whether to impose a forfeiture ~~is to be imposed~~
21 and penalty assessment for a violation and in fixing the amount of the ~~forfeiture to~~
22 be imposed penalty assessment, if any, for a violation, the following factors shall be
23 considered:

24 SECTION 26. 50.04 (5) (c) of the statutes is amended to read:

1 50.04 (5) (c) *Assessment Imposition of forfeitures and penalty assessments;*
 2 *powers and duties of department.* The department may directly assess impose
 3 forfeitures ~~and penalty assessments~~ provided for under par. (a). If the department
 4 determines that a forfeiture ~~and penalty assessment~~ should be assessed ~~imposed~~ for
 5 a particular violation or for failure to correct it, ~~it~~ the department shall send a notice
 6 of ~~assessment imposition of forfeiture and penalty assessment~~ to the nursing home.
 7 The notice shall specify the ~~amount~~ amounts of the forfeiture ~~assessed and penalty~~
 8 ~~assessment imposed~~, the violation, and the statute or rule alleged to have been
 9 violated, and shall inform the licensee of the right to hearing under par. (e). If the
 10 department does not issue a notice of forfeiture and penalty assessment within 120
 11 days after the date on which a nursing home receives the notice of a violation, the
 12 department may not impose a forfeiture or penalty assessment for the violation.

LENE W,
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 REFERENCES
 -
 PENALTY
 ASSESSMENTS

13 SECTION 27. 50.04 (5) (d) (title) of the statutes is amended to read:

14 50.04 (5) (d) (title) *Forfeiture and penalty assessment period.*

15 SECTION 28. 50.04 (5) (d) 1. of the statutes is amended to read:

16 50.04 (5) (d) 1. In the case of a class "B" violation, no forfeiture or penalty
 17 assessment may be assessed imposed for the violation from the day following the
 18 date of discovery until the date of notification. If the department fails to approve or
 19 reject a plan of correction within 15 days after its receipt of a complete plan, no
 20 forfeiture or penalty assessment may be imposed for the period beginning with the
 21 15th day after receipt and ending when notice of approval or rejection is received by
 22 the home. If a plan of correction is approved and carried out, no forfeiture or penalty
 23 assessment may be assessed imposed during the time period specified in the
 24 approved plan of correction, commencing on the day the plan of correction is received
 25 by the department.

1 SECTION 29. 50.04 (5) (d) 2. (intro.) of the statutes is amended to read:

2 50.04 (5) (d) 2. (intro.) In the case of a class "C" violation for which a notice of
3 violation has been served, a forfeiture and penalty assessment may be assessed
4 imposed for whichever of the following periods is applicable:

5 SECTION 30. 50.04 (5) (dm) (intro.) of the statutes is amended to read:

6 50.04 (5) (dm) (intro.) *Forfeiture and penalty assessment imposition date.* In
7 the case of a class "B" violation, the department may not ~~assess~~ impose a forfeiture
8 or a penalty assessment upon a nursing home until:

9 SECTION 31. 50.04 (5) (e) of the statutes is amended to read:

10 50.04 (5) (e) *Forfeiture and penalty assessment appeal hearing.* A nursing
11 home may contest an ~~assessment~~ imposition of a forfeiture and penalty assessment
12 by sending, within ~~10~~ 60 days after receipt of notice of ~~a contested action~~ the
13 imposition of the forfeiture and penalty assessment, a written request for hearing *CEASE IN,*
14 under s. 227.44 to the division of hearings and appeals created under s. 15.103 (1). *AST*
15 The administrator of the division may designate a hearing examiner to preside over *TAKE*
16 the case and recommend a decision to the administrator under s. 227.46. The *OUT*
17 decision of the administrator of the division shall be the final administrative *ADVISORS*
18 decision. The division shall commence the hearing within 30 days of receipt of the *TO*
19 request for hearing and shall issue a final decision within 15 days after the close of *PENALTY*
20 the hearing. Proceedings before the division are governed by ch. 227. In any petition *ASSESSMENTS*
21 for judicial review of a decision by the division, the party, other than the petitioner,
22 who was in the proceeding before the division shall be the named respondent. If
23 after receipt of notice of imposition of a forfeiture and penalty assessment, a nursing
24 home that has timely requested a hearing under sub. (4) (e) on the notice of violation
25 under sub. (4) for which the forfeiture and penalty assessment were imposed

1 requests a hearing under this paragraph on the imposition of the forfeiture and
2 penalty assessment, the hearing on the notice of violation under sub. (4) and the
3 hearing on the imposition of the forfeiture and penalty assessment shall be
4 consolidated.

