



SOON - In edit 1/24
State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-1686/2

DAK:cjs:k#

D-NOTES

DOA:.....Mullikin - Forfeitures levied against facilities and treatment facilities

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

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

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

HEALTH

Under current law, DHFS licenses, certifies, approves, or registers and otherwise regulates numerous health care services providers, including hospitals, nursing homes, community-based residential facilities (C-BRFs), adult family homes, residential care apartment complexes, rural medical centers, home health agencies, and hospices. Currently, the sanctions that DHFS may bring against those facilities or services that violate applicable standards of care or provisions of licensure, certification, approval, or registration vary as to the facility or service. The sanctions include denial of licensure, issuance of departmental orders, required submittal of a plan of correction, assessment of forfeitures, suspension of admissions, imposition of conditional licensure and suspension or revocation of licensure. (Unlike forfeitures for other facilities, nursing home forfeitures are fixed in amount using factors that concern the gravity of the violation, severity of harm, extent of violation, indications of good faith by the licensee, previous violations, and the financial benefit to the nursing home of committing or continuing the violation; nursing homes are also subject to notices of violation and correction orders.) Facilities or services on which sanctions or penalties are imposed may appeal the

sanctions in hearings that are delegated by DHFS to be conducted by the subunit of DOA that deals with hearings and appeals. Decisions that result from these hearings are subject to judicial review.

This bill makes uniform, with specified exceptions, the penalties and sanctions, and appeal rights for those penalties and sanctions, that DHFS may impose under current law on hospitals, nursing homes, C-BRFs, licensed adult family homes, residential care apartment complexes, rural medical centers, home health agencies, and hospices that violate conditions of licensure, certification, approval, or registration or applicable standards of care. The bill eliminates DHFS' authority to suspend licensure, certification, approval, or registration. Under the bill, if DHFS provides a C-BRF, hospital, or home health agency with written notice of the grounds for a sanction, an explanation of the types of sanctions that DHFS may impose, and an explanation of the appeal process, DHFS may order that the C-BRF, hospital, or home health agency do any of the following: 1) if operating without licensure or approval, cease operation; 2) terminate the employment of any person who operated or permitted operation of a C-BRF, hospital, or home health agency for which licensure or approval was revoked; 3) stop violating a provision of licensure or approval; 4) for a C-BRF only, submit a plan of correction for violation of a provision of licensure or approval; 5) for a C-BRF only, implement and comply with a plan of correction that is approved or developed by DHFS; 6) for a nursing home, C-BRF, or hospital only, suspend new admissions until all violations are corrected; or 7) provide training in one or more specific areas for staff members. In addition, if DHFS provides the same type of written notice, DHFS may impose any of the following:

1. Except for nursing homes, ~~licensed adult family homes, and home health agencies,~~ a daily administrative forfeiture of not less than \$10 nor more than \$2,000 for each violation, with each day of violation being a separate offense; the amount of the forfeiture and payment deadlines are specified by DHFS by rule, based on the size of the facility or service and the seriousness of the violation, and may be increased if there is continued failure to comply with a DHFS order.

2. Under specified circumstances, for all facilities or services, revocation of licensure, certification, approval, or registration. The bill specifies procedures for requesting a hearing to contest imposition of a sanction.

Under current law, nursing homes, C-BRFs, and hospices must demonstrate that they are "fit and qualified" in order to be licensed. This bill requires that licensed nursing homes, C-BRFs, and hospices, if they are in substantial noncompliance, as defined by DHFS by rule, with respect to applicable state or federal requirements, demonstrate that they are fit and qualified to operate. DHFS must, by rule, specify procedures regarding these findings.

Under current law, DHFS may issue a conditional license for up to one year to a nursing home and may revoke any outstanding license of the nursing home if DHFS finds that the nursing home has violated standards of care so as to create a condition or occurrence that presents a substantial probability that death or serious mental or physical harm to a resident will result or that directly threatens the health, safety, or welfare of a resident. Before issuing the conditional license, DHFS must establish a written plan of correction, provide written notice to the nursing home,

and, at the nursing home's request, hold a case conference, after which a hearing may be held. DHFS must periodically inspect a nursing home operating under a conditional license and may revoke the conditional license if the nursing home substantially fails to follow the plan of correction. This bill authorizes DHFS to issue a conditional license, certification, approval, or registration that is similar to a conditional approval of a nursing home, to any facility or service that violates standards of care or provisions of licensure.

Under current law, DHFS may issue provisional licenses for home health agencies, rural medical centers, and hospices that have not previously been licensed, that are not in operation at the time the application for licensure is made, or that are temporarily unable to comply with standards of care. DHFS must inspect a hospice within 30 days before termination of the provisional license and either issue or deny a regular license. This bill eliminates provisions relating to provisional licenses for rural medical centers, and, for home health agencies and hospices, changes the term "provisional" to "probationary."

MENTAL ILLNESS AND DEVELOPMENTAL DISABILITIES

Under current law, DHFS approves and otherwise regulates public and private treatment facilities for the provision of services for mental illness, developmental disability, and alcohol and other drug abuse. DHFS may, after notice and hearing, grant, suspend, revoke, or limit such an approval, and a court may restrain violations of conditions of approval or standards of care by treatment facilities; review denials, restrictions, or revocations of approval; and grant other enforcement relief.

This bill changes current provisions concerning approval and other regulation of treatment facilities to specify penalties and sanctions that DHFS may impose on treatment facilities for violations of conditions of approval or standards of care; these penalties and sanctions are similar to those that DHFS may, under the bill, impose on facilities or services regulated by DHFS that provide medical care. Under the bill, if DHFS provides a treatment facility with written notice of the grounds for a sanction, an explanation of the types of sanctions that DHFS may impose, and an explanation of the appeal process, DHFS may impose any of the following:

1. A daily forfeiture of not less than \$10 nor more than \$2,000 for each violation, with each day of violation being a separate offense; the amount of the forfeiture and payment deadlines are specified by DHFS by rule, based on the size of the treatment facility and the seriousness of the violation, and may be increased if there is continued failure to comply with a DHFS order.
2. Suspension of approval.
3. Under specified circumstances, revocation of approval.

The bill specifies procedures for requesting a hearing to contest a forfeiture, suspension, or revocation. The hearing is subject to judicial review under current law.

NO \$ DHFS also may issue probationary licenses for nursing homes and C-BRFs that have not previously been licensed and are not operating at the time the license application is made.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 46.031 (2r) (a) 3. of the statutes is amended to read:

2 46.031 (2r) (a) 3. Is for the treatment of alcoholics in treatment facilities which
3 have not been approved by the department in accordance with s. ~~51.45 (8)~~ 51.04 (1)
4 or conditionally approved by the department in accordance with s. 51.04 (3).

5 **SECTION 2.** 50.01 (4r) of the statutes is amended to read:

6 50.01 (4r) “Plan of correction” means ~~a nursing home’s~~ an applicable entity’s
7 response to alleged deficiencies cited by the department on forms provided by the
8 department.

9 **SECTION 3.** 50.02 (1) of the statutes is renumbered 50.02 (1m).

10 **SECTION 4.** 50.02 (1d) of the statutes is created to read:

11 50.02 (1d) DEFINITION. In this section, “entity” means any of the following:

12 (a) A nursing home that is licensed under s. 50.03 (4) (a) 1. a.

13 (b) A community-based residential facility that is licensed under s. 50.03 (4)

14 (a) 1. b.

15 (c) An adult family home that is licensed under s. 50.033.

16 (d) A residential care apartment complex that is certified under s. 50.034 (1)

17 (a) or registered under s. 50.034 (1) (b).

18 (e) A hospital that is approved under s. 50.35.

19 (f) A home health agency that is licensed under s. 50.49 (6) (a).

20 (g) A rural medical center that is licensed under s. 50.52.

21 (h) A hospice that is licensed under s. 50.92.

1 **SECTION 5.** 50.02 (2) (am) 2. of the statutes is amended to read:

2 50.02 (2) (am) 2. For the purposes of s. 50.033, establishing minimum
3 requirements for licensure, licensure application procedures and forms, standards
4 for operation and procedures for monitoring, and inspection, ~~revocation and appeal~~
5 ~~of revocation.~~

6 **SECTION 6.** 50.02 (3g) (a) 1. to 8. of the statutes are created to read:

7 50.02 (3g) (a) 1. A nursing home, if the department finds that either a class “A”
8 violation, as specified in s. 50.04 (4) (b) 1., or a class “B” violation, as specified in s.
9 50.04 (4) (b) 2., by the nursing home continues to exist.

10 2. A community-based residential facility, if the department finds that a
11 violation by the community-based residential facility of an applicable provision of
12 s. 50.03, 50.035, 50.037, 50.05, 50.06, 50.065, 50.07, or 50.09, or of a rule promulgated
13 under an applicable provision of sub. (2) or (3) or s. 50.03, 50.035, 50.037, 50.05,
14 50.06, 50.065, 50.07, or 50.09, continues to exist.

15 3. A licensed adult family home, if the department finds that a violation by the
16 adult family home of s. 50.033 or 50.065 or of a rule promulgated under s. 50.02 (2)
17 (am) 2., 50.033, or 50.065 continues to exist.

18 4. A certified or registered residential care apartment complex, if the
19 department finds that a violation by the residential care apartment complex of s.
20 50.034 or 50.065 or of a rule promulgated under s. 50.034 or 50.065 continues to exist.

21 5. A hospital, if the department finds that a violation by the hospital of s.
22 50.065, 50.35, 50.355, or 50.36 (3) or (3m) or of a rule promulgated under s. 50.065,
23 50.35, 50.355, or 50.36 (3) or (3m) continues to exist.

1 6. A home health agency, if the department finds that a violation by the home
2 health agency of s. 50.065 or 50.49 or of a rule promulgated under s. 50.065 or 50.49
3 continues to exist.

4 7. A rural medical center, if the department finds that a violation by the rural
5 medical center of s. 50.065, 50.53 (2), 50.535, or 50.54 (2) or of a rule promulgated
6 under s. 50.065, 50.53 (2), 50.535, or 50.54 (2) continues to exist.

7 8. A hospice, if the department finds that a violation by the hospice of s. 50.065,
8 50.92, 50.93 (1) to (3m), or 50.95 or of a rule promulgated under s. 50.065, 50.92, 50.93
9 (1) to (3m), or 50.95 continues to exist.

10 **SECTION 7.** 50.03 (2) (d) of the statutes is amended to read:

11 50.03 (2) (d) Any holder of a license or applicant for a license shall be deemed
12 to have given consent to any authorized officer, employee or agent of the department
13 to enter and inspect the facility in accordance with this subsection. Refusal to permit
14 such entry or inspection shall constitute grounds for initial licensure license denial,
15 as provided in sub. (4), ~~or suspension~~ or revocation of a license, as provided in sub-
16 ~~(5)~~ s. 50.02 (3m) (bm).

17 **SECTION 8.** 50.03 (3) (f) of the statutes is amended to read:

18 50.03 (3) (f) Community-based residential facilities shall report all formal
19 complaints regarding their operation filed under sub. (2) (f) and the disposition of
20 each when reporting under sub. (4) (c) ~~1-~~ 2m.

21 **SECTION 9.** 50.03 (4) (a) 1. b. of the statutes is amended to read:

22 50.03 (4) (a) 1. b. Except as provided in sub. [✓](4m) (b), the department shall issue
23 a license for a community-based residential facility if it finds the applicant to be fit
24 and qualified, if it finds that the community-based residential facility meets the
25 requirements established by this subchapter and if the community-based

1 residential facility has paid the license fee under s. 50.037 (2) (a). In determining
2 whether to issue a license for a community-based residential facility, the department
3 may consider any action by the applicant or by an employee of the applicant that
4 constitutes a substantial failure by the applicant or employee to protect and promote
5 the health, safety or welfare of a resident. The department may deny licensure to
6 or revoke licensure for any person who conducted, maintained, operated or permitted
7 to be maintained or operated a community-based residential facility for which
8 licensure was revoked. The department, or its designee, shall make such inspections
9 and investigations as are necessary to determine the conditions existing in each case
10 and shall file written reports. In reviewing the report of a community-based
11 residential facility that is required to be submitted under par. (c) ~~4~~ 2m., the
12 department shall consider all complaints filed under sub. (2) (f) since initial license
13 issuance or since the last review, whichever is later, and the disposition of each. The
14 department shall promulgate rules defining "fit and qualified" for the purposes of
15 this subd. 1. b.

16 **SECTION 10.** 50.03 (4) (c) 1. of the statutes is amended to read:

17 50.03 (4) (c) 1. A community-based residential facility license is valid until it
18 is revoked ~~or suspended under this section~~ s. 50.02 (3m) (bm).

