

Chapter HSS 132

NURSING HOMES

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Note: Chapter H 32 as it existed on July 31, 1982 was repealed and a new chapter HSS 132 was created effective August 1, 1982.

Subchapter I—General

HSS 132.11 Statutory authority. This chapter is promulgated under the authority of s. 50.02, Stats., to provide conditions of licensure for nursing homes.

History: Cr. Register, July, 1982, No. 319, eff. 8-1-82.

HSS 132.12 Scope. All nursing homes licensed under s. 50.03, Stats., are subject to all the provisions of this chapter, except for those provisions that apply only to particular licensure categories, and except for those nursing homes regulated by ch. HSS 134. Nursing homes include those owned and operated by the state, counties, municipalities, or other public bodies.

History: Cr. Register, July, 1982, No. 319, eff. 8-1-82.

HSS 132.13 Definitions. In this chapter:

(1) "Abuse" means any single or repeated act of force, violence, harassment, deprivation, neglect or mental pressure which reasonably could cause physical pain or injury, or mental anguish or fear.

(2) "Ambulatory" means able to walk without assistance.

(3) "Department" means the Wisconsin department of health and social services.

(4) "Developmental disability" means mental retardation or a related condition, such as cerebral palsy, epilepsy or autism, but excluding mental illness and infirmities of aging, which is:

(a) Manifested before the individual reaches age 22;

(b) Likely to continue indefinitely; and

(c) Results in substantial functional limitations in 3 or more of the following areas of major life activity:

1. Self-care;

2. Understanding and use of language;

3. Learning;

4. Mobility;

5. Self-direction; and

6. Capacity for independent living.

(5) "Dietitian" means a person who either:

(a) Is eligible for registration as a dietitian by the commission on dietetic registration of the American dietetic association under its requirements in effect on January 17, 1982; or

(b) Has a baccalaureate degree with major studies in food and nutrition, dietetics, or food service management, and has one year of supervisory experience in the dietetic service of a health care institution.

(6) "Direct supervision" means supervision of an assistant by a supervisor who is present in the same building as the assistant while the assistant is performing the supervised function.

(7) "Facility" means a nursing home subject to the requirements of this chapter.

(8) "Full-time" means at least 37.5 hours each week devoted to facility business.

(9) "Intermediate care facility" means a nursing home which is licensed by the department as an intermediate care facility to provide intermediate nursing care.

(10) "Intermediate nursing care" means basic care consisting of physical, emotional, social and other rehabilitative services under periodic medical supervision. This nursing care requires the skill of a registered nurse for observation and recording of reactions and symptoms, and for supervision of nursing care. Most of the residents have long-term illnesses or disabilities which may have reached a relatively stable plateau. Other residents whose conditions are stabilized may need medical and nursing services to maintain stability. Essential supportive consultant services are provided.

(11) "Licensed practical nurse" means a person licensed as a licensed practical nurse under ch. 441, Stats.

(12) "Limited nursing care" means simple nursing care procedures required by residents with long-term illnesses or disabilities in order to maintain stability and which can be provided safely only by or under the supervision of a person no less skilled than a licensed practical nurse who works under the direction of a registered nurse. Supervision of the physical, emotional, social and rehabilitative needs of the resident is the responsibility of the appropriate health care provider serving under the direction of a physician.

(13) "Mobile nonambulatory" means unable to walk without assistance, but able to move from place to place with the use of a device such as a walker, crutches, a wheel chair or a wheeled platform.

(14) "Nonambulatory" means unable to walk without assistance.

(15) "Nonmobile" means unable to move from place to place.

(16) "Nurse" means a registered nurse or licensed practical nurse.

(17) "Nurse practitioner" means a registered professional nurse who meets the requirements of s. HSS 105.20 (2) (b).

(18) "Nursing assistant" means a person who is employed primarily to provide direct care services to residents but is not registered or licensed under ch. 441, Stats.

