

CHAPTER 170, Laws of 1977

AN ACT to repeal 50.03 (3) (a), (4) (b) and (6); to renumber 50.03 (1) (c) and (5) and 146.309; to renumber and amend 50.02 (4); to amend 50.03 (3) (b) 2. e and 4, (4) (a) 1, (c) and (e), (8) and (10) and 50.09 (1) (intro.) and (2), as renumbered; to repeal and recreate 50.01, 50.02 (title), (1), (2) (a) and (3) and 50.03 (1) (exc. (1) (c)), (2) (c) and (4) (d); and to create 15.101 (9), 15.103, 50.025 (title), 50.03 (2) (d) and (e), (2m), (3) (e), (4) (f), (4m), (5) (b) to (d), (5m), (11), (13) and (14), 50.04 (title), (1) and (3) to (6), 50.053, 50.07 and 50.11 of the statutes, relating to enforcement of nursing home regulations, creating a division of nursing home forfeiture appeals, providing a penalty and increasing appropriations.

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

SECTION 1. Legislative intent. The intent of this legislation is to establish fair and effective methods for enforcement action regarding facilities licensed under chapter 50 of the statutes. It is further intended that this legislation be used to encourage compliance with rules and provide full opportunity to settle enforcement actions outside of the court system. It is intended that the use of strong sanctions will bring compliance in the case of homes which are in serious or chronic violation of state regulations. The legislation is also intended to provide for the due process and other rights of facility residents and operators and of the citizens of Wisconsin.

SECTION 2. 15.101 (9) of the statutes is created to read:

15.101 (9) **DIVISION OF NURSING HOME FORFEITURE APPEALS.** The division of nursing home forfeiture appeals shall have the program responsibilities specified for the division under s. 50.04 (5) (e).

SECTION 3. 15.103 of the statutes is created to read:

15.103 Same; specified divisions. (1) **DIVISION OF NURSING HOME FORFEITURE APPEALS.** There is created a division of nursing home forfeiture appeals which is attached to the department of administration under s. 15.03. The administrator of the division shall be appointed by the governor to serve for a term of 4 years. The administrator shall be a public official for purposes of subch. III of ch. 19.

SECTION 4. 50.01 of the statutes is repealed and recreated to read:

50.01 Definitions. As used in this subchapter:

(1) "Community-based residential facility" means a place where 3 or more unrelated adults reside in which care, treatment or services above the level of room and board but not including nursing care are provided to persons residing in the facility as a primary function of the facility. "Community-based residential facility" does not include a nursing home, except that the department may designate a category or categories of intermediate care facilities which serve fewer than 20 residents and which otherwise meet the definition of this subsection to be licensed and regulated as community-based residential facilities. The reception and care or treatment of a person in a convent or facility owned or operated exclusively by and for members of a religious order shall not constitute the premises to be a "community-based residential facility".

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

(2) "Intermediate care facility" means a facility which provides 24-hour services including board, room and personal care to 3 or more unrelated residents who, because of their mental or physical condition, require, on a regular basis, health-related care and services, including intermittent nursing care, but who do not require the degree of care and treatment which a hospital or skilled nursing home is designed to provide. "Intermediate care facilities" include all facilities defined as such under Title XIX of the Social Security Act, 42 U.S.C.A. 1396d.

(3) "Nursing home" means:

(a) An institution which provides 24-hour services including board, room and personal care to 3 or more unrelated residents who because of their mental or physical condition require skilled nursing care.

(b) An intermediate care facility, except an intermediate care facility designated as a community-based residential facility under sub. (1).

(c) The reception and care or treatment of a person in a convent or facility owned or operated exclusively by and for members of a religious order shall not constitute the premises to be a "nursing home".

(4) "Nursing home administrator" has the meaning assigned in s. 456.01 (2).

(4m) "Operator" means any person licensed or required to be licensed under s. 50.03 (1).

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

(5) "Primary function" means the basic or essential care, treatment or services provided to residents of a facility.

(6) "Resident" means a person cared for or treated in any nursing home or community-based residential facility, irrespective of how admitted.