19 2m. Every 24 months, on a schedule determined by the department, a
20 community-based residential facility licensee shall submit a biennial report in the
21 form and containing the information that the department requires, including
22 payment of the fees required under s. 50.037 (2) (a). If a complete biennial report is
23 not timely filed, the department shall issue a warning to the licensee. The
24 department may revoke a community-based residential facility license for failure to

1 timely and completely report within 60 days after the report date established under
2 the schedule determined by the department.

3 **SECTION 11.** 50.03 (4) (c) 2. of the statutes is renumbered 50.03 (4) (cm) 1. and
4 amended to read:

5 50.03 (4) (cm) 1. A nursing home license is valid until it is revoked or suspended
6 under this section s. 50.02 (3m) (bm).

7 2. Every 12 months, on a schedule determined by the department, a nursing
8 home licensee shall submit a report in the form and containing the information that
9 the department requires, including payment of the fee required under s. 50.135 (2)
10 (a). If a complete report is not timely filed, the department shall issue a warning to
11 the licensee. The department may revoke a nursing home license for failure to timely
12 and completely report within 60 days after the report date established under the
13 schedule determined by the department.

14 **SECTION 12.** 50.03 (4) (c) 3. of the statutes is created to read:

15 50.03 (4) (c) 3. A community-based residential facility that is in substantial
16 noncompliance with a federal statute or regulation or with an applicable provision
17 of this chapter shall demonstrate, including by providing financial or other
18 information requested by the department, that the community-based residential
19 facility continues to be fit and qualified, as defined by the department by rule under
20 par. (a) 1. a., to operate. The department shall promulgate rules defining
21 “substantial noncompliance” for the purposes of this subdivision.

22 **SECTION 13.** 50.03 (4) (cm) 3. of the statutes is created to read:

23 50.03 (4) (cm) 3. A nursing home that is in substantial noncompliance with a
24 federal statute or regulation or with an applicable provision of this chapter shall
25 demonstrate, including by providing financial or other information requested by the

1 department, that the nursing home continues to be fit and qualified, as defined by
2 the department by rule under par. (a) 1. b., to operate. The department shall
3 promulgate rules defining "substantial noncompliance" for the purposes of this
4 subdivision.

5 ~~SECTION 14. 50.03 (4m) of the statutes is repealed.~~

6 SECTION 15. 50.03 (5) of the statutes is repealed.

7 SECTION 16. 50.03 (5g) (title) of the statutes is renumbered 50.02 (3m) (title)
8 and amended to read:

9 50.02 (3m) (title) SANCTIONS AND PENALTIES FOR COMMUNITY-BASED RESIDENTIAL
10 FACILITIES.

11 SECTION 17. 50.03 (5g) (a) of the statutes is repealed.

12 SECTION 18. 50.03 (5g) (b) of the statutes is renumbered 50.02 (3m) (a) and
13 amended to read:

14 50.02 (3m) (a) ~~Except as provided in s. 50.04 (4) and (5), if~~ If, based on an
15 investigation made by the department, the department provides to a
16 ~~community-based residential facility~~ any of the following entities written notice of
17 the grounds for a sanction, an explanation of the types of sanctions and penalties that
18 the department may impose under this subsection, and an explanation of the process
19 for appealing a sanction or penalty imposed under this subsection, the department
20 may order any of the following applicable sanctions:

- 21 1. That a person stop conducting, maintaining or operating the
22 ~~community-based residential facility~~ an entity under ~~4150.01~~ (1d) (b), (c), or (f) if the
23 ~~community-based residential facility~~ entity is without a valid license or
24 ~~probationary license in violation of sub. (1), or approval~~ or conditional license or
25 approval.

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1 2. That, within 30 days after the date of the order, ~~the community-based~~
 2 residential facility under this subdivision, an entity under ~~§150.01~~ (1d) (b), (e), or (f)
 3 terminate the employment of any employed person who conducted, maintained,
 4 operated or permitted to be maintained or operated a ~~community-based residential~~
 5 facility an entity for which licensure or approval or conditional licensure or approval
 6 was revoked before issuance of the department's order. ~~This~~ The order under this
 7 subdivision includes employment of a person in any capacity, whether as an officer,
 8 director, agent, or employee of the ~~community-based residential facility~~ entity.

9 3. That a ~~licensee~~ an entity under ~~§150.01~~ (1d) (b), (e) or (f) stop violating any
 10 provision of licensure or approval or conditional licensure or approval applicable to
 11 ~~a community-based residential facility under sub. (4) or (4m)~~ the entity under this
 12 chapter or of rules relating to ~~community-based residential facilities~~ the entity
 13 promulgated by the department under sub. (4) or (4m) this chapter.

14 4. That a ~~licensee~~ an entity under ~~§150.01~~ (1d) (b), (e), or (f) submit a plan of
 15 correction for violation of any provision of licensure or approval or conditional
 16 licensure or approval applicable to a ~~community-based residential facility under~~
 17 sub. (4) or (4m) the entity under this chapter or of a rule relating to ~~community-based~~
 18 ~~residential facilities~~ the entity promulgated by the department under sub. (4) or (4m)
 19 this chapter.

20 5. That a ~~licensee~~ an entity under ~~§150.01~~ (1d) (b) implement and comply with
 21 a plan of correction previously submitted by the ~~licensee~~ entity and approved by the
 22 department.

23 6. That a ~~licensee~~ an entity under ~~§150.01~~ (1d) (b) implement and comply with
 24 a plan of correction for the entity that is developed by the department.

1 7. That a licensee an entity under ~~§ 50.01~~ (1d) (a), (b), or (e) accept no additional
2 residents or patients until all violations are corrected.

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3 8. That a licensee an entity under ~~§ 50.01~~ (1d) (b), (e), or (f) provide training
4 in one or more specific areas for all of the licensee's entity's staff or for specific staff
5 members.

6 SECTION 19. 50.03 (5g) (c) (intro.) and 1. of the statutes are renumbered 50.02
7 (3m) (b) 1. and 2., and 50.02 (3m) (b) 1. and 2. (intro.), a. and c., as renumbered, are
8 amended to read:

9 50.02 (3m) (b) 1. If the department provides to a community-based residential
10 facility an entity under ~~§ 50.01~~ (1d) (a), (b), (d), (e), (f), (g), or (h) written notice of the
11 a penalty, the grounds for a sanction or the penalty, an explanation of the types of
12 sanctions or penalties that the department may impose under this subsection, and
13 an explanation of the process for appealing a sanction or penalty imposed under this
14 subsection, the department may impose any of the following a forfeiture against a
15 licensee an entity under ~~§ 50.01~~ (1d) (b), (d), (e), (g), or (h) or other person who
16 violates the applicable provisions of this section chapter or rules promulgated under
17 the applicable provisions of this section chapter or against an entity under ~~§ 50.01~~
18 (1d) (a), (b), (e), or (f), who fails to comply with an applicable order issued under par.
19 (b) (a) by the time specified in the order.

✓
Subs.

✓
(c),

✓
f

20 2. (intro.) -A- For a forfeiture specified under subd. 1., the department shall
21 impose a daily forfeiture amount per violation of not less than \$10 nor more than
22 ~~\$1,000~~ \$2,000 for each violation, with each day of violation constituting a separate
23 offense. All of the following apply to a forfeiture under this subdivision:

24 a. Within the limits specified in this subdivision, the department may, by rule,
25 set daily forfeiture amounts and payment deadlines based on the size and type of

1 ~~community-based residential facility of the entity and, for a community-based~~
2 ~~residential facility, the type of community-based residential facility, and the~~
3 seriousness of the violation. The department may set daily forfeiture amounts that
4 increase periodically within the statutory limits if there is continued failure to
5 comply with an order issued under par. ~~(b)~~ (a).

6 c. ~~All forfeitures shall be paid~~ An entity assessed a forfeiture shall pay the
7 forfeiture to the department within 10 days after receipt of notice of assessment or,
8 if the forfeiture is contested under par. ~~(f)~~ (e), within 10 days after receipt of the final
9 decision after exhaustion of administrative review, unless the final decision is
10 appealed and the order is stayed by court order under s. 50.03 ~~(11)~~ sub. (3r). The
11 department shall remit all forfeitures paid under this subdivision to the state
12 treasurer for deposit in the school fund.

13 **SECTION 20.** 50.03 (5g) (c) 2. of the statutes is repealed.

14 **SECTION 21.** 50.03 (5g) (c) 3. of the statutes is renumbered 50.02 (3m) (bm) and
15 amended to read:

16 50.02 **(3m)** (bm) ~~Revocation~~ If the department provides to an entity written
17 notice of revocation, the grounds for the revocation, an explanation of the types of
18 sanctions or penalties that the department may impose under this subsection and
19 an explanation of the process for appealing a sanction or penalty imposed under this
20 subsection, the department may impose revocation of licensure, certification,
21 approval, or registration or conditional licensure, certification, approval, or
22 registration as specified in pars. ~~(d) to (g)~~ (c) to (f).

23 **SECTION 22.** 50.03 (5g) (d) of the statutes is renumbered 50.02 (3m) (c) and
24 amended to read:

1 50.02 (3m) (c) Under the procedure specified in par. (e) (d), the department
2 shall revoke approval of a hospital that fails to comply with s. 165.40 (6) (a) 1. or 2.
3 and may revoke a license, certification, approval, or registration or conditional
4 license, certification, approval, or registration for a licensee an entity for any of the
5 following reasons:

6 1. The department has imposed a sanction or penalty on the licensee entity
7 under par. (e) (b) and the licensee entity continues to violate or resumes violation of
8 a an applicable provision of licensure under sub. (4) or (4m), certification, approval,
9 or registration or conditional licensure, certification, approval, or registration, a rule
10 relating to the entity promulgated under this subchapter chapter or an order issued
11 under par. (b) (a) that forms any part of the basis for the sanction or penalty.

12 2. The licensee entity or a person under the supervision of the licensee entity
13 has substantially violated a provision of licensure, certification, approval, or
14 registration or conditional licensure, certification, approval, or registration
15 applicable to a community-based residential facility under sub. (4) or (4m) the entity,
16 a rule relating to community-based residential facilities the entity promulgated
17 under this subchapter chapter, or an order issued under par. (b) (a).

18 3. The licensee entity or a person under the supervision of the licensee entity
19 has acted in relation to or has created a condition relating to the operation or
20 maintenance of the community-based residential facility entity that directly
21 threatens the health, safety, or welfare of a resident of the community-based
22 residential facility or patient of the entity.

23 4. The licensee entity or a person under the supervision of the licensee entity
24 has repeatedly violated the same or similar provisions of licensure under sub. (4) or
25 (4m), certification, approval, or registration or conditional licensure, certification,

1 approval, or registration applicable to the entity, rules relating to the entity
2 promulgated under this subchapter chapter or orders issued under par. (b) (a).

3 **SECTION 23.** 50.03 (5g) (e) of the statutes is renumbered 50.02 (3m) (d) and
4 amended to read:

5 50.02 (3m) (d) 1. The department may revoke a license ~~for a licensee,~~
6 certification, approval, or registration or conditional license, certification, approval,
7 or registration of an entity for the reason specified in par. (d) (c) 1., 2., 3., or 4. if the
8 department provides the licensee with written notice of revocation, the grounds for
9 the revocation and an explanation of the process for appealing the revocation,
10 complies with par. (bm) at least 30 days before the date of revocation. The
11 department may revoke the license, certification, approval, or registration or
12 conditional license, certification, approval, or registration only if the violation
13 remains substantially uncorrected on the date of revocation or license expiration of
14 the license, certification, approval, or registration or conditional license,
15 certification, approval, or registration.

16 2. The department shall revoke approval for a hospital that fails to comply with
17 s. 165.40 (6) (a) 1. or 2. and may revoke a license, certification, approval, or
18 registration or conditional license, certification, approval, or registration for a
19 licensee an entity for the reason specified in par. (d) (c) 2. or 3. immediately if the
20 department provides the licensee with written notice of revocation, the grounds for
21 the revocation and an explanation of the process for appealing the revocation
22 complies with par. (bm).

23 3. The department may deny a license, certification, approval, or registration
24 or conditional license, certification, approval, or registration for a licensee an entity

1 whose license, certification, approval, or registration or conditional license,
2 certification, approval, or registration was revoked under this paragraph.

3 **SECTION 24.** 50.03 (5g) (f) of the statutes is renumbered 50.02 (3m) (e) and
4 amended to read:

5 50.02 (3m) (e) If ~~a community-based residential facility~~ an entity desires to
6 contest the revocation of a license, certification, approval, or registration or ~~to contest~~
7 ~~the imposing~~ imposition of a sanction or penalty, including an assessment of
8 forfeiture, under this subsection, or the issuance or terms of a conditional license,
9 certification, approval, or registration under sub. (3g), the ~~community-based~~
10 ~~residential facility~~ entity shall, within 10 days after receipt of notice under par. (e)
11 (a), (b), or (bm), notify the department in writing of its request for a hearing under
12 s. 227.44. The department shall hold ~~the hearing~~ a prehearing conference within 30
13 days after receipt of such the notice and shall send notice to the ~~community-based~~
14 ~~residential facility~~ entity of ~~the~~ a hearing as provided under s. 227.44 (2). This
15 paragraph does not apply to the issuance of a notice of violation or the requirement
16 to submit a plan of correction.