(19) "Personal care" means personal assistance, supervision and a suitable activities program. In addition:

(a) Provision is made for periodic medical supervision and other medical services as needed. These services are for individuals who do not need nursing care but do need the services provided by this type of facility in meeting their needs. Examples of these individuals are those referred from institutions for the developmentally disabled, those disabled from aging, and the chronically ill whose conditions have become stabilized;

(b) The services provided are chiefly characterized by the fact that they can be provided by personnel other than those trained in medical or allied fields. The services are directed toward personal assistance, supervision, and protection;

(c) The medical service emphasizes a preventive approach of periodic medical supervision by the resident's physician as part of a formal medical program that will provide required consultation services and also cover emergencies; and

(d) The dietary needs of residents are met by the provision of an adequate general diet or by therapeutic, medically prescribed diets.

(20) "Pharmacist" means a person registered as a pharmacist under ch. 450, Stats.

(21) "Physical therapist" means a person licensed to practice physical therapy under ch. 448, Stats.

(22) "Physician" means a person licensed to practice medicine or osteopathy under ch. 448, Stats.

(23) "Physician extender" means a person who is a physician's assistant or a nurse practitioner acting under the general supervision and direction of a physician.

(24) "Physician's assistant" means a person certified under ch. 448, Stats., to perform as a physician's assistant.

(25) "Practitioner" means a physician, dentist, podiatrist or other person permitted by Wisconsin law to distribute, dispense and administer a controlled substance in the course of professional practice.

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

(27) "Registered nurse" means a person who holds a certificate of registration as a registered nurse under ch. 441, Stats.

(28) "Resident" means a person cared for or treated in any facility on a 24-hour basis irrespective of how the person has been admitted to the facility.

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

(30) "Short-term care" means recuperative care or respite care.

(31) "Skilled nursing facility" means a nursing home which is licensed by the department to provide skilled nursing services.

(32) (a) "Skilled nursing services" means those services furnished pursuant to a physician's orders which:

1. Require the skills of professional personnel such as registered or licensed practical nurses; and

2. Are provided either directly by or under the supervision of these personnel.

(b) In determining whether a service is skilled, the following criteria shall be used:

1. The service would constitute a skilled service where the inherent complexity of a service prescribed for a resident is such that it can be safely and effectively performed only by or under the supervision of professional personnel;

2. The restoration potential of a resident is not the deciding factor in determining whether a service is to be considered skilled or unskilled. Even where full recovery or medical improvement is not possible, skilled care may be needed to prevent, to the extent possible, deterioration of the condition or to sustain current capacities; and

3. A service that is generally unskilled would be considered skilled where, because of special medical complications, its performance or supervision or the observation of the resident necessitates the use of skilled nursing personnel.

(33) "Specialized consultation" means the provision of professional or technical advice, such as systems analysis, crisis resolution or inservice training, to assist the facility in maximizing service outcomes.

(34) "Supervision" means at least intermittent face-to-face contact between supervisor and assistant, with the supervisor instructing and overseeing the assistant, but does not require the continuous presence of the supervisor in the same building as the assistant.

(35) "Tour of duty" means a portion of the day during which a shift of resident care personnel are on duty.

(36) "Unit dose drug delivery system" means a system for the distribution of medications in which single doses of medications are individually packaged and sealed for distribution to residents.

History: Cr. Register, July, 1982, No. 319, eff. 8-1-82; emerg. renum. (3) to (24) to be (4) to (25), cr. (3), eff. 9-15-86; r. and recr. Register, January, 1987, No. 373, eff. 2-1-87; am. (4), Register, February, 1989, No. 398, eff. 3-1-89.

HSS 132.14 Licensure. (1) CATEGORIES. Nursing homes shall elect one of the following categories of licensure:

- (a) Skilled nursing facility; or
- (b) Intermediate care facility.

(2) APPLICATION. Application for a license shall be made on a form provided by the department.

Note: To obtain a copy of the application form for a license to operate a nursing home, write: Bureau of Quality Compliance, Division of Health, P.O. Box 309, Madison, Wisconsin 53701.