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

SECTION 5. 50.02 (title), (1), (2) (a), as affected by chapter 29, laws of 1977, and (3) of the statutes are repealed and recreated to read:

50.02 (title) Departmental authority; development of standards. (1) DEPARTMENTAL AUTHORITY. The department shall have authority to provide uniform, statewide licensing, inspection and regulation of community-based residential facilities and nursing homes as provided in this subchapter. Nothing in this subchapter may be construed to limit the authority of the department of industry, labor and human relations or of municipalities to set standards of building safety and hygiene, but any local orders of municipalities shall be consistent with uniform, statewide regulation of community-based residential facilities.

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

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

(b) In setting standards and regulations, the department shall consider the residents' needs and abilities, the increased cost in relation to proposed benefits to be received, the services to be provided by the facility, the relationship between the physical structure and the objectives of the program conducted in the facility and the primary functions of the facility.

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

SECTION 6. 50.02 (4) of the statutes is renumbered 50.04 (2) and amended to read:

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

SECTION 7. 50.025 (title) of the statutes is created to read:

50.025 (title) Plan reviews.

SECTION 8. 50.03 (1) (except (1) (c)) of the statutes is repealed and recreated to read:

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

SECTION 9. 50.03 (1) (c) of the statutes, as created by chapter 29, laws of 1977, is renumbered 50.025.

SECTION 10. 50.03 (2) (c) of the statutes is repealed and recreated to read:

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

SECTION 11. 50.03 (2) (d) and (e) of the statutes are created to read:

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

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

SECTION 12. 50.03 (2m) of the statutes is created to read:

50.03 (2m) SERVICE OF NOTICES. (a) Each licensee or applicant for license shall file with the department the name and address of a person authorized to accept service of any notices or other papers which the department may send by registered mail, with a return receipt requested.

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

SECTION 13. 50.03 (3) (a) of the statutes is repealed.

SECTION 14. 50.03 (3) (b) 2. e and 4 of the statutes, as affected by chapter 29, laws of 1977, are amended to read:

50.03 (3) (b) 2. e. Any mortgage, note, deed of trust or other obligation secured in whole or in part by the land on which or building in which the facility is located, except that disclosure of the disbursements of a secured mortgage, note, deed of trust or other obligation is not required; and

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

SECTION 15. 50.03 (3) (e) of the statutes is created to read:

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

SECTION 16. 50.03 (4) (a) 1 of the statutes, as affected by chapter 29, laws of 1977, is amended to read:

50.03 (4) (a) 1. The Except as provided in sub. (4m), the department shall issue a license if it finds the applicant to be fit and qualified, and if it finds that the facility meets the requirements established by this subchapter. The department, or its designee, shall make such inspections and investigations as are necessary to determine the conditions existing in each case and shall file written reports. The department may designate and use full-time city or county agencies as its agents in making the inspections and investigations, including such subsequent inspections and investigations as are deemed necessary or advisable. The department shall reimburse the city or county furnishing such service at the rate of \$25 per year per license issued in the municipality.

SECTION 17. 50.03 (4) (b) of the statutes is repealed.

SECTION 18. 50.03 (4) (c) of the statutes is amended to read:

50.03 (4) (c) Unless sooner revoked or suspended, a license shall be valid for one year. Annually at such time and in such form as the department requires At least 120 days but not more than 150 days prior to license expiration, the applicant shall submit an annual report and application for renewal of the license in such form and containing such information as the department requires. If the report and application are approved, the license shall be renewed for an additional one-year period. If application for renewal and a complete annual report are not timely filed, the department shall issue a warning to the licensee. If Failure to make application for

renewal is not made within 30 days thereafter, ~~the license shall be canceled~~ may be grounds for nonrenewal of the license.

SECTION 19. 50.03 (4) (d) of the statutes is repealed and recreated to read:

50.03 (4) (d) Immediately upon the denial of any application for a license under this section, the department shall notify the applicant in writing. Notice of denial shall include a clear and concise statement of the violations on which denial is based and notice of the opportunity for a hearing under s. 227.07. If the applicant desires to contest the denial of a license it shall provide written notice to the department of a request for a hearing within 10 days after receipt of the notice of denial.