17 **SECTION 25.** 50.03 (5g) (g) 1. and 3. of the statutes are renumbered 50.02 (3m)
18 (f) 1. and 2. and amended to read:

19 50.02 (3m) (f) 1. Subject to s. 227.51 (3), revocation shall become effective on
20 the date set by the department in the notice of revocation, ~~or~~ upon final action after
21 hearing under ch. 227, or after court action if a stay is granted under sub. ~~(11)~~ (3r),
22 whichever is later.

23 2. The department may extend the effective date of revocation of a license,
24 certification, approval, or registration or conditional license, certification, approval,

1 or registration in any case in order to permit orderly removal and relocation of
2 residents or patients.

3 **SECTION 26.** 50.03 (5m) (a) 2. of the statutes is amended to read:

4 50.03 (**5m**) (a) 2. The department has ~~suspended or~~ revoked the existing license
5 of the facility as provided under ~~sub. (5) s. 50.02 (3m) (bm)~~.

6 **SECTION 27.** 50.03 (5m) (a) 3. of the statutes is amended to read:

7 50.03 (**5m**) (a) 3. The department has initiated revocation procedures under
8 sub. (5) and has determined that the lives, health, safety, or welfare of the resident
9 cannot be adequately assured pending a full hearing on license revocation under ~~sub.~~
10 (~~5~~) s. 50.02 (3m) (bm).

11 **SECTION 28.** 50.03 (11) of the statutes is renumbered 50.02 (3r) and amended
12 to read:

13 50.02 (**3r**) JUDICIAL REVIEW. (a) All administrative remedies shall be exhausted
14 before an agency determination under this subchapter ~~shall be~~ chapter is subject to
15 judicial review. Final decisions after hearing ~~shall be~~ are subject to judicial review
16 exclusively as provided in s. 227.52, except that an entity shall file any petition for
17 review of department action under this chapter ~~shall be~~ filed within 15 days after
18 receipt of notice of the final agency determination.

19 (b) The court may stay enforcement under s. 227.54 of the department's
20 agency's final decision if a showing is made that there is a substantial probability
21 that the party seeking review will prevail on the merits and will suffer irreparable
22 harm if a stay is not granted, and that the ~~facility~~ entity will meet the applicable
23 requirements of this ~~subchapter~~ chapter and the rules promulgated under this
24 ~~subchapter~~ chapter during such the stay. ~~Where~~ If a stay is granted, the court may
25 impose such conditions on the granting of the stay as may be necessary to safeguard

1 the lives, health, rights, safety, and welfare of residents or patients, and to assure
2 compliance by the facility entity with the requirements of this ~~subchapter~~ chapter.

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

7 **SECTION 29.** 50.03 (13) (c) of the statutes is amended to read:

8 50.03 (13) (c) *Outstanding violations.* Violations reported in departmental
9 inspection reports prior to the transfer of ownership shall be corrected, with
10 corrections verified by departmental survey, prior to the issuance of a full regular
11 license to the transferee. The license granted to the transferee shall be subject to the
12 plan of correction submitted by the previous owner and approved by the department
13 and any conditions contained in a conditional license issued to the previous owner.
14 In the case of a nursing home, if there are outstanding violations and no approved
15 plan of correction has been implemented, the department may issue a conditional
16 license and plan of correction as provided in s. ~~50.04 (6)~~ 50.02 (3g).

17 **SECTION 30.** 50.033 (2) of the statutes is amended to read:

18 50.033 (2) REGULATION. Standards for operation of licensed adult family homes
19 and procedures for application for licensure, monitoring, and inspection, ~~revocation~~
20 ~~and appeal of revocation~~ under this section shall be under rules promulgated by the
21 department under s. 50.02 (2) (am) 2. An adult family home licensure is valid until
22 revoked under ~~this section~~ s. 50.02 (3m) (bm). Licensure is not transferable. The
23 biennial licensure fee for a licensed adult family home is \$135. The fee is payable to
24 the county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437, if the county
25 department licenses the adult family home under sub. (1m) (b), and is payable to the

1 department, on a schedule determined by the department if the department licenses
2 the adult family home under sub. (1m) (b).

3 **SECTION 31.** 50.033 (4) of the statutes is repealed.

4 **SECTION 32.** 50.034 (2) (f) of the statutes is amended to read:

5 50.034 (2) (f) Establishing standards and procedures for ~~appeals of revocations~~
6 ~~of certification or refusal to issue or renew certification.~~

7 **SECTION 33.** 50.034 (7) of the statutes is repealed.

8 **SECTION 34.** 50.034 (8) of the statutes is repealed.

9 **SECTION 35.** 50.035 (11) of the statutes is repealed.

10 **SECTION 36.** 50.04 (4) (d) of the statutes is repealed.

11 **SECTION 37.** 50.04 (4) (e) 3. of the statutes is amended to read:

12 50.04 (4) (e) 3. In any petition for judicial review under s. 50.02 (3r) of a decision
13 by the division under subd. 2., the department, if not the petitioner who was in the
14 proceeding before the division under subd. 1., shall be the named respondent.

15 **SECTION 38.** 50.04 (5) (e) of the statutes is amended to read:

16 50.04 (5) (e) *Forfeiture appeal hearing.* A nursing home may contest an
17 assessment of forfeiture by sending, within 10 days after receipt of notice of a
18 contested action, a written request for hearing under s. 227.44 to the division of
19 hearings and appeals created under s. 15.103 (1). The administrator of the division
20 may designate a hearing examiner to preside over the case and recommend a decision
21 to the administrator under s. 227.46. The decision of the administrator of the
22 division shall be the final administrative decision. The division shall commence the
23 hearing within 30 days of receipt of the request for hearing and shall issue a final
24 decision within 15 days after the close of the hearing. Proceedings before the division
25 are governed by ch. 227. In any petition for judicial review under s. 50.02 (3r) of a

1 decision by the division, the party, other than the petitioner, who was in the
2 proceeding before the division shall be the named respondent.

3 **SECTION 39.** 50.04 (5) (f) of the statutes is amended to read:

4 50.04 (5) (f) *Forfeitures paid within 10 days.* All forfeitures shall be paid to the
5 department within 10 days of receipt of notice of assessment or, if the forfeiture is
6 contested under par. (e), within 10 days of receipt of the final decision after
7 exhaustion of administrative review, unless the final decision is appealed and the
8 order is stayed by court order under s. ~~50.03 (11)~~ 50.02 (3r). The department shall
9 remit all forfeitures paid to the state treasurer for deposit in the school fund.

10 **SECTION 40.** 50.04 (6) (title) of the statutes is renumbered 50.02 (3g) (title) and
11 amended to read:

12 50.02 (3g) (title) CONDITIONAL LICENSE, CERTIFICATION, APPROVAL, OR
13 REGISTRATION.

14 **SECTION 41.** 50.04 (6) (a) of the statutes is renumbered 50.02 (3g) (a) (intro.)
15 and amended to read:

16 50.02 (3g) (a) *Power of department.* (intro.) ~~In addition to the right to assess~~
17 ~~forfeitures under sub. (5), the~~ The department may, in addition to assessing
18 forfeitures under sub. (3m) (b), issue a conditional license, certification, approval, or
19 registration, as applicable, to any nursing home if the department finds that either
20 a class "A" or class "B" violation, as defined in sub. (4), continues to exist in such
21 home of the following, under the following conditions:

22 (b) The issuance of a conditional license shall revoke, certification, approval,
23 or registration to an entity revokes any outstanding license held by the nursing
24 home. The nursing home may seek review of a decision to issue a conditional license

1 ~~as provided under s. 50.03 (5), certification, approval, or registration held under this~~
2 ~~chapter by the entity.~~

3 **SECTION 42.** 50.04 (6) (b) of the statutes is renumbered 50.02 (3g) (c) and
4 amended to read:

5 50.02 (3g) (c) ~~Violation correction plan.~~ Prior to the issuance of a conditional
6 license, certification, approval, or registration, the department shall establish a
7 written plan of correction. The plan shall specify the violations ~~which~~ that prevent
8 full licensure, certification, approval, or registration and shall establish a time
9 schedule for correction of the deficiencies. Retention of the conditional license,
10 certification, approval, or registration by an entity shall be conditional on the entity's
11 meeting the requirements of the plan of correction.

12 **SECTION 43.** 50.04 (6) (c) of the statutes is renumbered 50.02 (3g) (d) and
13 amended to read:

14 50.02 (3g) (d) ~~Notice. Written~~ The department shall send to an entity written
15 notice of the decision to issue a conditional license ~~shall be sent to the facility,~~
16 certification, approval, or registration, together with the proposed plan of correction.
17 The notice shall inform the ~~facility~~ entity of its right to a case conference under par.
18 (e) prior to issuance of the conditional license ~~under par. (d), certification, approval,~~
19 or registration and of its right under par. (f) to a ~~full hearing under par. (e).~~

20 **SECTION 44.** 50.04 (6) (d) of the statutes is renumbered 50.02 (3g) (e) and
21 amended to read:

22 50.02 (3g) (e) ~~Case conference.~~ If the facility entity desires to have a case
23 conference it shall, within 4 working days of receipt of the notice under par. ~~(e)~~ (d),
24 send a written request for a case conference to the department. The department
25 shall, within 4 working days from the receipt of the request, hold a case conference

1 in the county in which the ~~facility~~ entity is located. Following this conference the
2 department may affirm or overrule its previous decision, or modify the terms of the
3 conditional license, certification, approval, or registration and plan of correction.
4 ~~The conditional license may be issued~~ department may issue the conditional license,
5 certification, approval, or registration after the case conference, or after the time for
6 requesting a case conference has expired, prior to any further hearing.

7 **SECTION 45.** 50.04 (6) (e) of the statutes is renumbered 50.02 (3g) (f) and
8 amended to read:

9 50.02 (3g) (f) ~~*Hearing.*~~ If after the case conference the licensee entity desires
10 to contest the basis for issuance of a conditional license, certification, approval, or
11 registration or the terms of the license conditional license, certification, approval, or
12 registration or plan of correction, the licensee ~~shall send a written request for~~
13 ~~hearing to the department within 4 working days after issuance of the conditional~~
14 ~~license. The department shall hold the hearing within 30 days of receipt of such~~
15 ~~notice and shall immediately notify the licensee of the date and location of the~~
16 ~~hearing~~ entity is entitled to a hearing under sub. (3m) (e).

17 **SECTION 46.** 50.04 (6) (f) of the statutes is renumbered 50.02 (3g) (g) and
18 amended to read:

19 50.02 (3g) (g) ~~*Term; inspection.*~~ ~~A conditional license shall be issued~~ The
20 department may issue a conditional license, certification, approval, or registration
21 for a period specified by the department, but in no event for more than ~~one year~~ 12
22 months. The department shall periodically inspect any ~~nursing home~~ entity that is
23 operating under a conditional license, certification, approval, or registration. If the
24 department finds substantial failure by the ~~nursing home~~ entity to follow the plan
25 of correction, the conditional license ~~may be revoked~~ department may revoke the

1 conditional license, certification, approval, or registration as provided under s. 50.03
2 ~~(5) sub. (3m) (bm)~~. The licensee entity is entitled to a hearing under sub. (3m) (e) on
3 the revocation under s. 50.03 ~~(5)~~, but the department may rely on facts found in a
4 hearing under par. (e) ~~(f)~~ as grounds for revocation.

5 **SECTION 47.** 50.04 (6) (g) of the statutes is renumbered 50.02 (3g) (h) and
6 amended to read:

7 50.02 (3g) (h) *Expiration.* If the department determines that a the conditional
8 license, certification, approval, or registration of an entity shall expire without
9 renewal or replacement of the conditional license, certification, approval, or
10 registration by a regular license, certification, approval, or registration, the
11 department shall so notify the licensee entity at least 30 days prior to expiration of
12 the conditional license, certification, approval, or registration. The notice shall
13 ~~comply with notice requirements under s. 50.03 (5) be written, shall state the~~
14 grounds for the expiration without renewal or replacement and shall explain the
15 process for appealing the expiration without renewal or replacement. The licensee
16 entity is entitled to a hearing under s. 50.03 (5) sub. (3m) (e) prior to expiration of the
17 license conditional license, certification, approval, or registration.

18 **SECTION 48.** 50.05 (2) (b) of the statutes is amended to read:

19 50.05 (2) (b) The department has ~~suspended or~~ revoked the existing license of
20 the facility.

21 **SECTION 49.** 50.05 (2) (c) of the statutes is amended to read:

22 50.05 (2) (c) The department has initiated revocation procedures under s. 50.03
23 ~~(5)~~ 50.02 (3m) (bm) and has determined that the lives, health, safety, or welfare of
24 the residents cannot be adequately assured pending a full hearing on license
25 revocation.