(3) REQUIREMENTS FOR LICENSURE. (a) In every application the license applicant shall provide the following information:

1. The identities of all persons or business entities having the authority, directly or indirectly, to direct or cause the direction of the management or policies of the facility;

2. The identities of all persons or business entities having any ownership interest whatsoever in the facility, whether direct or indirect, and whether the interest is in the profits, land or building, including owners of any business entity which owns any part of the land or building;

3. The identities of all creditors holding a security interest in the premises, whether land or building; and

4. In the case of a change of ownership, disclosure of any relationship or connection between the old licensee and the new licensee, and between any owner or operator of the old licensee and the owner or operator of the new licensee, whether direct or indirect.

(b) The applicant shall provide any additional information requested by the department during its review of the license application.

(c) The applicant shall submit evidence to establish that he or she has sufficient resources to permit operation of the facility for a period of 6 months.

(d) No license may be issued unless and until the applicant has supplied all information requested by the department.

(4) REVIEW OF THE APPLICATION. (a) *Investigation.* After receiving a complete application, the department shall investigate the applicant to determine if the applicant is fit and qualified to be a licensee and to determine if the applicant is able to comply with this chapter.

(b) *Fit and qualified.* In making its determination of the applicant's fitness, the department shall review the information contained in the application and shall review any other documents that appear to be relevant in making that determination, including survey and complaint investigation findings for each facility with which the applicant is affiliated or was affiliated during the past 5 years. The department shall consider at least the following:

1. Any class A or class B violation, as defined under s. 50.04, Stats., issued by the department relating to the applicant's operation of a residential or health care facility in Wisconsin;

2. Any adverse action against the applicant by the licensing agency of this state or any other state relating to the applicant's operation of a residential or health care facility. In this subdivision, "adverse action" means an action initiated by a state licensing agency which resulted in the denial, suspension or revocation of the license of a residential or health care facility operated by the applicant;

3. Any adverse action against the applicant based upon noncompliance with federal statutes or regulations in the applicant's operation of a residential or health care facility in this or any other state. In this subdivision, "adverse action" means an action by a state or federal agency which resulted in the denial, non-renewal, cancellation or termination of certification of a residential or health care facility operated by the applicant;

4. The frequency of noncompliance with state licensure and federal certification laws in the applicant's operation of a residential or health care facility in this or any other state;

5. Any denial, suspension, enjoining or revocation of a license the applicant had as a health care provider as defined in s. 146.81 (1), Stats., or any conviction of the applicant for providing health care without a license;

6. Any conviction of the applicant for a crime involving neglect or abuse of patients or of the elderly or involving assaultive behavior or wanton disregard for the health or safety of others;

7. Any conviction of the applicant for a crime related to the delivery of health care services or items;

8. Any conviction of the applicant for a crime involving controlled substances;

9. Any knowing or intentional failure or refusal by the applicant to disclose required ownership information; and

10. Any prior financial failures of the applicant that resulted in bankruptcy or in the closing of an inpatient health care facility or the moving of its residents.

(5) ACTION BY THE DEPARTMENT. Within 60 days after receiving a complete application for a license, the department shall either approve the Register, February, 1989, No. 398

application and issue a license or deny the application. The department shall deny a license to any applicant who has a history, determined under sub. (4) (b) 1 to 4, of substantial noncompliance with federal or this state's or any state's nursing home requirements, or who fails under sub. (4) (b) 5 to 10, to qualify for a license. If the application for a license is denied, the department shall give the applicant reasons, in writing, for the denial and shall identify the process for appealing the denial.

(6) **TYPES OF LICENSE.** (a) *Probationary license.* If the applicant has not been previously licensed under this chapter or if the facility is not in operation at the time application is made, the department shall issue a probationary license. A probationary license shall be valid for 12 months from the date of issuance unless sooner suspended or revoked under s. 50.03 (5), Stats. If the applicant is found to be fit and qualified under sub. (4) and in substantial compliance with this chapter, the department shall issue a regular license upon expiration of the probationary license. The regular license shall be valid for a period of one year from the date of issuance unless sooner suspended or revoked.

(b) *Regular license.* If the applicant has been previously licensed, the department shall issue a regular license if the applicant is found to be in substantial compliance with this chapter. A regular license shall be valid for a period of one year from the date of issuance unless sooner suspended or revoked.