SECTION 20. 50.03 (4) (e) of the statutes is amended to read:

50.03 (4) (e) Each license shall be issued only for the premises and persons named in the application and shall not be transferable or assignable. The license shall be posted in a ~~conspicuous place in the community-based residential~~ place readily visible to residents and visitors, such as the lobby or reception area of the facility. Any license granted shall state the maximum bed capacity allowed, the person to whom the license is granted, the date, the expiration date, the ~~minimal services which the institution shall provide~~ maximum level of care for which the facility is licensed as a condition of its licensure and such additional information and special limitations as the department, by rule, may prescribe.

SECTION 21. 50.03 (4) (f) of the statutes is created to read:

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

SECTION 22. 50.03 (4m) of the statutes is created to read:

50.03 (4m) PROBATIONARY LICENSE. If the applicant has not been previously licensed or if the facility is not in operation at the time application is made, the department may issue a probationary license. A probationary license shall be valid for 120 days unless sooner suspended or revoked under sub. (5). Within 30 days prior to the termination of a probationary license, the department shall fully and completely inspect the facility and, if the facility meets the applicable requirements for licensure, shall issue a regular license under sub. (4). If the department finds that the facility does not meet the requirements for licensure but has made substantial progress toward meeting those requirements, the license may be renewed for a period not to exceed 120 days from the expiration date of the initial probationary license.

SECTION 23. 50.03 (5) of the statutes, as affected by chapter 29, laws of 1977, is renumbered 50.03 (5) (a).

SECTION 24. 50.03 (5) (b) to (d) of the statutes are created to read:

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

(c) *Contest of nonrenewal or revocation.* If a facility desires to contest the nonrenewal or revocation of a license, the facility shall, within 10 days after receipt of notice under par. (b), notify the department in writing of its request for a hearing under s. 227.07. The department shall hold the hearing within 30 days of receipt of such notice and shall send notice to the facility of the hearing as provided under s. 227.07 (2).

(d) *Effective date of nonrenewal or revocation.* 1. Subject to s. 227.14 (3), revocation shall become effective on the date set by the department in the notice of revocation, or upon final action after hearing under ch. 227, or after court action if a stay is granted under sub. (11), whichever is later.

2. Subject to s. 227.14 (2), nonrenewal shall become effective on the date of expiration of any existing license, or upon final action after hearing under ch. 227, or after court action if a stay is granted under sub. (11), whichever is later.

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

SECTION 25. 50.03 (5m) of the statutes is created to read:

50.03 (5m) RESIDENT REMOVAL. (a) *Departmental authority.* The department may remove any resident from any facility required to be licensed under this chapter when any of the following conditions exist:

1. Such facility is operating without a license.
2. The department has suspended, revoked or refused to renew the existing license of the facility as provided under sub. (5).
3. The department has initiated revocation or nonrenewal procedures under sub. (5) and has determined that the lives, health, safety, or welfare of the resident cannot be adequately assured pending a full hearing on license nonrenewal or revocation under sub. (5).
4. The facility has requested the aid of the department in the removal of the resident and the department finds that the resident consents to removal or that the removal is made for valid medical reasons or for the welfare of the resident or of other residents.
5. The facility is closing or intends to close and adequate arrangements for relocation of the resident have not been made at least 30 days prior to closure.
6. The department determines that an emergency exists which requires immediate removal of the resident. An emergency is a situation, physical condition or one or more practices, methods or operations which presents imminent danger of death or serious physical or mental harm to a resident of a facility.

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

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

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

(e) *Relocation teams.* The department may place relocation teams in any facility from which residents are being removed, discharged or transferred for any reason, for

the purpose of implementing removal plans and training the staffs of transferring and receiving facilities in transfer trauma mitigation.

(f) *Nonemergency removal procedures.* In any removal conducted under par. (a) 1 to 5, the department shall:

1. Provide written notice to the facility prior to the removal. The notice shall state the basis for the order of removal and shall inform the facility of its right to an informal conference prior to removal under par. (g) and its right to a subsequent hearing under par. (h). If a facility desires to contest a nonemergency removal prior to removal it shall, within 4 working days after receipt of the notice, send a written request for an informal conference to the department. The department shall, within 4 working days from the receipt of the request, hold an informal conference in the county in which the facility is located. Following this conference, the department may affirm, modify or overrule its previous decision. Removal may not begin until the period for requesting a conference has passed or, if a conference is requested, until after a conference has been held.