1 **SECTION 50.** 50.053 of the statutes is renumbered 50.02 (3m) (em) and amended
2 to read:

3 50.02 **(3m)** (em) ~~Case-conference.~~ The department may hold a case conference
4 with the parties to any contested action under this ~~subchapter~~ chapter to resolve any
5 or all issues prior to formal hearing. Unless any party to the contested case objects,
6 the department may delay the commencement of the formal hearing in order to hold
7 the case conference.

8 **SECTION 51.** 50.09 (6) (d) of the statutes is amended to read:

9 50.09 **(6)** (d) The facility shall attach a statement, which summarizes
10 complaints or allegations of violations of rights established under this section, to the
11 report required under s. 50.03 (4) (c) ~~1. or 2.~~ 2m. or (cm) 2. The statement shall
12 contain the date of the complaint or allegation, the name of the persons involved, the
13 disposition of the matter and the date of disposition. The department shall consider
14 the statement in reviewing the report.

15 **SECTION 52.** 50.14 (6) of the statutes is repealed.

16 **SECTION 53.** 50.35 of the statutes is amended to read:

17 **50.35 Application and approval.** Application for approval to maintain a
18 hospital shall be made to the department on forms provided by the department. On
19 receipt of an application, the department shall, except as provided in s. 50.498, issue
20 a certificate of approval if the applicant and hospital facilities meet the requirements
21 established by the department. Except as provided in s. 50.498, this approval shall
22 be in effect until, for just cause ~~and in the manner herein prescribed,~~ it is suspended
23 ~~or~~ revoked. The certificate of approval may be issued only for the premises and
24 persons or governmental unit named in the application and is not transferable or
25 assignable. The department shall withhold, suspend or, under s. 50.02 (3m) (bm),

1 revoke approval for a failure to comply with s. 165.40 (6) (a) 1. or 2., but, except as
2 provided in s. 50.498, otherwise may not withhold, ~~suspend or, under s. 50.02 (3m)~~
3 (bm), revoke approval unless for a substantial failure to comply with ss. 50.32 to
4 50.39 or the rules and standards adopted by the department ~~after giving a reasonable~~
5 ~~notice, a fair hearing and a reasonable opportunity to comply.~~ Failure by a hospital
6 to comply with s. 50.36 (3m) shall be considered to be a substantial failure to comply
7 under this section.

8 **SECTION 54.** 50.37 (1) of the statutes is amended to read:

9 50.37 (1) ~~Suspended or revoked~~ Revoked the hospital's approval under s. 50.35
10 50.02 (3m) (bm).

11 **SECTION 55.** 50.38 of the statutes is repealed.

12 **SECTION 56.** 50.49 (6) (b) of the statutes is amended to read:

13 50.49 (6) (b) A home health agency license is valid until ~~suspended or revoked,~~
14 except as provided in s. 50.498.

15 **SECTION 57.** 50.49 (7) of the statutes is repealed.

16 **SECTION 58.** 50.49 (9) of the statutes is repealed.

17 **SECTION 59.** 50.49 (10) of the statutes is amended to read:

18 50.49 (10) PROVISIONAL PROBATIONARY LICENSES. Except as provided in s. 50.498,
19 a provisional probationary license if approved by the department may be issued to
20 any home health agency, the facilities of which are in use or needed for patients, but
21 which is temporarily unable to conform to all the rules established under this section.
22 A provisional probationary license may not be issued for more than one year.

23 **SECTION 60.** 50.498 (1) (c) of the statutes is amended to read:

24 50.498 (1) (c) A provisional probationary license under s. 50.49 (10).

25 **SECTION 61.** 50.498 (1m) of the statutes is amended to read:

1 50.498 (1m) If an individual who applies for a certificate of approval,~~license~~
2 ~~or provisional license~~ or a license as specified under sub. (1) does not have a social
3 security number, the individual, as a condition of obtaining the certificate of
4 approval,~~license or provisional~~ or the license, shall submit a statement made or
5 subscribed under oath or affirmation to the department that the applicant does not
6 have a social security number. The form of the statement shall be prescribed by the
7 department of workforce development. A certificate of approval,~~license or~~
8 ~~provisional~~ or a license issued in reliance upon a false statement submitted under
9 this subsection is invalid.

10 **SECTION 62.** 50.498 (3) of the statutes is amended to read:

11 50.498 (3) Except as provided in sub. (1m), the department shall deny an
12 application for the issuance of a certificate of approval,~~license or provisional~~ or a
13 license specified in sub. (1) if the applicant does not provide the information specified
14 in sub. (1).

15 **SECTION 63.** 50.498 (4) of the statutes is amended to read:

16 50.498 (4) The department shall deny an application for the issuance of a
17 certificate of approval,~~license or provisional~~ or a license specified in sub. (1) or shall,
18 notwithstanding s. 50.02 (3m) (bm), revoke a certificate of approval,~~license or~~
19 ~~provisional~~ or a license specified in sub. (1), if the department of revenue certifies
20 under s. 73.0301 that the applicant for or holder of the certificate of approval,~~license~~
21 ~~or provisional~~ or the license is liable for delinquent taxes.

22 **SECTION 64.** 50.498 (5) of the statutes is amended to read:

23 50.498 (5) An Notwithstanding s. 50.02 (3m) (e), an action taken under sub. (3)
24 or (4) is subject to review only as provided under s. 73.0301 (2) (b) and (5).

25 **SECTION 65.** 50.51 (2) (b) of the statutes is amended to read:

1 50.51 (2) (b) Minimum requirements for issuance of a ~~provisional license or a~~
2 ~~regular~~ license to rural medical centers.

3 **SECTION 66.** 50.52 (2) (intro.) of the statutes is amended to read:

4 50.52 (2) (intro.) The department shall issue a ~~provisional license or a regular~~
5 license as a rural medical center to an applicant if all of the following are first done:

6 **SECTION 67.** 50.52 (4) of the statutes is amended to read:

7 50.52 (4) A regular license issued to a rural medical center is valid until it is
8 ~~suspended or revoked. A provisional license issued to a rural medical center is valid~~
9 ~~for 6 months from the date of issuance.~~

10 **SECTION 68.** 50.55 (1) of the statutes is repealed.

11 **SECTION 69.** 50.55 (2) (title) of the statutes is repealed and recreated to read:

12 50.55 (2) (title) PENALTY.

13 **SECTION 70.** 50.925 of the statutes is amended to read:

14 **50.925 Use of name or advertising prohibited.** No entity that is not a
15 hospice licensed or conditionally licensed under this subchapter or an applicant for
16 a license ~~or a provisional license~~ under this subchapter may designate itself as a
17 “hospice” or use the word “hospice” to represent or tend to represent the entity as a
18 hospice or services provided by the entity as services provided by a hospice.

19 **SECTION 71.** 50.93 (1) (intro.) of the statutes is amended to read:

20 50.93 (1) APPLICATION. (intro.) The application for a license ~~or for a provisional~~
21 ~~license~~ shall:

22 **SECTION 72.** 50.93 (2) (a) of the statutes is amended to read:

23 50.93 (2) (a) A hospice license is valid until ~~suspended or revoked.~~

24 **SECTION 73.** 50.93 (3) of the statutes is amended to read:

1 **50.93 (3) PROVISIONAL PROBATIONARY LICENSE.** If the applicant has not been
2 previously licensed under this subchapter or if the hospice is not in operation at the
3 time that application is made, the department may issue a ~~provisional~~ probationary
4 license. Unless sooner ~~suspended~~ or revoked under sub. (4), a ~~provisional~~
5 probationary license shall be valid for 24 months from the date of issuance. Within
6 30 days prior to the termination of a ~~provisional~~ probationary license, the
7 department shall fully and completely inspect the hospice and, if the hospice meets
8 the applicable requirements for licensure, shall issue a regular license under sub. (2).
9 If the department finds that the hospice does not meet the requirements for
10 licensure, the department may not issue a regular license under sub. (2).

11 **SECTION 74.** 50.93 (3g) of the statutes is created to read:

12 **50.93 (3g) SUBSTANTIAL NONCOMPLIANCE.** A hospice that is in substantial
13 noncompliance, as defined by the department by rule under s. 50.95 (7), with a
14 federal statute or regulation or with an applicable provision of this chapter shall
15 demonstrate, including by providing financial or other information requested by the
16 department, that the hospice continues to be fit and qualified, as defined by the
17 department by rule under s. 50.95 (5), to operate.

18 **SECTION 75.** 50.93 (4) of the statutes is repealed and recreated to read:

19 **50.93 (4) EFFECT OF LICENSE INVALIDITY.** No state or federal funds passing
20 through the state treasury may be paid to a hospice that does not have a valid license
21 issued under this section.

22 **SECTION 76.** 50.95 (7) of the statutes is created to read:

23 **50.95 (7)** The definition of “substantial noncompliance” for the purposes of s.
24 50.93 (3g).

25 **SECTION 77.** 50.98 (title) and (1) of the statutes are repealed.

1 **SECTION 78.** 50.98 (2) of the statutes is renumbered 50.02 (3m) (b) 3. and
2 amended to read:

3 50.02 **(3m)** (b) 3. In determining whether a forfeiture is to be imposed under
4 subd. 1. and in fixing the amount of the forfeiture to be imposed under subd. 2., if any,
5 for a violation, the department shall consider the following factors ~~shall be~~
6 ~~considered:~~

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

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

16 c. Any previous violations committed by the licensee entity.

17 d. The financial benefit to the hospice entity of committing or continuing the
18 violation.

19 **SECTION 79.** 50.98 (3) to (6) of the statutes are repealed.

20 **SECTION 80.** 51.032 (1) (b) of the statutes is amended to read:

21 51.032 (1) (b) A certification issued under s. 51.04 (2).

22 **SECTION 81.** 51.032 (1) (e) of the statutes is amended to read:

23 51.032 (1) (e) An approval issued under s. ~~51.45 (8)~~ 51.04 (1).

24 **SECTION 82.** 51.032 (4) of the statutes is amended to read:

1 51.032 (4) The department shall deny an application for the issuance of a
2 certification or approval specified in sub. (1) or shall, notwithstanding s. 51.04 (4),
3 revoke a certification or approval specified in sub. (1) if the department of revenue
4 certifies under s. 73.0301 that the applicant for or holder of a certification or approval
5 is liable for delinquent taxes.

6 **SECTION 83.** 51.032 (5) of the statutes is amended to read:

7 51.032 (5) ~~An Notwithstanding s. 51.04 (4)~~, action taken under sub. (3) or (4)
8 is subject to review only as provided under s. 73.0301 (2) (b) and (5).

9 **SECTION 84.** 51.04 of the statutes is repealed and recreated to read:

10 **51.04 Treatment facilities. (2) CERTIFICATION.** Except as provided in s.
11 51.032, an approved treatment facility may apply to the department for certification
12 of the facility for the receipt of funds for services provided as a benefit to a medical
13 assistance recipient under s. 49.46 (2) (b) 6. f. or to a community aids funding
14 recipient under s. 51.423 (2) or provided as mandated coverage under s. 632.89. The
15 department shall annually charge a fee for each certification.

16 **(3) CONDITIONAL APPROVAL.** (a) The department may, in addition to assessing
17 forfeitures under sub. (4) (a), issue a conditional approval to any treatment facility
18 if the department finds that a violation by the treatment facility of an applicable
19 provision of this chapter or of a rule promulgated under an applicable provision of
20 this chapter continues to exist.

21 (b) The issuance of a conditional approval to a treatment facility revokes any
22 outstanding approval held under this section by the treatment facility.

23 (c) Prior to the issuance of a conditional approval, the department shall
24 establish a written plan of correction. The plan shall specify the violations that
25 prevent full approval and shall establish a time schedule for correction of the

1 deficiencies. Retention of the conditional approval by a treatment facility shall be
2 conditional on the treatment facility's meeting the requirements of the plan of
3 correction.

4 (d) The department shall send to a treatment facility written notice of the
5 decision to issue a conditional approval, together with the proposed plan of
6 correction. The notice shall inform the treatment facility of its right to a case
7 conference prior to issuance of the conditional approval and of its right under par. (f)
8 to a hearing.

9 (e) If the treatment facility desires to have a case conference it shall, within 4
10 working days of receipt of the notice under par. (d), send a written request for a case
11 conference to the department. The department shall, within 4 working days from the
12 receipt of the request, hold a case conference in the county in which the treatment
13 facility is located. Following this conference the department may affirm or overrule
14 its previous decision, or modify the terms of the conditional approval and plan of
15 correction. The department may issue the conditional approval after the case
16 conference, or after the time for requesting a case conference has expired, prior to any
17 further hearing.

18 (f) If after the case conference the treatment facility desires to contest the basis
19 for issuance of a conditional approval or the terms of the conditional approval or plan
20 of correction, the treatment facility is entitled to a hearing as specified under sub.
21 (4) (d).