5 SECTION 32. 50.04 (5) (f) of the statutes is amended to read:

6 50.04 (5) (f) *Forfeitures ~~and penalty assessments~~ paid within 10 60 days.* All
7 forfeitures ~~and penalty assessments~~ shall be paid to the department within 10 60
8 days of receipt of notice of assessment imposition of the forfeiture and penalty
9 assessment or, if the forfeiture ~~or penalty assessment~~ is contested under par. (e),
10 within 10 60 days of receipt of the final decision after exhaustion of administrative
11 review, unless the final decision is appealed and the order is stayed by court order
12 under s. 50.03 (11). The department shall remit all forfeitures paid to the secretary
13 of administration for deposit in the school fund. All moneys collected as penalty
14 assessments under this subsection shall be credited to the appropriation account
15 under s. 20.435 (6) (ge).

16 SECTION 33. 50.04 (5) (fm) of the statutes is amended to read:

17 50.04 (5) (fm) *Forfeiture ~~and penalty assessment~~ reduction for timely payment.*
18 If a nursing home does not contest a notice of violation under sub. (4) (e) and does not
19 contest an assessment imposition of a forfeiture ~~and penalty assessment~~ under par.
20 (e) for a class "A" or class "B" violation and pays the forfeiture ~~and penalty~~
21 ~~assessment~~ to the department within 10 60 days after receipt of the notice of
22 assessment imposition of the forfeiture and penalty assessment, the department
23 shall reduce the amount of the assessment forfeiture and penalty assessment by 35%
24 35 percent.

25 SECTION 34. 50.04 (5) (fr) of the statutes is amended to read:

1 ~~50.04 (5) (fr) Report to the legislature. Annually, the department shall submit~~
2 ~~a report to the legislature under s. 13.172 (2) that specifies for the previous year the~~
3 ~~number of class "A" violations, the amount amounts of the forfeiture assessment and~~
4 ~~penalty assessment imposed for each of those violations and, if known, the amount~~
5 ~~amounts of the forfeiture and penalty assessment actually paid and collected with~~
6 ~~respect to those violations. The report shall also include an explanation for any~~
7 ~~assessment that was imposition of a forfeiture and penalty assessment that totaled~~
8 ~~less than \$2,500 for the violations specified in the report.~~

9 SECTION 35. 50.04 (5) (g) of the statutes is amended to read:

10 ~~50.04 (5) (g) Enforcement by attorney general. The attorney general may bring~~
11 ~~an action in the name of the state to collect any forfeiture or penalty assessment~~
12 ~~imposed under this section if the forfeiture or penalty assessment has not been paid~~
13 ~~following the exhaustion of all administrative and judicial reviews. The only issue~~
14 ~~to be contested in any such action shall be whether the forfeiture or penalty~~
15 ~~assessment has been paid.~~

16 SECTION 36. 50.04 (6) (a) of the statutes is repealed and recreated to read:

17 50.04 (6) (a) Power of department. 1. In addition to the right to impose
18 ~~forfeitures and penalty assessments~~ under sub. (5), the department may issue a
19 conditional license to any nursing home if the department finds that any of the
20 following is true:

21 a. A class "A" or class "B" violation, as defined in sub. (4), continues to exist in
22 the nursing home.

23 b. A federal violation continues to exist that constitutes immediate jeopardy,
24 high risk of death, substantial harm, or actual harm not involving immediate
25 jeopardy to a resident, or that directly threatens a resident.

1 2. The issuance of a conditional license shall revoke any outstanding license
2 held by the nursing home.

3 3. The nursing home may seek review of a decision to issue a conditional license
4 as provided in s. 50.03 (5).