2. Provide effective notice to any resident to be removed, to the resident's guardian, if any, and to a member of the resident's family, where practicable, prior to the removal. The notice shall state the reason for which removal is ordered and shall inform the resident of the resident's right to challenge the removal under par. (h). The department shall hold an informal conference with the resident or guardian prior to removal at which the resident or guardian may present any objections to the proposed removal, removal planning or alternative placement.

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

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

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

SECTION 26. 50.03 (6) of the statutes is repealed.

SECTION 27. 50.03 (8), as affected by chapter 29, laws of 1977, and (10) of the statutes are amended to read:

50.03 (8) FORFEITURE. Any ~~person acting or claiming to act in behalf of the operator or owner of a community-based residential facility who violates which is in violation of~~ this subchapter or any rule adopted by the department under this subchapter shall forfeit not less than \$10 nor more than \$1,000 for each such offense, with each day of violation constituting a separate offense.

(10) **UNIFORM ACCOUNTING SYSTEM.** The department shall establish a uniform classification of accounts and accounting procedures for each level of licensure which shall be based on generally accepted accounting principles and which reflect the allocation of revenues and expenses by primary functions, to be used by the department in carrying out this subsection. Each facility subject to this subsection shall satisfactorily establish with the department by a date set by the department that it has instituted the uniform accounting system as required in this subsection or is making suitable progress in the establishment of each system. ~~Failure to do so shall make the nursing home or other facility subject to the penalties of sub. (6).~~

SECTION 28. 50.03 (11), (13) and (14) of the statutes are created to read:

50.03 (11) **JUDICIAL REVIEW.** (a) All administrative remedies shall be exhausted before an agency determination under this subchapter shall be subject to judicial review. Final decisions after hearing shall be subject to judicial review exclusively as provided in s. 227.15, except that any petition for review of department action under this chapter shall be filed within 15 days after receipt of notice of the final agency determination.

(b) The court may stay enforcement under s. 227.17 of the department's final decision if a showing is made that there is a substantial probability that the party seeking review will prevail on the merits and will suffer irreparable harm if a stay is not granted, and that the facility will meet the requirements of this subchapter and the rules established under this subchapter during such stay. Where a stay is granted the court may impose such conditions on the granting of the stay as may be necessary to safeguard the lives, health, rights, safety and welfare of residents, and to assure compliance by the facility with the requirements of this subchapter.

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

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

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

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

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

(14) CLOSING OF FACILITY. Any owner, operator or administrator of a facility licensed under this section shall give 90 days' notice prior to voluntarily closing a facility or closing any part of a facility if closing such part will displace more than 10% of the residents. Such notice shall be given to the department, to any resident who must be transferred, to the resident's guardian, if any, and to a member of the resident's family, where practicable, unless the resident requests that notice to the family be withheld. Notice shall state the proposed date of closing and the reason for closing. The facility shall offer to assist the resident to secure an alternative placement and shall advise the resident on available alternatives. Where the resident is unable to choose an alternate placement and is not under guardianship or protective placement, the department shall be notified of the need for relocation assistance. The facility shall comply with all applicable laws and regulations until the date of closing, including those related to discharge planning, transfer trauma mitigation, and continuity of care for transferred residents. The department may place a relocation team in the facility as provided under sub. (5m).

SECTION 29. 50.04 (title), (1) and (3) to (6) of the statutes are created to read:

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

(3) INSPECTION REPORTS. (a) *Inspection.* The department shall make or cause to be made at least one inspection annually of each nursing home in the state within 120 days prior to license issuance or renewal.

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

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

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

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

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

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

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

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

2. At the time of issuance of a notice of a class "B" or "C" violation, the department shall request a plan of correction which is subject to the department's approval. The nursing home shall have 15 days after receipt of notice of violation in which to prepare and submit a plan of correction but the department may extend this period up to 30 days where correction involves substantial capital improvement. The plan shall include a fixed time period within which violations are to be corrected. If the nursing home plan of correction is substantially in compliance, it may be modified upon agreement between the department and the nursing home to achieve full compliance. If it rejects a plan of correction, the department shall send notice of the rejection and the reason for the rejection to the nursing home and impose a plan of correction. The imposed plan of correction may be modified upon agreement between the department and the nursing home.