22 (g) The department may issue a conditional approval for a period specified by
23 the department, but in no event for more than 12 months. The department shall
24 periodically inspect any treatment facility that is operating under a conditional
25 approval. If the department finds substantial failure by the treatment facility to

1 follow the plan of correction, the department may revoke the conditional approval as
2 provided under sub. (4) (b). The treatment facility is entitled to a hearing as specified
3 under sub. (4) (d) on the revocation, but the department may rely on facts found in
4 a hearing under par. (f) as grounds for revocation.

5 (h) If the department determines that the conditional approval of a treatment
6 facility shall expire without renewal or replacement of the conditional approval by
7 an approval under sub. (1), the department shall so notify the treatment facility at
8 least 30 days prior to expiration of the conditional approval. The notice shall be
9 written, shall state the grounds for the expiration without renewal or replacement,
10 and shall explain the process for appealing the expiration without renewal or
11 replacement. The treatment facility is entitled to a hearing as specified under sub.
12 (4) (d) prior to expiration of the conditional approval.

13 (4) SANCTIONS AND PENALTIES. (a) If the department provides to a treatment
14 facility written notice of the sanction or penalty, the grounds for the sanction or
15 penalty, an explanation of the types of sanctions or penalties that the department
16 may impose under this subsection, and an explanation of the process for appealing
17 a sanction or penalty imposed under this subsection, the department may impose
18 any of the following against a treatment facility or other person who violates the
19 applicable provisions of this chapter or rules promulgated under the applicable
20 provisions of this chapter:

21 1. A daily forfeiture amount per violation of not less than \$10 nor more than
22 \$2,000 for each violation, with each day of violation constituting a separate offense.

23 All of the following apply to a forfeiture under this subdivision:

24 a. Within the limits specified in this subdivision, the department may, by rule,
25 set daily forfeiture amounts and payment deadlines based on the size of the

1 treatment facility, the type of the treatment facility, and the seriousness of the
2 violation.

3 b. The department may directly assess a forfeiture imposed under this
4 subdivision by specifying the amount of that forfeiture in the notice provided under
5 this paragraph.

6 c. A treatment facility assessed a forfeiture shall pay the forfeiture to the
7 department within 10 days after receipt of notice of assessment or, if the forfeiture
8 is contested under par. (d), within 10 days after receipt of the final decision after
9 exhaustion of administrative review, unless the final decision is appealed and the
10 order is stayed by court order under sub. (5). The department shall remit all
11 forfeitures paid under this subdivision to the state treasurer for deposit in the school
12 fund.

13 d. The attorney general may bring an action in the name of the state to collect
14 any forfeiture imposed under this subdivision if the forfeiture has not been paid
15 following the exhaustion of all administrative and judicial reviews. The only issue
16 to be contested in any such action shall be whether the forfeiture has been paid.

17 2. Suspension of approval for the treatment facility.

18 3. Revocation of approval or of conditional approval as specified in pars. (b) to
19 (e).

20 (b) Under the procedure specified in par. (c), the department may revoke an
21 approval for a treatment facility for any of the following reasons:

22 1. The department has imposed a sanction or penalty on the treatment facility
23 under par. (a) and the treatment facility continues to violate or resumes violation of
24 an applicable provision of approval or of conditional approval or a rule relating to the
25 treatment facility promulgated under this chapter.

1 2. The treatment facility or a person under the supervision of the treatment
2 facility has substantially violated a provision of approval applicable to the treatment
3 facility or a rule relating to the treatment facility promulgated under this chapter.

4 3. The treatment facility or a person under the supervision of the treatment
5 facility has acted in relation to or has created a condition relating to the operation
6 or maintenance of the treatment facility that directly threatens the health, safety,
7 or welfare of a patient of the treatment facility.

8 4. The treatment facility or a person under the supervision of the treatment
9 facility has repeatedly violated the same or similar provisions of approval or
10 conditional approval applicable to the treatment facility or rules relating to the
11 treatment facility promulgated under this chapter.

12 (c) 1. The department may revoke an approval or conditional approval for a
13 treatment facility for the reason specified in par. (b) 1., 2., 3., or 4. if the department
14 provides the treatment facility with written notice of revocation, the grounds for the
15 revocation, and an explanation of the process for appealing the revocation, at least
16 30 days before the date of revocation. The department may revoke the approval or
17 conditional approval only if the violation remains substantially uncorrected on the
18 date of revocation or expiration of the approval or conditional approval.

19 2. The department may revoke an approval or conditional approval for a
20 treatment facility for the reason specified in par. (b) 2. or 3. immediately if the
21 department provides the treatment facility with written notice of revocation, the
22 grounds for the revocation, and an explanation of the process for appealing the
23 revocation.

24 3. The department may deny an approval or conditional approval for treatment
25 facility whose approval or conditional approval was revoked under this paragraph.

1 (d) If a treatment facility desires to contest the suspension or revocation of an
2 approval or conditional approval or the imposition of a sanction or penalty, including
3 an assessment of a forfeiture under par. (a), the treatment facility shall, within 10
4 days after receipt of notice under par. (a), notify the department in writing of its
5 request for a hearing under s. 227.44. The department shall hold a prehearing
6 conference within 30 days after receipt of the notice and shall send notice to the
7 treatment facility of a hearing as provided under s. 227.44 (2).

8 (e) 1. Subject to s. 227.51 (3), revocation shall become effective on the date set
9 by the department in the notice of revocation, upon final action after hearing under
10 ch. 227, or after court action if a stay is granted under sub. (5), whichever is later.

11 2. The department may extend the effective date of revocation of an approval
12 or a conditional approval in any case in order to permit orderly removal and
13 relocation of patients.

14 (5) JUDICIAL REVIEW. (a) All administrative remedies shall be exhausted before
15 an agency determination under this chapter is subject to judicial review. Final
16 decisions after hearing are subject to judicial review exclusively as provided in s.
17 227.52, except that a treatment facility shall file any petition for review of
18 department action under this chapter within 15 days after receipt of notice of the
19 final agency determination.

20 (b) The court may stay enforcement under s. 227.54 of the agency's final
21 decision if a showing is made that there is a substantial probability that the party
22 seeking review will prevail on the merits and will suffer irreparable harm if a stay
23 is not granted, and that the treatment facility will meet the applicable requirements
24 of this chapter and the rules promulgated under this chapter during the stay. If a
25 stay is granted, the court may impose such conditions on the granting of the stay as

1 may be necessary to safeguard the lives, health, rights, safety, and welfare of patients
2 and to assure compliance by the treatment facility with the requirements of this
3 chapter.

4 (c) The attorney general may delegate to the department the authority to
5 represent the state in any action brought to challenge department actions prior to
6 exhaustion of administrative remedies and final disposition by the agency.

7 **SECTION 85.** 51.08 of the statutes is amended to read:

8 **51.08 Milwaukee County Mental Health Complex.** Any county having a
9 population of 500,000 or more may, pursuant to s. 46.17, establish and maintain a
10 county mental health complex. The county mental health complex shall be a hospital
11 devoted to the detention and care of drug addicts, alcoholics, chronic patients, and
12 mentally ill persons whose mental illness is acute. ~~Such~~ The hospital shall be
13 governed ~~pursuant to~~ under s. 46.21. Treatment of alcoholics at the county mental
14 health complex is subject to approval by the department under s. ~~51.45 (8)~~ 51.04 (1).
15 The county mental health complex established ~~pursuant to~~ under this section is
16 subject to rules promulgated by the department concerning hospital standards.

17 **SECTION 86.** 51.09 of the statutes is amended to read:

18 **51.09 County hospitals.** Any county having a population of less than 500,000
19 may establish a hospital or facilities for the detention and care of mentally ill
20 persons, alcoholics, and drug addicts; and in connection therewith a hospital or
21 facility for the care of ~~cases~~ persons afflicted with pulmonary tuberculosis. County
22 hospitals established ~~pursuant to~~ under this section are subject to rules promulgated
23 by the department concerning hospital standards, including standards for alcoholic
24 treatment facilities under s. ~~51.45 (8)~~ 51.04 (1).

25 **SECTION 87.** 51.30 (10) (b) of the statutes is amended to read:

1 51.30 (10) (b) ~~Whoever~~ Notwithstanding s. 51.04 (4) (a), whoever negligently
2 discloses confidential information under this section is subject to a forfeiture of not
3 more than \$1,000 for each violation.

4 **SECTION 88.** 51.45 (2) (b) of the statutes is amended to read:

5 51.45 (2) (b) “Approved private treatment facility” means a private agency
6 meeting the standards ~~prescribed in sub. (8) (a) of,~~ and approved under sub. (8) (e),
7 s. 51.04 (1).

8 **SECTION 89.** 51.45 (2) (c) of the statutes is amended to read:

9 51.45 (2) (c) “Approved public treatment facility” means a treatment agency
10 operating under the direction and control of the department or providing treatment
11 under this section through a contract with the department under sub. (7) (g) or with
12 the county department under s. 51.42 (3) (ar) 2., and meeting the standards
13 ~~prescribed in sub. (8) (a) of,~~ and approved under sub. (8) (e), s. 51.04 (1).

14 **SECTION 90.** 51.45 (8) (title) of the statutes is renumbered 51.04 (1) (title) and
15 amended to read:

16 51.04 (1) (title) ~~STANDARDS FOR PUBLIC AND PRIVATE TREATMENT FACILITIES;~~
17 ~~ENFORCEMENT PROCEDURES~~ APPROVAL.

18 **SECTION 91.** 51.45 (8) (a) of the statutes is renumbered 51.04 (1) (a) and
19 amended to read:

20 51.04 (1) (a) The department shall establish minimum standards for ~~approved~~
21 ~~treatment facilities that must be met for a treatment facility to be approved as a~~
22 public or private treatment facility approval, except as provided in s. 51.032, of public
23 and private treatment facilities and ~~fix~~ shall specify the fees to be charged by the
24 department for the required inspections. The standards may concern only the health
25 standards to be met and standards of treatment to be afforded patients and shall

1 distinguish between facilities rendering different modes of treatment. In setting
2 standards, the department shall consider the residents' needs and abilities, the
3 services to be provided by the facility, and the relationship between the physical
4 structure and the objectives of the program. Nothing in this subsection shall may
5 be construed to prevent county departments from establishing reasonable higher
6 standards.

7 **SECTION 92.** 51.45 (8) (b) of the statutes is renumbered 51.04 (1) (b).

8 **SECTION 93.** 51.45 (8) (c) of the statutes is renumbered 51.04 (1) (c) and
9 amended to read:

10 51.04 (1) (c) ~~Approval of a No treatment facility must be secured that is not~~
11 ~~approved under this section before application subsection may apply for a~~
12 ~~grant-in-aid for such facility under s. 51.423 or before treatment in any facility is~~
13 ~~rendered render treatment to patients.~~

14 **SECTION 94.** 51.45 (8) (d) of the statutes is renumbered 51.04 (1) (d) and
15 amended to read:

16 51.04 (1) (d) ~~Each An approved public and private treatment facility shall file~~
17 ~~with the department on request, data, statistics, schedules and information the~~
18 ~~department reasonably requires, including any data or information specified under~~
19 ~~s. 46.973 (2m). An approved public or private The approval of a treatment facility~~
20 ~~that without good cause fails to furnish any data, statistics, schedules or information~~
21 ~~as requested, or files fraudulent returns thereof, shall be removed from the list of~~
22 ~~approved treatment facilities, is subject to revocation.~~

23 **SECTION 95.** 51.45 (8) (e) of the statutes is repealed.

24 **SECTION 96.** 51.45 (8) (f) of the statutes is repealed.

25 **SECTION 97.** 73.0301 (1) (d) 3. of the statutes is amended to read:

1 73.0301 (1) (d) 3. A license, certificate of approval, ~~provisional probationary~~
2 license, ~~conditional license~~, certification, certification card, registration, permit,
3 training permit ~~or~~, approval, or conditional license, certification, approval, or
4 registration specified in s. 50.02 (3g), 50.35, 50.49 (6) (a) or (10), 50.93 (3), 51.038,
5 51.04 (1), (2), or (3), 51.42 (7) (b) 11., 51.421 (3) (a), ~~51.45 (8)~~, 146.40 (3) or (3m), 146.50
6 (5) (a) or (b), (6g) (a), (7) or (8) (a) or (f), 250.05 (5), 252.23 (2), 252.24 (2), 254.176,
7 254.20 (3), 255.08 (2) (a) or 343.305 (6) (a) or a permit for operation of a campground
8 specified in s. 254.47 (1).