(7) **SCOPE OF LICENSE.** (a) The license is issued only for the premises and the persons named in the license application, and may not be transferred or assigned by the licensee.

(b) The license shall state any applicable restrictions, including maximum bed capacity and the level of care that may be provided, and any other limitations that the department considers appropriate and necessary taking all facts and circumstances into account.

(c) A licensee shall fully comply with all requirements and restrictions of the license.

History: Cr. Register, July, 1982, No. 319, eff. 8-1-82; cr. (5), Register, November, 1985, No. 359, eff. 12-1-85; r. and recr., Register, January, 1987, No. 373, eff. 2-1-87; am. (3) (c), renun. (4) to (6) to be (5) to (7) and am. (5) and (6) (a), cr. (4), Register, February, 1989, No. 398, eff. 3-1-89.

HSS 132.15 Certification for medical assistance. For requirements for certification under the medical assistance program, see ch. HSS 105.

History: Cr. Register, July, 1982, No. 319, eff. 8-1-82.

Subchapter II—Enforcement

HSS 132.21 Waivers and variances. (1) **DEFINITIONS.** As used in this section:

(a) "Waiver" means the grant of an exemption from a requirement of this chapter.

(b) "Variance" means the granting of an alternate requirement in place of a requirement of this chapter.

(2) **REQUIREMENTS FOR WAIVERS OR VARIANCES.** A waiver or variance may be granted if the department finds that the waiver or variance will

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not adversely affect the health, safety, or welfare of any resident and that:

(a) Strict enforcement of a requirement would result in unreasonable hardship on the facility or on a resident; or

(b) An alternative to a rule, including new concepts, methods, procedures, techniques, equipment, personnel qualifications, or the conducting of pilot projects, is in the interests of better care or management.

(3) PROCEDURES. (a) *Applications*. 1. All applications for waiver or variance from the requirements of this chapter shall be made in writing to the department, specifying the following:

a. The rule from which the waiver or variance is requested;

b. The time period for which the waiver or variance is requested;

c. If the request is for a variance, the specific alternative action which the facility proposes;

d. The reasons for the request; and

e. Justification that sub. (2) would be satisfied.

2. Requests for a waiver or variance may be made at any time.

3. The department may require additional information from the facility prior to acting on the request.

(b) *Grants and denials*. 1. The department shall grant or deny each request for waiver or variance in writing. Notice of denials shall contain the reasons for denial. If a notice of denial is not issued within 60 days after the receipt of a complete request, the waiver or variance shall be automatically approved.

2. The terms of a requested variance may be modified upon agreement between the department and a facility.

3. The department may impose such conditions on the granting of a waiver or variance which it deems necessary.

4. The department may limit the duration of any waiver or variance.

(c) *Hearings*. 1. Denials of waivers or variances may be contested by requesting a hearing as provided by ch. 227, Stats.

2. The licensee shall sustain the burden of proving that the denial of a waiver or variance was unreasonable.

(d) *Revocation*. The department may revoke a waiver or variance if:

1. It is determined that the waiver or variance is adversely affecting the health, safety or welfare of the residents; or

2. The facility has failed to comply with the variance as granted; or

3. The licensee notifies the department in writing that it wishes to relinquish the waiver or variance and be subject to the rule previously waived or varied; or

(c) *Alternate placement.* 1. Except for removals under par. (b) 1 and 5, no resident may be involuntarily removed unless an alternative placement is arranged for the resident pursuant to s. HSS 132.31 (1) (j).

2. No resident may be involuntarily removed under par. (b) 1 for non-payment of charges if the resident meets both of the following conditions:

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

b. The funding of the resident's care in the nursing home under s. 49.45 (6m), Stats., is reduced or terminated because either the resident requires a level or type of care which is not provided by the nursing home or the nursing home is found to be an institution for mental diseases as defined under 42 CFR 435.1009.

(3) **PERMANENT REMOVALS.** (a) *Notice.* The facility shall provide a resident, the resident's physician, and guardian, relative, or other responsible person, at least 30 days notice of removal under sub. (2) (b), unless the continued presence of the resident endangers the health, safety, or welfare of the resident or other residents.

