

1981 Senate Bill 263

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CHAPTER 121 , Laws of 1981

AN ACT to repeal 50.04 (4) (d); to renumber 50.04 (5) (d) 1 to 3; to renumber and amend 50.04 (4) (a) and (5) (d) (intro.); to amend 15.101 (9), 15.103 (1), 20.505 (6) (title) and (k), 20.923 (6) (a), 50.02 (title) and (1), 50.03 (4) (c) and (4m), 50.04 (3), (4) (e) and (5) (a) 3 and 5 and (e) and 50.05 (4), (6), (7) (f) and (h) and (15) (f); and to create 50.02 (4), 50.04 (4) (a) 2 and 3 and (5) (dm) (intro.), 50.10 and 50.12 of the statutes, relating to revising the regulation of nursing homes and granting rule-making authority.

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

SECTION 1. 15.101 (9) of the statutes is amended to read:

15.101 (9) (title) DIVISION OF NURSING HOME APPEALS. The division of nursing home ~~forfeiture~~ appeals shall have the program responsibilities specified for the division under s. 50.04 (4) (e) and (5) (e).

SECTION 2. 15.103 (1) of the statutes is amended to read:

15.103 (1) (title) DIVISION OF NURSING HOME 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 3. 20.505 (6) (title) and (k) of the statutes are amended to read:

20.505 (6) (title) DIVISION OF NURSING HOME APPEALS. (k) *Reimbursement for services*. All moneys received from state agencies by the division of nursing home ~~forfeiture~~ appeals board to be used to carry out the purposes for which made and received.

SECTION 4. 20.923 (6) (a) of the statutes is amended to read:

20.923 (6) (a) Administration, department of; division of nursing home ~~forfeiture~~ appeals: administrator.

SECTION 5. 50.02 (title) and (1) of the statutes are amended to read:

50.02 (title) Departmental authority; development of standards; reports. (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. The department may consult with nursing homes as needed and may provide specialized consultations when requested by any nursing home, separate from its inspection process, to scrutinize any particular questions the nursing home raises. The department shall, by rule, define "specialized consultation".

SECTION 6. 50.02 (4) of the statutes is created to read:

50.02 (4) REPORTS TO THE BOARD ON AGING AND LONG-TERM CARE. The department shall submit at least one report quarterly to the board on aging and long-term care regarding enforcement actions, consultation, staff training programs, new procedures and policies, complaint investigation and consumer participation in enforcement under this subchapter and changes that may be needed under this subchapter.

SECTION 7. 50.03 (4) (c) and (4m) of the statutes are amended to read:

50.03 (4) (c) Unless sooner revoked or suspended, a community-based residential facility license shall be valid for one year. Unless sooner revoked or suspended, a nursing home license is valid for one year, but may be issued to a new licensee for less than one year to coincide with the date of federal medical assistance certification as a skilled nursing facility or intermediate care facility. 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. Failure to make application for renewal within 30 days thereafter may be grounds for nonrenewal of the license.

(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 has conducted a full inspection prior to issuing a probationary license to any nursing home, the department is not required to conduct a 2nd full inspection within 30 days prior to termination of the nursing home's probationary license but shall inspect any condition found out of compliance during the initial inspection. The department may expand its 2nd inspection as it deems necessary. 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 8. 50.04 (3) of the statutes is amended to read:

50.04 (3) INSPECTION REPORTS. (a) *Inspection.* The department shall make or cause to be made at least one inspection ~~annually~~ biennially of each nursing home ~~in the state within 120 days prior to license issuance or renewal.~~ The department may determine if conditions and practices comply with applicable standards by examining only a portion of the residents, records or physical plant when it conducts an inspection.

(b) (title) *Biennial report.* The department shall make at least one report on each nursing home in the state ~~annually~~ biennially. All conditions and practices not in compliance with applicable standards within the last ~~year~~ 2 years 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~~ biennial 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~~ biennial 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.

SECTION 9. 50.04 (4) (a) of the statutes is renumbered 50.04 (4) (a) 1 and amended to read:

50.04 (4) (a) 1. 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.

SECTION 10. 50.04 (4) (a) 2 and 3 of the statutes are created to read:

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.

3. The department is not required to serve a notice of a class "C" violation if it finds that the nursing home is in substantial compliance with the specific rule violated.

SECTION 11. 50.04 (4) (d) of the statutes is repealed.

SECTION 12. 50.04 (4) (e) and (5) (a) 3 and 5 of the statutes are amended to read:

50.04 (4) (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 division of nursing home appeals created under s. 15.103 (1) within 10 days of receipt of notice of the contested action. Upon the request of the nursing home, the division shall grant a stay of the hearing under this paragraph until the department assesses a forfeiture, so that its hearing under this paragraph is consolidated with the forfeiture appeal hearing held under sub. (5) (e). All agency action under this subsection arising out of a violation or rejection and imposition of a plan of correction shall be the subject of a single hearing. ~~The department~~ Unless a stay is granted under this paragraph, the division shall commence the hearing within 30 days of the request for hearing, within 30 days of the department's acceptance of a nursing home's plan of correction or within 30 days of the department's imposition of a plan of correction, whichever is later. The department division 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~~ division shall notify the nursing home of its decision to reverse, modify or uphold the contested action within 40 15 days after the close of the hearing.