9 **SECTION 98.** 165.40 (6) (a) (intro.) of the statutes is amended to read:

10 165.40 (6) (a) (intro.) No certificate of approval to maintain a hospital may be
11 issued under s. 50.35 and a certificate of approval that has been issued under that
12 section shall be ~~suspended or~~ revoked if any of the following occurs:

13 **SECTION 99.** 301.031 (2r) (a) 3. of the statutes is amended to read:

14 301.031 (2r) (a) 3. Is for the treatment of alcoholics in treatment facilities
15 which have not been approved by the department of health and family services in
16 accordance with s. ~~51.45 (8)~~ 51.04 (1) or which have not been conditionally approved
17 by the department of health and family services in accordance with s. 51.04 (3).

18 **SECTION 100.** 343.06 (1) (d) of the statutes is amended to read:

19 343.06 (1) (d) To any person whose dependence on alcohol has attained such
20 a degree that it interferes with his or her physical or mental health or social or
21 economic functioning, or who is addicted to the use of controlled substances or
22 controlled substance analogs, ~~except that the secretary may issue a license if the~~
23 person submits to an examination, evaluation or treatment in a treatment facility
24 meeting the standards prescribed in s. ~~51.45 (8) (a)~~ 51.04 (1), as directed by the
25 secretary, in accordance with s. 343.16 (5).

1 **SECTION 101.** 632.89 (1) (e) 1. of the statutes is amended to read:

2 632.89 (1) (e) 1. A program in an outpatient treatment facility, if both are
3 approved by the department of health and family services, the program is
4 established and maintained according to rules promulgated under s. 51.42 (7) (b) and
5 the facility is approved and certified under s. 51.04.

6 **SECTION 9323. Initial applicability; health and family services.**

7 (1) **FACILITY LICENSURE, CERTIFICATION, APPROVAL, AND REGISTRATION;**
8 **ENFORCEMENT.** The treatment of sections 50.01 (4r), 50.02 (1), (1d), (2) (am) 2., and
9 (3g) (a) 1., 2., 3., 4., 5., 6., 7., and 8., 50.03 (2) (d), (3) (f), (4) (a) 1. b., (c) 1., 2., and 3.,
10 and (cm) 3., (4m), (5), (5g) (title), (a), (b), (c) (intro.), 1., 2., and 3., (d), (e), (f), and (g)
11 1. and 3., (5m) (a) 2. and 3., (11), and (13) (c), 50.033 (2) and (4), 50.034 (2) (f), (7), and
12 (8), 50.035 (11), 50.04 (4) (d) and (e) 3., (5) (e) and (f), and (6) (title), (a), (b), (c), (d),
13 (e), (f), and (g), 50.05 (2) (b) and (c), 50.053, 50.09 (6) (d), 50.14 (6), 50.35, 50.37 (1),
14 50.38, 50.49 (6) (b), (7), (9), and (10), 50.498 (1) (c), (1m), (3), (4), and (5), 50.51 (2) (b),
15 50.52 (2) (intro.) and (4), 50.55 (1) and (2) (title), 50.925, 50.93 (1) (intro.), (2) (a), (3),
16 (3g), and (4), 50.95 (7), 50.98 (title), (1), (2), (3), (4), (5), and (6), and 165.40 (6) (a)
17 (intro.) of the statutes first applies to licenses, certifications, approvals, and
18 registrations issued; to conditional licenses, certifications, approvals, registrations,
19 and probationary licenses issued; and to violations committed; on the effective date
20 of this subsection.

21 (2) **TREATMENT FACILITY APPROVAL AND CONDITIONAL APPROVAL: ENFORCEMENT.** The
22 treatment of sections 46.031 (2r) (a) 3., 51.032 (1) (b) and (e), (4), and (5), 51.04, 51.08,
23 51.09, 51.30 (10) (b), 51.45 (2) (b) and (c) and (8) (title), (a), (b), (c), (d), (e), and (f),
24 73.0301 (1) (d) 3., 301.031 (2r) (a) 3., 343.06 (1) (d), and 632.89 (1) (e) 1. of the statutes

1 first applies to approvals and conditional approvals issued and to violations
2 committed on the effective date of this subsection.

3 **SECTION 9423. Effective dates; health and family services.**

4 (1) FACILITY AND TREATMENT FACILITY; ENFORCEMENT. The treatment of sections
5 46.031 (2r) (a) 3., 50.01 (4r), 50.02 (1), (1d), (2) (am) 2., and (3g) (a) 1., 2., 3., 4., 5., 6.,
6 7., and 8., 50.03 (2) (d), (3) (f), (4) (a) 1. b., (c) 1., 2., and 3., and (cm) 3., ~~4.~~ (5), (5g)
7 (title), (a), (b), (c) (intro.), 1., 2., and 3., (d), (e), (f), and (g) 1. and 3., (5m) (a) 2. and
8 3., (11), and (13) (c), 50.033 (2) and (4), 50.034 (2) (f), (7), and (8), 50.035 (11), 50.04
9 (4) (d) and (e) 3., (5) (e) and (f), and (6) (title), (a), (b), (c), (d), (e), (f), and (g), 50.05 (2)
10 (b) and (c), 50.053, 50.09 (6) (d), 50.14 (6), 50.35, 50.37 (1), 50.38, 50.49 (6) (b), (7), (9),
11 and (10), 50.498 (1) (c), (1m), (3), (4), and (5), 50.51 (2) (b), 50.52 (2) (intro.) and (4),
12 50.55 (1) and (2) (title), 50.925, 50.93 (1) (intro.), (2) (a), (3), (3g), and (4), 50.95 (7),
13 50.98 (title), (1), (2), (3), (4), (5), and (6), 51.032 (1) (b) and (e), (4), and (5), 51.04, 51.08,
14 51.09, 51.30 (10) (b), 51.45 (2) (b) and (c), (8) (title), (a), (b), (c), (d), (e), and (f), 73.0301
15 (1) (d) 3., 165.40 (6) (a) (intro.), 301.031 (2r) (a) 3., 343.06 (1) (d), 632.89 (1) (e) 1. of
16 the statutes and SECTION 9323 (1) and (2) of this act take effect on the first day of the
17 7th month beginning after publication.

18 (END)

D - NOTE

D-NOTE

To Melissa:

Please note that, in light of our Wednesday conversation, I added reference to both

licensed adult family homes and to home health

agencies as entities that may be subject to a forfeiture under s. 50.02(3m)(b)1. ^{in error,} ~~the~~ ^{semicolon}

reference to home health agencies had not

previously been included.

DAK

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1686/2dn
DAK:cjs&jld:rs

January 25, 2001

To Melissa:

Please note that, in light of our Wednesday conversation, I added reference to both licensed adult family homes and to home health agencies as entities that may be subject to a forfeiture under s. 50.02 (3m) (b) 1.; in error, the reference to have health agencies had not previously been included.

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137
E-mail: debora.kennedy@legis.state.wi.us

Kennedy, Debora

From: Mullikin, Melissa
Sent: Friday, February 02, 2001 1:47 PM
To: Kennedy, Debora
Subject: FW: FW: LRB Draft: 01-1686/2 Forfeitures levied against facilities and treatment facilities

Debora,

Is there still time to make the following minor changes to this draft?

Thanks much,
Melissa

Melissa Mullikin
Executive Policy and Budget Analyst
State Budget Office
267-7980

-----Original Message-----

From: Forsaith, Andrew
Sent: Friday, February 02, 2001 10:19 AM
To: Mullikin, Melissa
Subject: Re: FW: LRB Draft: 01-1686/2 Forfeitures levied against facilities and treatment facilities

We have two minor comments:

1) A technical point: We think "(c)" should be added to the phrase "entity under..." in line 10, page 11, since the draft allows forfeitures against entities under (1d)(c) in line 15.

2) If possible, we would like to reduce the period for the probationary licenses for hospices from 24 to 12 months. This would be a change from current law, but would make it consistent with other probationary licenses in chapter 50. See Draft section 72, page 27, line 5.

Otherwise the draft looks fine to us. Thanks.

>>> Mullikin, Melissa 02/01/01 09:42AM >>>

Please forward any additional MINOR comments to me by noon on Friday. If it is FINAL, please let me know ASAP.

Thanks.

Melissa Mullikin
Executive Policy and Budget Analyst
State Budget Office
267-7980

-----Original Message-----

From: Schlueter, Ron
Sent: Thursday, January 25, 2001 4:36 PM
To: Mullikin, Melissa
Cc: Kraus, Jennifer; Currier, Dawn; Hanaman, Cathlene; Haugen, Caroline
Subject: LRB Draft: 01-1686/2 Forfeitures levied against facilities and treatment facilities

Following is the PDF version of draft 01-1686/2.



(SOON - In edit 2/2)

State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-1686/3
DAK:cjs&jld:rs

DOA:.....Mullikin - Forfeitures levied against facilities and treatment facilities

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

Changes on pp. 3, 10, and 27 only

Do not gen

1

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

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

HEALTH

Under current law, DHFS licenses, certifies, approves, or registers and otherwise regulates numerous health care services providers, including hospitals, nursing homes, community-based residential facilities (C-BRFs), adult family homes, residential care apartment complexes, rural medical centers, home health agencies, and hospices. Currently, the sanctions that DHFS may bring against those facilities or services that violate applicable standards of care or provisions of licensure, certification, approval, or registration vary as to the facility or service. The sanctions include denial of licensure, issuance of departmental orders, required submittal of a plan of correction, assessment of forfeitures, suspension of admissions, imposition of conditional licensure and suspension or revocation of licensure. (Unlike forfeitures for other facilities, nursing home forfeitures are fixed in amount using factors that concern the gravity of the violation, severity of harm, extent of violation, indications of good faith by the licensee, previous violations, and the financial benefit to the nursing home of committing or continuing the violation; nursing homes are also subject to notices of violation and correction orders.) Facilities or services on which sanctions or penalties are imposed may appeal the

sanctions in hearings that are delegated by DHFS to be conducted by the subunit of DOA that deals with hearings and appeals. Decisions that result from these hearings are subject to judicial review.

This bill makes uniform, with specified exceptions, the penalties and sanctions, and appeal rights for those penalties and sanctions, that DHFS may impose under current law on hospitals, nursing homes, C-BRFs, licensed adult family homes, residential care apartment complexes, rural medical centers, home health agencies, and hospices that violate conditions of licensure, certification, approval, or registration or applicable standards of care. The bill eliminates DHFS' authority to suspend licensure, certification, approval, or registration. Under the bill, if DHFS provides a C-BRF, hospital, or home health agency with written notice of the grounds for a sanction, an explanation of the types of sanctions that DHFS may impose, and an explanation of the appeal process, DHFS may order that the C-BRF, hospital, or home health agency do any of the following: 1) if operating without licensure or approval, cease operation; 2) terminate the employment of any person who operated or permitted operation of a C-BRF, hospital, or home health agency for which licensure or approval was revoked; 3) stop violating a provision of licensure or approval; 4) for a C-BRF only, submit a plan of correction for violation of a provision of licensure or approval; 5) for a C-BRF only, implement and comply with a plan of correction that is approved or developed by DHFS; 6) for a nursing home, C-BRF, or hospital only, suspend new admissions until all violations are corrected; or 7) provide training in one or more specific areas for staff members. In addition, if DHFS provides the same type of written notice, DHFS may impose any of the following:

1. Except for nursing homes, a daily administrative forfeiture of not less than \$10 nor more than \$2,000 for each violation, with each day of violation being a separate offense; the amount of the forfeiture and payment deadlines are specified by DHFS by rule, based on the size of the facility or service and the seriousness of the violation, and may be increased if there is continued failure to comply with a DHFS order.

2. Under specified circumstances, for all facilities or services, revocation of licensure, certification, approval, or registration. The bill specifies procedures for requesting a hearing to contest imposition of a sanction.

Under current law, nursing homes, C-BRFs, and hospices must demonstrate that they are "fit and qualified" in order to be licensed. This bill requires that licensed nursing homes, C-BRFs, and hospices, if they are in substantial noncompliance, as defined by DHFS by rule, with respect to applicable state or federal requirements, demonstrate that they are fit and qualified to operate. DHFS must, by rule, specify procedures regarding these findings.

Under current law, DHFS may issue a conditional license for up to one year to a nursing home and may revoke any outstanding license of the nursing home if DHFS finds that the nursing home has violated standards of care so as to create a condition or occurrence that presents a substantial probability that death or serious mental or physical harm to a resident will result or that directly threatens the health, safety, or welfare of a resident. Before issuing the conditional license, DHFS must establish a written plan of correction, provide written notice to the nursing home,

and, at the nursing home's request, hold a case conference, after which a hearing may be held. DHFS must periodically inspect a nursing home operating under a conditional license and may revoke the conditional license if the nursing home substantially fails to follow the plan of correction. This bill authorizes DHFS to issue a conditional license, certification, approval, or registration that is similar to a conditional approval of a nursing home, to any facility or service that violates standards of care or provisions of licensure.