(b) *Removal procedures.* 1. Unless circumstances posing a danger to the health, safety, or welfare of a resident require otherwise, at least 7 days before the planning conference required by subd. 2., the resident, guardian, if any, any appropriate county agency, and others designated by the resident, including the resident's physician, shall be given a notice containing the time and place of the conference; a statement informing the resident that any persons of the resident's choice may attend the conference; and the procedure for submitting a complaint to the department.

2. Unless the resident is receiving respite care or unless precluded by circumstances posing a danger to the health, safety, or welfare of a resident, prior to any involuntary removal under sub. (2) (b), a planning conference shall be held at least 14 days before removal with the resident, guardian, if any, any appropriate county agency, and others designated by the resident, including the resident's physician, to review the need for relocation, assess the effect of relocation on the resident, discuss alternative placements, and develop a relocation plan which includes at least those activities listed in subd. 3.

Note: The discharge planning conference requirement for a resident receiving recuperative care is found in s. HSS 132.70 (6).

3. Removal activities shall include:

a. Counseling regarding the impending removal;

b. The opportunity for the resident to make at least one visit to the potential alternative placement, if any, including a meeting with that facility's admissions staff, unless medically contraindicated or waived by the resident;

c. Assistance in moving the resident and the resident's belongings and funds to the new facility or quarters; and

d. Provisions for needed medications and treatments during relocation.

4. A resident who is removed at the resident's request shall be advised of the assistance required by subd. 3. and provided such assistance upon request.

(c) *Discharge records.* Upon removal of a resident, the documents required by s. HSS 132.45 (5) (1) and (6) (h) shall be prepared and provided to the facility admitting the resident, along with any other information about the resident needed by the admitting facility.

(4) **TRANSFER AGREEMENTS.** (a) *Requirement.* Each facility shall have in effect a transfer agreement with one or more hospitals under which inpatient hospital care or other hospital services are available promptly to the facility's residents when needed. Each intermediate care facility shall also have in effect a transfer agreement with one or more skilled care facilities.

(b) *Transfer of residents.* A hospital and a facility shall be considered to have a transfer agreement in effect if there is a written agreement between them or, when the 2 institutions are under common control, if there is a written statement by the person or body which controls them, which gives reasonable assurance that:

1. Transfer of residents will take place between the hospital and the facility ensuring timely admission, whenever such transfer is medically appropriate as determined by the attending physician; and

2. There shall be interchange of medical and other information necessary for the care and treatment of individuals transferred between the institutions, or for determining whether such individuals can be adequately cared for somewhere other than in either of the institutions.

(c) *Exemption.* A facility which does not have a resident transfer agreement in effect, but which is found by the department to have attempted in good faith to enter into such an agreement with a hospital sufficiently close to the facility to make feasible the transfer between them of residents and the information referred to in par. (b) 2., shall be considered to have such an agreement in effect if and for so long as the department finds that to do so is in the public interest and essential to ensuring skilled nursing facility services in the community.

(5) **BEDHOLD.** (a) *Bedhold.* A resident who is on leave or temporarily discharged, as to a hospital for surgery or treatment, and has expressed an intention to return to the facility under the terms of the admission statement for bedhold, shall not be denied readmission unless, at the time readmission is requested, a condition of sub. (2) (b) has been satisfied.

(b) *Limitation.* The facility shall hold a resident's bed under par. (a) until the resident returns, until the resident waives his or her right to have the bed held, or up to 15 days following the temporary leave or discharge, whichever is earlier.

Note: See s. HSS 107.09 for medical assistance bedhold rules.

History: Cr. Register, July, 1982, No. 319, eff. 8-1-82; cr. (2) (b) 8. and 9., am. (2) (c), (3) (b) 2. and (c), Register, January, 1987, No. 373, eff. 2-1-87; renum. (2) (c) to be (2) (c) 1. and am., cr. (2) (c) 2., Register, February, 1989, No. 398, eff. 3-1-89.

HSS 132.54 Transfer within the facility. Prior to any transfer of a resident between rooms or beds within a facility, the resident or guardian, if Register, February, 1989, No. 398