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

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

(d) *Suspension of referrals.* 1. The department shall prepare on a monthly basis a list containing the names and addresses of all nursing homes with existing class "A" violations as defined in par. (b) 1 or with 5 or more existing violations of any type, for which a plan of correction has not been timely submitted to the department under par. (c), for which a plan of correction has been disapproved or for which an approved plan of correction has not been carried out. A copy of the monthly list of violators shall be sent to each county welfare director and each s. 51.42 or 51.437 board director in the county in which each nursing home listed is located. The department shall notify each nursing home placed on the list of such placement at least 10 days prior to issuance of the list. No nursing home may be placed on the list unless a hearing has been held under par. (e) and a final determination has been made by the department or the time for requesting a hearing has passed and no request has been made. A nursing home shall be removed from the list when all corrections are made or when a plan of correction for all deficiencies is approved by the department. The list shall indicate those nursing homes which have been removed from the list during the prior month.

2. No county social services department or board under s. 51.42 or 51.437 may refer persons to nursing homes on the list prepared under this paragraph.

3. No nursing home which is placed on the list prepared under this paragraph due to an existing class "A" violation or due to 5 or more existing class "B" violations may admit residents until it is removed from the list. Violation of this subdivision constitutes a class "B" violation.

4. The department may make exceptions to subd. 2 or 3 where there is a lack of facilities of the same type in the area sufficient to satisfy the demand for the type of service provided by the home.

5. The department may provide information from the list to any agencies which make referrals to nursing homes.

(e) *Hearings.* 1. If a nursing home desires to contest any department action under this subsection, including rejection and imposition of a plan of correction, or suspension of referrals or admissions, it shall send a written request for a hearing under s. 227.07 to the department within 10 days of receipt of notice of the contested action. All agency action under this subsection arising out of a violation or rejection and imposition of a plan of correction shall be the subject of a single hearing. The department shall commence the hearing within 30 days of the request for hearing, within 30 days of the department's acceptance of a nursing home's plan of correction or within 30 days of the department's imposition of a plan of correction, whichever is later. The department shall send notice to the nursing home in conformance with s. 227.07. Issues litigated at the hearing may not be relitigated at subsequent hearings under this paragraph arising out of the same violation.

2. The department shall notify the nursing home of its decision to reverse, modify or uphold the contested action within 10 days after the close of the hearing.

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

1. A class "A" violation may be subject to a forfeiture of not less than \$1,000 and not more than \$5,000 for each violation.

2. A class "B" violation may be subject to a forfeiture of not less than \$100 and not more than \$1,000 for each violation.

3. A class "C" violation may be subject to a forfeiture of not less than \$10 and not more than \$100. No forfeiture may be assessed for a class "C" violation unless the same deficiency was found to exist in the nursing home on at least one occasion during the previous 6 months and a notice of violation was sent to the nursing home under sub. (4) (a).

4. Notwithstanding subd. 1, 2 and 3, if the violation or group of violations results from inadequate staffing, the amount of the forfeiture shall be no less than the difference between the cost of the staff actually employed and the estimated cost of the staff required. The number of staff required shall be determined by the provider contract, court order or the department, by rule, whichever is greatest. The inadequate staff shall be presumed to exist from the date of the notice of violation.

5. A nursing home which violates a statute or rule and which has received notices of violation of the same statute or rule on 2 or more separate prior occasions within the prior 2-year period may be subject to a forfeiture 3 times the amount authorized for the class of violation involved. This provision does not apply if a violation does not directly threaten a resident's health, safety or welfare or violate a resident's rights, or if there is no reasonable probability that repeated violation will directly threaten a resident's health, safety or welfare or violate a resident's rights. A notice of violation found to be unjustified after hearing may not be considered in determining whether to apply this subdivision.

6. If a licensee fails to correct a violation within the time specified in the notice of violation or approved plan of correction, or within the extended correction time

granted under sub. (4) (c) 4, or if violation continues after a report of correction, a separate forfeiture may be assessed upon the licensee in an amount not to exceed, for each day of continuing violation, \$5,000 for class "A" violations; \$1,000 for class "B" violations; and \$100 for class "C" violations.