Under current law, DHFS may issue provisional licenses for home health agencies, rural medical centers, and hospices that have not previously been licensed, that are not in operation at the time the application for licensure is made, or that are temporarily unable to comply with standards of care. DHFS must inspect a hospice within 30 days before termination of the provisional license and either issue or deny a regular license. DHFS also may issue probationary licenses for nursing homes and C-BRFs that have not previously been licensed and are not operating at the time the license application is made. This bill eliminates provisions relating to provisional licenses for rural medical centers, and, for home health agencies and hospices,

months changes the term "provisional" to "probationary." *In addition, the bill changes from 24 to 12 months the period of validity of a hospice probationary license.*

MENTAL ILLNESS AND DEVELOPMENTAL DISABILITIES

Under current law, DHFS approves and otherwise regulates public and private treatment facilities for the provision of services for mental illness, developmental disability, and alcohol and other drug abuse. DHFS may, after notice and hearing, grant, suspend, revoke, or limit such an approval, and a court may restrain violations of conditions of approval or standards of care by treatment facilities; review denials, restrictions, or revocations of approval; and grant other enforcement relief.

This bill changes current provisions concerning approval and other regulation of treatment facilities to specify penalties and sanctions that DHFS may impose on treatment facilities for violations of conditions of approval or standards of care; these penalties and sanctions are similar to those that DHFS may, under the bill, impose on facilities or services regulated by DHFS that provide medical care. Under the bill, if DHFS provides a treatment facility with written notice of the grounds for a sanction, an explanation of the types of sanctions that DHFS may impose, and an explanation of the appeal process, DHFS may impose any of the following:

1. A daily forfeiture of not less than \$10 nor more than \$2,000 for each violation, with each day of violation being a separate offense; the amount of the forfeiture and payment deadlines are specified by DHFS by rule, based on the size of the treatment facility and the seriousness of the violation, and may be increased if there is continued failure to comply with a DHFS order.
2. Suspension of approval.
3. Under specified circumstances, revocation of approval.

The bill specifies procedures for requesting a hearing to contest a forfeiture, suspension, or revocation. The hearing is subject to judicial review under current law.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 46.031 (2r) (a) 3. of the statutes is amended to read:

2 46.031 (2r) (a) 3. Is for the treatment of alcoholics in treatment facilities which
3 have not been approved by the department in accordance with s. ~~51.45 (8)~~ 51.04 (1)
4 or conditionally approved by the department in accordance with s. 51.04 (3).

5 **SECTION 2.** 50.01 (4r) of the statutes is amended to read:

6 50.01 (4r) “Plan of correction” means ~~a nursing home’s~~ an applicable entity’s
7 response to alleged deficiencies cited by the department on forms provided by the
8 department.

9 **SECTION 3.** 50.02 (1) of the statutes is renumbered 50.02 (1m).

10 **SECTION 4.** 50.02 (1d) of the statutes is created to read:

11 50.02 (1d) DEFINITION. In this section, “entity” means any of the following:

12 (a) A nursing home that is licensed under s. 50.03 (4) (a) 1. a.

13 (b) A community-based residential facility that is licensed under s. 50.03 (4)
14 (a) 1. b.

15 (c) An adult family home that is licensed under s. 50.033.

16 (d) A residential care apartment complex that is certified under s. 50.034 (1)
17 (a) or registered under s. 50.034 (1) (b).

18 (e) A hospital that is approved under s. 50.35.

19 (f) A home health agency that is licensed under s. 50.49 (6) (a).

20 (g) A rural medical center that is licensed under s. 50.52.

21 (h) A hospice that is licensed under s. 50.92.

1 **SECTION 5.** 50.02 (2) (am) 2. of the statutes is amended to read:

2 50.02 (2) (am) 2. For the purposes of s. 50.033, establishing minimum
3 requirements for licensure, licensure application procedures and forms, standards
4 for operation and procedures for monitoring, and inspection, ~~revocation and appeal~~
5 ~~of revocation~~.

6 **SECTION 6.** 50.02 (3g) (a) 1. to 8. of the statutes are created to read:

7 50.02 (3g) (a) 1. A nursing home, if the department finds that either a class “A”
8 violation, as specified in s. 50.04 (4) (b) 1., or a class “B” violation, as specified in s.
9 50.04 (4) (b) 2., by the nursing home continues to exist.

10 2. A community-based residential facility, if the department finds that a
11 violation by the community-based residential facility of an applicable provision of
12 s. 50.03, 50.035, 50.037, 50.05, 50.06, 50.065, 50.07, or 50.09, or of a rule promulgated
13 under an applicable provision of sub. (2) or (3) or s. 50.03, 50.035, 50.037, 50.05,
14 50.06, 50.065, 50.07, or 50.09, continues to exist.

15 3. A licensed adult family home, if the department finds that a violation by the
16 adult family home of s. 50.033 or 50.065 or of a rule promulgated under s. 50.02 (2)
17 (am) 2., 50.033, or 50.065 continues to exist.

18 4. A certified or registered residential care apartment complex, if the
19 department finds that a violation by the residential care apartment complex of s.
20 50.034 or 50.065 or of a rule promulgated under s. 50.034 or 50.065 continues to exist.

21 5. A hospital, if the department finds that a violation by the hospital of s.
22 50.065, 50.35, 50.355, or 50.36 (3) or (3m) or of a rule promulgated under s. 50.065,
23 50.35, 50.355, or 50.36 (3) or (3m) continues to exist.

1 6. A home health agency, if the department finds that a violation by the home
2 health agency of s. 50.065 or 50.49 or of a rule promulgated under s. 50.065 or 50.49
3 continues to exist.

4 7. A rural medical center, if the department finds that a violation by the rural
5 medical center of s. 50.065, 50.53 (2), 50.535, or 50.54 (2) or of a rule promulgated
6 under s. 50.065, 50.53 (2), 50.535, or 50.54 (2) continues to exist.

7 8. A hospice, if the department finds that a violation by the hospice of s. 50.065,
8 50.92, 50.93 (1) to (3m), or 50.95 or of a rule promulgated under s. 50.065, 50.92, 50.93
9 (1) to (3m), or 50.95 continues to exist.

10 **SECTION 7.** 50.03 (2) (d) of the statutes is amended to read:

11 50.03 (2) (d) Any holder of a license or applicant for a license shall be deemed
12 to have given consent to any authorized officer, employee or agent of the department
13 to enter and inspect the facility in accordance with this subsection. Refusal to permit
14 such entry or inspection shall constitute grounds for initial ~~licensure~~ license denial,
15 as provided in sub. (4), ~~or suspension~~ or revocation of a license, as provided in sub.
16 ~~(5)~~ s. 50.02 (3m) (bm).

17 **SECTION 8.** 50.03 (3) (f) of the statutes is amended to read:

18 50.03 (3) (f) Community-based residential facilities shall report all formal
19 complaints regarding their operation filed under sub. (2) (f) and the disposition of
20 each when reporting under sub. (4) (c) ~~1.~~ 2m.

21 **SECTION 9.** 50.03 (4) (a) 1. b. of the statutes is amended to read:

22 50.03 (4) (a) 1. b. Except as provided in sub. (4m) (b), the department shall issue
23 a license for a community-based residential facility if it finds the applicant to be fit
24 and qualified, if it finds that the community-based residential facility meets the
25 requirements established by this subchapter and if the community-based

1 residential facility has paid the license fee under s. 50.037 (2) (a). In determining
2 whether to issue a license for a community-based residential facility, the department
3 may consider any action by the applicant or by an employee of the applicant that
4 constitutes a substantial failure by the applicant or employee to protect and promote
5 the health, safety or welfare of a resident. The department may deny licensure to
6 or revoke licensure for any person who conducted, maintained, operated or permitted
7 to be maintained or operated a community-based residential facility for which
8 licensure was revoked. The department, or its designee, shall make such inspections
9 and investigations as are necessary to determine the conditions existing in each case
10 and shall file written reports. In reviewing the report of a community-based
11 residential facility that is required to be submitted under par. (c) ~~1.~~ 2m., the
12 department shall consider all complaints filed under sub. (2) (f) since initial license
13 issuance or since the last review, whichever is later, and the disposition of each. The
14 department shall promulgate rules defining “fit and qualified” for the purposes of
15 this subd. 1. b.

16 **SECTION 10.** 50.03 (4) (c) 1. of the statutes is amended to read:

17 50.03 (4) (c) 1. A community-based residential facility license is valid until it
18 is revoked ~~or suspended under this section~~ s. 50.02 (3m) (bm).

19 2m. Every 24 months, on a schedule determined by the department, a
20 community-based residential facility licensee shall submit a biennial report in the
21 form and containing the information that the department requires, including
22 payment of the fees required under s. 50.037 (2) (a). If a complete biennial report is
23 not timely filed, the department shall issue a warning to the licensee. The
24 department may revoke a community-based residential facility license for failure to

1 timely and completely report within 60 days after the report date established under
2 the schedule determined by the department.

3 **SECTION 11.** 50.03 (4) (c) 2. of the statutes is renumbered 50.03 (4) (cm) 1. and
4 amended to read:

5 50.03 (4) (cm) 1. A nursing home license is valid until it is revoked ~~or suspended~~
6 under ~~this section~~ s. 50.02 (3m) (bm).

7 2. Every 12 months, on a schedule determined by the department, a nursing
8 home licensee shall submit a report in the form and containing the information that
9 the department requires, including payment of the fee required under s. 50.135 (2)
10 (a). If a complete report is not timely filed, the department shall issue a warning to
11 the licensee. The department may revoke a nursing home license for failure to timely
12 and completely report within 60 days after the report date established under the
13 schedule determined by the department.

14 **SECTION 12.** 50.03 (4) (c) 3. of the statutes is created to read:

15 50.03 (4) (c) 3. A community-based residential facility that is in substantial
16 noncompliance with a federal statute or regulation or with an applicable provision
17 of this chapter shall demonstrate, including by providing financial or other
18 information requested by the department, that the community-based residential
19 facility continues to be fit and qualified, as defined by the department by rule under
20 par. (a) 1. a., to operate. The department shall promulgate rules defining
21 “substantial noncompliance” for the purposes of this subdivision.

22 **SECTION 13.** 50.03 (4) (cm) 3. of the statutes is created to read:

23 50.03 (4) (cm) 3. A nursing home that is in substantial noncompliance with a
24 federal statute or regulation or with an applicable provision of this chapter shall
25 demonstrate, including by providing financial or other information requested by the

1 department, that the nursing home continues to be fit and qualified, as defined by
2 the department by rule under par. (a) 1. b., to operate. The department shall
3 promulgate rules defining “substantial noncompliance” for the purposes of this
4 subdivision.

5 **SECTION 14.** 50.03 (5) of the statutes is repealed.

6 **SECTION 15.** 50.03 (5g) (title) of the statutes is renumbered 50.02 (3m) (title)
7 and amended to read:

8 50.02 (3m) (title) ~~SANCTIONS AND PENALTIES FOR COMMUNITY-BASED RESIDENTIAL~~
9 ~~FACILITIES.~~

10 **SECTION 16.** 50.03 (5g) (a) of the statutes is repealed.

11 **SECTION 17.** 50.03 (5g) (b) of the statutes is renumbered 50.02 (3m) (a) and
12 amended to read:

13 50.02 (3m) (a) ~~Except as provided in s. 50.04 (4) and (5), if~~ If, based on an
14 investigation made by the department, the department provides to a
15 ~~community-based residential facility~~ any of the following entities written notice of
16 the grounds for a sanction, an explanation of the types of sanctions and penalties that
17 the department may impose under this subsection, and an explanation of the process
18 for appealing a sanction or penalty imposed under this subsection, the department
19 may order any of the following applicable sanctions:

20 1. That a person stop conducting, maintaining or operating ~~the~~
21 ~~community-based residential facility~~ an entity under sub. (1d) (b), (e), or (f) if the
22 ~~community-based residential facility~~ entity is without a valid license or
23 ~~probationary license in violation of sub. (1), or approval, probationary license, or~~
24 conditional license or approval.

1 2. That, within 30 days after the date of the order, ~~the community-based~~
2 ~~residential facility under this subdivision, an entity under sub. (1d) (b), (e), or (f)~~
3 terminate the employment of any employed person who conducted, maintained,
4 operated or permitted to be maintained or operated a ~~community-based residential~~
5 ~~facility~~ an entity for which licensure or approval or conditional licensure or approval
6 was revoked before issuance of the department's order. ~~This~~ The order under this
7 subdivision includes employment of a person in any capacity, whether as an officer,
8 director, agent, or employee of the ~~community-based residential facility~~ entity.

9 3. That a licensee an entity under sub. (1d) (b), (e), or (f) stop violating any
10 provision of licensure or approval or conditional licensure or approval applicable to
11 ~~a community-based residential facility under sub. (4) or (4m)~~ the entity under this
12 chapter or of rules relating to ~~community-based residential facilities~~ the entity
13 promulgated by the department under sub. ~~(4) or (4m)~~ this chapter.