5 **SECTION 37.** 50.05 (2) (f) (intro.) of the statutes is amended to read:

6 50.05 (2) (f) (intro.) The facility is a nursing facility that is in violation of s.
7 49.498 ~~or~~, a rule promulgated under s. 49.498, or a requirement under 42 CFR 483
8 related to the operation of a nursing facility, meets the criteria established by rule
9 under s. 49.498 (14) (c) for placement of a monitor or appointment of a receiver, and
10 there is a need for placement of a monitor or appointment of a receiver during the
11 period that any of the following applies:

12 **SECTION 38.** 50.05 (2) (f) 2. of the statutes is amended to read:

13 50.05 (2) (f) 2. The nursing facility institutes improvements in order to bring
14 the nursing facility into compliance with the requirements of s. 49.498 ~~or~~, a rule
15 promulgated under s. 49.498, or a requirement under 42 CFR 483 related to the
16 operation of a nursing facility.

****NOTE: I do not believe it is necessary to include the specific reference to federal regulations in s. 50.05 (2) (c) because the violation of federal regulations is one of the bases for revocation under s. 50.03 (5). I did, however, feel that it was needed to add the citation to the introduction for s. 50.05 (2) (f) so it followed with the addition of the citation to s. 50.05 (2) (f) 2.

17 ~~**SECTION 39.** 50.15 of the statutes is created to read:~~

18 ~~**50.15 Nursing home improvement grants.** From the appropriation~~
19 ~~account under s. 20.435 (6) (ge), the department shall make grants to nursing homes~~
20 ~~to fund quality-of-care improvement projects. The department shall promulgate~~
21 ~~rules that specify the eligibility criteria and application procedures for receipt of a~~
22 ~~grant under this section.~~

1 **SECTION 40. Nonstatutory provisions.**

2 (1) ~~NURSING HOME IMPROVEMENT GRANTS.~~ The department of health services
3 shall submit ~~in proposed form the rules required under section 50.15 of the statutes,~~
4 as created by this act, to the legislative council staff under section 227.15 (1) of the
5 statutes no later than the first day of the 13th month beginning after the effective
6 date of this subsection.

7 **SECTION 41. Initial applicability.**

8 (1) HEARING REQUESTS. The treatment of section 50.04 (4) (e) 1. and (5) (e) of the
9 statutes first applies to requests for hearings related to a notice of violation, a report
10 notation, a of plan correction, or a rejection of a plan of correction that is issued on
11 the effective date of this subsection.

12 (2) CONDITIONAL LICENSURE. The treatment of sections 50.01 (1k), (1nd), and
13 (1ng) and 50.04 (6) (a) of the statutes first applies to violations that continue to exist
14 on the effective date of this subsection.

15 (3) SUSPENSION OF ADMISSIONS. The treatment of sections 50.01 (1k), (1nd), and
16 (1ng) and 50.04 (4) (d) 1. a. and b. and (d) 2. of the statutes first applies to written
17 notice of violations received on the effective date of this subsection.

18 (4) SUSPENSION OR REVOCATION OF LICENSURE. The treatment of section 50.03 (5)
19 (a) and (b) of the statutes first applies to findings made by the department of health
20 services on the effective date of this subsection.

21 (5) PROVISIONAL LICENSE. The treatment of section 50.03 (4m) (a) of the statutes
22 first applies to inspections made by the department of health services on the effective
23 date of this subsection.

Dodge, Tamara

From: Smyrski, Rose
Sent: Thursday, May 19, 2011 4:35 PM
To: Dodge, Tamara
Subject: FW: Dual Enforcement draft
Attachments: Dual Enforcement Preliminary Draft (needs changes).pdf

Tammy

Attached is a marked up version of the draft – however it was a bit aggressive and some sections were inadvertently crossed off. Hence, see the part below: any questions please let me know

- The marked-up draft should not change the treatment of ICFs-MR and the federal and state enforcement systems (with respect to ICFs-MR, the P2 draft is okay and shouldn't be changed as indicated in the marked-up version). The dual system should be maintained for ICFs-MR because the federal enforcement options are very limited.

pull: penalty & assessment
& nursing home improvement grants