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

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

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

3. Any previous violations committed by the licensee.

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

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

(d) *Forfeitures; when assessed; time period.* In the case of a class "B" or "C" violation, no forfeiture may be assessed for the violation from the day following the date of discovery until the date of notification. If the department fails to approve or reject a plan of correction within 15 days after its receipt of a complete plan, no forfeiture may be imposed for the period beginning with the 15th day after receipt and ending when notice of approval or rejection is received by the home. If a plan of correction is approved and carried out, no forfeiture may be assessed during the time period specified in the approved plan of correction, commencing on the day the plan of correction is received by the department. The department may not assess a forfeiture upon a nursing home until:

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

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

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

(e) *Forfeiture appeal hearing.* A nursing home may contest an assessment of forfeiture, by sending a written request for hearing under s. 227.07 to the division of nursing home forfeiture appeals created under s. 15.101 (9). The administrator may designate a hearing examiner to preside over the case and recommend a decision to the administrator under s. 227.09. The decision of the administrator shall be the final administrative decision. The division shall commence the hearing within 30 days of receipt of the request for hearing and shall issue a final decision within 15 days after the close of the hearing.

(f) *Forfeitures paid within 10 days.* All forfeitures shall be paid to the department within 10 days of receipt of notice of assessment or, if the forfeiture is contested under par. (e), within 10 days of receipt of the final decision after exhaustion of administrative review, unless the final decision is appealed and the order is stayed by

court order under s. 50.03 (11). The department shall remit all forfeitures paid to the state treasurer for deposit in the school fund.

(g) The attorney general may bring an action in the name of the state to collect any forfeiture imposed under this section if the forfeiture has not been paid following the exhaustion of all administrative and judicial reviews. The only issue to be contested in any such action shall be whether the forfeiture has been paid.

(6) **CONDITIONAL LICENSE.** (a) *Power of department.* In addition to the right to assess forfeitures under sub. (5), the department may issue a conditional license to any nursing home if the department finds that either a class "A" or class "B" violation, as defined in sub. (4), continues to exist in such home. The issuance of a conditional license shall revoke any outstanding license held by the nursing home. The nursing home may seek review of a decision to issue a conditional license as provided under s. 50.03 (5).

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

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

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

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

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

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

SECTION 30. 50.053 of the statutes is created to read:

50.053 Informal conference. The department may hold an informal conference with the parties to any contested action under this subchapter to resolve any or all issues prior to formal hearing. Unless any party to the contested case objects, the

department may delay the commencement of the formal hearing in order to hold the informal conference.

SECTION 31. 50.07 of the statutes is created to read:

50.07 Prohibited acts. (1) No person may:

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

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

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

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

(e) Intentionally retaliate or discriminate against any resident or employe for contacting or providing information to any state official, or for initiating, participating in, or testifying in an action for any remedy authorized under this subchapter.

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

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

SECTION 32. 50.11 of the statutes is created to read:

50.11 Cumulative remedies. The remedies provided by this subchapter are cumulative and shall not be construed as restricting any remedy, provisional or otherwise, provided by law for the benefit of any party, and no judgment under this subchapter shall preclude any party from obtaining additional relief based upon the same facts.

SECTION 33. 146.309 of the statutes is renumbered 50.09, and 50.09 (1) (intro.) and (2), as renumbered, are amended to read:

50.09 (1) (intro.) Every resident in a nursing home, ~~adult group foster home or residential care institution~~ community-based residential facility shall, except as provided in sub. (5), have the right to:

(2) The department, in establishing standards for nursing homes ~~under s. 146.30 (2), adult group foster homes under s. 146.305 (2) and residential care institutions under s. 146.32 (2),~~ and community-based residential facilities may establish, by rule, rights in addition to those specified in sub. (1) for residents in such facilities. ~~Such rules shall not be effective until approved by the senate and assembly health committees.~~

SECTION 34. **Appropriation increases.** The appropriation to the department of health and social services under section 20.435 (1) (a) of the statutes, as affected by the laws of 1977, is increased by \$149,200 in fiscal year 1977-78 and by \$115,000 in fiscal year 1978-79 for 7.5 positions in 1977-78 and in 1978-79. Of those amounts, \$89,000 in fiscal year 1977-78 and \$100,000 in fiscal year 1978-79 shall be used for contracting with the department of administration for 5 positions in fiscal year 1977-78 and in fiscal year 1978-79.