(5) (a) 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) the nursing home fails to submit a plan of correction under sub. (4) (c) 2, or the nursing home fails to correct the violation within the time specified in the plan of correction.~~

5. A nursing home which violates a statute or rule and which has received ~~notices a~~ notice of violation of the same statute or rule on ~~2~~ one 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 only apply if a violation directly threaten~~ threatens a resident's health, safety or welfare or ~~violate~~ violates a resident's rights, or if there is ~~no~~ a 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.

SECTION 13. 50.04 (5) (d) (intro.) of the statutes is renumbered 50.04 (5) (d) and amended to read:

50.04 (5) (d) (title) *Forfeiture 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:~~

SECTION 14. 50.04 (5) (d) 1 to 3 of the statutes are renumbered 50.04 (5) (dm) 1 to 3.

SECTION 15. 50.04 (5) (dm) (intro.) of the statutes is created to read:

50.04 (5) (dm) *Forfeiture assessment date.* (intro.) In the case of a class “B” or “C” violation, the department may not assess a forfeiture upon a nursing home until:

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

50.04 (5) (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)~~ 15.103 (1). 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. Proceedings before the division are governed by ch. 227. In any petition for judicial review of a decision by the division, the division shall be the named respondent.

SECTION 17. 50.05 (4), (6), (7) (f) and (h) and (15) (f) of the statutes are amended to read:

50.05 (4) APPOINTMENT OF RECEIVER. The secretary, represented by the department of justice, may apply by verified petition to the circuit court for the county in which the facility is located for an order appointing the secretary or the secretary’s designee receiver of the facility. The court shall hold a hearing on the petition within 5 days of the filing of the petition. The petition and notice of the hearing shall be served on the operator, administrator or designated agent of the facility as provided under ch. 801 or shall be posted in a conspicuous place in the facility not later than 3 days before the time specified for the hearing, unless a different period is fixed by order of the court. The court shall appoint a receiver for a limited specified time period, not to exceed 90 up to 180 days, if it finds that any ground exists which would authorize the appointment of a receiver under sub. (2) and that appointment of a receiver will contribute to the continuity of care or the orderly and safe transfer of residents in the facility. The court may extend the period of receivership in 90-day increments on request.

(6) OBJECTIVE. The receiver shall with all reasonable speed, but in any event within 90 days after the date on which the receivership was ordered by the date receivership ends under sub. (4), provide for the orderly transfer of all residents in the facility to other suitable facilities or make other provisions for their continued health, safety and welfare.

(7) (f) May let contracts and hire agents and employes to carry out the powers and duties created under this section. Competitive bidding requirements under s. 16.75 do not apply to contracts for services or materials let by the receiver.

(h) Shall have full power to direct and manage and to discharge employes of the facility, subject to any contract rights they may have. The receiver shall pay employes at the same rate of compensation, including benefits, that the employes would have received from the operator, except that the receiver shall compensate employes only for time actually worked during the period of receivership and shall not be responsible for reimbursement for vacations or periods of sick leave. The receiver may grant salary increases and fringe benefits to employes of a nursing home, in accord with the nursing home reimbursement formula under s. 49.45 (6m). Receivership does not relieve the operator of any obligation to employes not carried out by the receiver.

(15) (f) The receiver shall, within 60 days after termination of the receivership, file a notice of any lien created under this subsection. No action on a lien created under this subsection may be brought more than 2 years after the date of filing. If the lien is on real property, the notice shall be filed with the clerk of circuit court of the county in which the facility is located and entered on the lien docket kept under s. 779.07. If the lien is on personal property, the lien shall be filed with the secretary of state. The secretary of state

shall place the lien on personal property in the same file as financing statements are filed under ss. 409.401 and 409.402. The notice shall specify the name of the person against whom the lien is claimed, the name of the receiver, the dates of the petition for receivership and the termination of receivership, a description of the property involved and the amount claimed. No lien shall exist under this section against any person, on any property, or for any amount not specified in the notice filed under this paragraph. To the extent applicable, ch. 846 controls the foreclosure of liens under this subsection that attach to real property.

SECTION 18. 50.10 of the statutes is created to read:

50.10 Private cause of action. (1) Any person residing in a nursing home has an independent cause of action to correct conditions in the nursing home or acts or omissions by the nursing home or by the department, that:

(a) The person alleges violate this subchapter or rules promulgated under this subchapter; and

(b) The person alleges are foreseeably related to impairing the person's health, safety, personal care, rights or welfare.

(2) Actions under this section are for a writ of mandamus against the department or for injunctive relief against either the nursing home or the department.

SECTION 19. 50.12 of the statutes is created to read:

50.12 Waiver of federal requirements. The department shall petition the secretary of the U.S. department of health and human services for a waiver of the requirement that it conduct annual medical assistance surveys of nursing homes, and for a waiver of the requirement that it conduct annual independent medical reviews and independent professional reviews, to allow the department under 42 USC 1396a (a) (26) and (31) to conduct biennial surveys and reviews.

SECTION 20. Cross-reference changes. In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

(20) HEALTH AND SOCIAL SERVICES.

(a) *Nursing homes.*

A	B	C
Statute Sections	Old Cross-References	New Cross-References
16.75 (1)(a)	s. 16.754, par. (c) and subs. (1m), (2), (6), (7) and (8) and s. 144.48 (7)	par. (c) and subs. (1m), (2), (6), (7) and (8) and ss. 16.754, 50.05 (7) (f) and 144.48 (7)