14 4. That a licensee an entity under sub. (1d) (b), (e), or (f) submit a plan of
15 correction for violation of any provision of licensure or approval or conditional
16 licensure or approval applicable to a ~~community-based residential facility under~~
17 ~~sub. (4) or (4m)~~ the entity under this chapter or of a rule relating to ~~community-based~~
18 ~~residential facilities~~ the entity promulgated by the department under sub. ~~(4) or (4m)~~
19 this chapter.

20 5. That a licensee an entity under sub. (1d) (b) implement and comply with a
21 plan of correction previously submitted by the licensee entity and approved by the
22 department.

23 6. That a licensee an entity under sub. (1d) (b) implement and comply with a
24 plan of correction for the entity that is developed by the department.

1 7. That a licensee an entity under sub. (1d) (a), (b), or (e) accept no additional
2 residents or patients until all violations are corrected.

3 8. That a licensee an entity under sub. (1d) (b), (e), or (f) provide training in one
4 or more specific areas for all of the licensee's entity's staff or for specific staff
5 members.

6 **SECTION 18.** 50.03 (5g) (c) (intro.) and 1. of the statutes are renumbered 50.02
7 (3m) (b) 1. and 2., and 50.02 (3m) (b) 1. and 2. (intro.), a. and c., as renumbered, are
8 amended to read:

9 50.02 **(3m)** (b) 1. If the department provides to a ~~community-based residential~~
10 facility an entity under sub. (1d) (a), (b), (d), (e), (f), (g), or (h) written notice of the
11 a penalty, the grounds for a sanction or the penalty, an explanation of the types of
12 sanctions or penalties that the department may impose under this subsection, and
13 an explanation of the process for appealing a sanction or penalty imposed under this
14 subsection, the department may impose any of the following a forfeiture against a
15 licensee an entity under sub. (1d) (b), (c), (d), (e), (f), (g), or (h) or other person who
16 violates the applicable provisions of this ~~section~~ chapter or rules promulgated under
17 the applicable provisions of this ~~section~~ chapter or against an entity under sub. (1d)
18 (a), (b), (e), or (f), who fails to comply with an applicable order issued under par. (b)
19 (a) by the time specified in the order.

20 2. (intro.) ~~A-~~ For a forfeiture specified under subd. 1., the department shall
21 impose a daily forfeiture amount per violation of not less than \$10 nor more than
22 \$1,000 ~~\$2,000~~ for each violation, with each day of violation constituting a separate
23 offense. All of the following apply to a forfeiture under this subdivision:

24 a. Within the limits specified in this subdivision, the department may, by rule,
25 set daily forfeiture amounts and payment deadlines based on the size ~~and type of~~

1 ~~community-based residential facility of the entity and, for a community-based~~
2 ~~residential facility, the type of community-based residential facility,~~ and the
3 seriousness of the violation. The department may set daily forfeiture amounts that
4 increase periodically within the statutory limits if there is continued failure to
5 comply with an order issued under par. (b) (a).

6 c. ~~All forfeitures shall be paid~~ An entity assessed a forfeiture shall pay the
7 forfeiture to the department within 10 days after receipt of notice of assessment or,
8 if the forfeiture is contested under par. (f) (e), within 10 days after receipt of the final
9 decision after exhaustion of administrative review, unless the final decision is
10 appealed and the order is stayed by court order under s. 50.03 (11) sub. (3r). The
11 department shall remit all forfeitures paid under this subdivision to the state
12 treasurer for deposit in the school fund.

13 **SECTION 19.** 50.03 (5g) (c) 2. of the statutes is repealed.

14 **SECTION 20.** 50.03 (5g) (c) 3. of the statutes is renumbered 50.02 (3m) (bm) and
15 amended to read:

16 50.02 (3m) (bm) ~~Revocation~~ If the department provides to an entity written
17 notice of revocation, the grounds for the revocation, an explanation of the types of
18 sanctions or penalties that the department may impose under this subsection and
19 an explanation of the process for appealing a sanction or penalty imposed under this
20 subsection, the department may impose revocation of licensure, certification,
21 approval, or registration or conditional licensure, certification, approval, or
22 registration as specified in pars. (d) to (g) (c) to (f).

23 **SECTION 21.** 50.03 (5g) (d) of the statutes is renumbered 50.02 (3m) (c) and
24 amended to read:

1 50.02 (3m) (c) Under the procedure specified in par. (e) (d), the department
2 shall revoke approval of a hospital that fails to comply with s. 165.40 (6) (a) 1. or 2.
3 and may revoke a license, certification, approval, or registration or conditional
4 license, certification, approval, or registration for a licensee an entity for any of the
5 following reasons:

6 1. The department has imposed a sanction or penalty on the licensee entity
7 under par. (e) (b) and the licensee entity continues to violate or resumes violation of
8 -a an applicable provision of licensure under sub. (4) or (4m), certification, approval,
9 or registration or conditional licensure, certification, approval, or registration, a rule
10 relating to the entity promulgated under this subchapter chapter or an order issued
11 under par. (b) (a) that forms any part of the basis for the sanction or penalty.

12 2. The licensee entity or a person under the supervision of the licensee entity
13 has substantially violated a provision of licensure, certification, approval, or
14 registration or conditional licensure, certification, approval, or registration
15 applicable to a community-based residential facility under sub. (4) or (4m) the entity,
16 a rule relating to community-based residential facilities the entity promulgated
17 under this subchapter chapter, or an order issued under par. (b) (a).

18 3. The licensee entity or a person under the supervision of the licensee entity
19 has acted in relation to or has created a condition relating to the operation or
20 maintenance of the community-based residential facility entity that directly
21 threatens the health, safety, or welfare of a resident of the community-based
22 residential facility or patient of the entity.

23 4. The licensee entity or a person under the supervision of the licensee entity
24 has repeatedly violated the same or similar provisions of licensure under sub. (4) or
25 (4m), certification, approval, or registration or conditional licensure, certification,

1 approval, or registration applicable to the entity, rules relating to the entity
2 promulgated under this ~~subchapter~~ chapter or orders issued under par. (b) (a).

3 **SECTION 22.** 50.03 (5g) (e) of the statutes is renumbered 50.02 (3m) (d) and
4 amended to read:

5 50.02 (3m) (d) 1. The department may revoke a license for ~~a licensee,~~
6 certification, approval, or registration or conditional license, certification, approval,
7 or registration of an entity for the reason specified in par. (d) (c) 1., 2., 3., or 4. if the
8 department ~~provides the licensee with written notice of revocation, the grounds for~~
9 ~~the revocation and an explanation of the process for appealing the revocation,~~
10 complies with par. (bm) at least 30 days before the date of revocation. The
11 department may revoke the license, certification, approval, or registration or
12 conditional license, certification, approval, or registration only if the violation
13 remains substantially uncorrected on the date of revocation or license expiration of
14 the license, certification, approval, or registration or conditional license,
15 certification, approval, or registration.

16 2. The department shall revoke approval for a hospital that fails to comply with
17 s. 165.40 (6) (a) 1. or 2. and may revoke a license, certification, approval, or
18 registration or conditional license, certification, approval, or registration for a
19 licensee an entity for the reason specified in par. (d) (c) 2. or 3. immediately if the
20 department ~~provides the licensee with written notice of revocation, the grounds for~~
21 ~~the revocation and an explanation of the process for appealing the revocation~~
22 complies with par. (bm).

23 3. The department may deny a license, certification, approval, or registration
24 or conditional license, certification, approval, or registration for a licensee an entity

1 whose license, certification, approval, or registration or conditional license,
2 certification, approval, or registration was revoked under this paragraph.

3 **SECTION 23.** 50.03 (5g) (f) of the statutes is renumbered 50.02 (3m) (e) and
4 amended to read:

5 50.02 (3m) (e) If ~~a community-based residential facility~~ an entity desires to
6 contest the revocation of a license, certification, approval, or registration or ~~to contest~~
7 ~~the imposing~~ imposition of a sanction or penalty, including an assessment of
8 forfeiture, under this subsection, or the issuance or terms of a conditional license,
9 certification, approval, or registration under sub. (3g), the ~~community-based~~
10 ~~residential facility~~ entity shall, within 10 days after receipt of notice under par. (e)
11 (a), (b), or (bm), notify the department in writing of its request for a hearing under
12 s. 227.44. The department shall hold ~~the hearing~~ a prehearing conference within 30
13 days after receipt of such the notice and shall send notice to the ~~community-based~~
14 ~~residential facility~~ entity of ~~the~~ a hearing as provided under s. 227.44 (2). This
15 paragraph does not apply to the issuance of a notice of violation or the requirement
16 to submit a plan of correction.

17 **SECTION 24.** 50.03 (5g) (g) 1. and 3. of the statutes are renumbered 50.02 (3m)
18 (f) 1. and 2. and amended to read:

19 50.02 (3m) (f) 1. Subject to s. 227.51 (3), revocation shall become effective on
20 the date set by the department in the notice of revocation, ~~or~~ upon final action after
21 hearing under ch. 227, or after court action if a stay is granted under sub. ~~(11)~~ (3r),
22 whichever is later.

23 2. The department may extend the effective date of revocation of a license,
24 certification, approval, or registration or conditional license, certification, approval,

1 or registration in any case in order to permit orderly removal and relocation of
2 residents or patients.

3 **SECTION 25.** 50.03 (5m) (a) 2. of the statutes is amended to read:

4 50.03 (5m) (a) 2. The department has ~~suspended or~~ revoked the existing license
5 of the facility as provided under ~~sub. (5)~~ s. 50.02 (3m) (bm).

6 **SECTION 26.** 50.03 (5m) (a) 3. of the statutes is amended to read:

7 50.03 (5m) (a) 3. The department has initiated revocation procedures under
8 sub. (5) and has determined that the lives, health, safety, or welfare of the resident
9 cannot be adequately assured pending a full hearing on license revocation under ~~sub.~~
10 ~~(5)~~ s. 50.02 (3m) (bm).

11 **SECTION 27.** 50.03 (11) of the statutes is renumbered 50.02 (3r) and amended
12 to read:

13 50.02 (3r) JUDICIAL REVIEW. (a) All administrative remedies shall be exhausted
14 before an agency determination under this subchapter ~~shall be~~ chapter is subject to
15 judicial review. Final decisions after hearing ~~shall be~~ are subject to judicial review
16 exclusively as provided in s. 227.52, except that an entity shall file any petition for
17 review of department action under this chapter ~~shall be filed~~ within 15 days after
18 receipt of notice of the final agency determination.

19 (b) The court may stay enforcement under s. 227.54 of the department's
20 agency's final decision if a showing is made that there is a substantial probability
21 that the party seeking review will prevail on the merits and will suffer irreparable
22 harm if a stay is not granted, and that the ~~facility~~ entity will meet the applicable
23 requirements of this ~~subchapter~~ chapter and the rules promulgated under this
24 subchapter chapter during such the stay. ~~Where~~ If a stay is granted, the court may
25 impose such conditions on the granting of the stay as may be necessary to safeguard

1 the lives, health, rights, safety, and welfare of residents or patients, and to assure
2 compliance by the facility entity with the requirements of this subchapter chapter.

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

7 **SECTION 28.** 50.03 (13) (c) of the statutes is amended to read:

8 50.03 (13) (c) *Outstanding violations.* Violations reported in departmental
9 inspection reports prior to the transfer of ownership shall be corrected, with
10 corrections verified by departmental survey, prior to the issuance of a full regular
11 license to the transferee. The license granted to the transferee shall be subject to the
12 plan of correction submitted by the previous owner and approved by the department
13 and any conditions contained in a conditional license issued to the previous owner.
14 In the case of a nursing home, if there are outstanding violations and no approved
15 plan of correction has been implemented, the department may issue a conditional
16 license and plan of correction as provided in s. ~~50.04 (6)~~ 50.02 (3g).

17 **SECTION 29.** 50.033 (2) of the statutes is amended to read:

18 50.033 (2) REGULATION. Standards for operation of licensed adult family homes
19 and procedures for application for licensure, monitoring, and inspection, ~~revocation~~
20 ~~and appeal of revocation~~ under this section shall be under rules promulgated by the
21 department under s. 50.02 (2) (am) 2. An adult family home licensure is valid until
22 ~~revoked under this section s. 50.02 (3m) (bm)~~. Licensure is not transferable. The
23 biennial licensure fee for a licensed adult family home is \$135. The fee is payable to
24 the county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437, if the county
25 department licenses the adult family home under sub. (1m) (b), and is payable to the

1 department, on a schedule determined by the department if the department licenses
2 the adult family home under sub. (1m) (b).

3 **SECTION 30.** 50.033 (4) of the statutes is repealed.

4 **SECTION 31.** 50.034 (2) (f) of the statutes is amended to read:

5 50.034 (2) (f) Establishing standards and procedures for ~~appeals of revocations~~
6 ~~of certification or refusal to issue or renew certification.~~

7 **SECTION 32.** 50.034 (7) of the statutes is repealed.

8 **SECTION 33.** 50.034 (8) of the statutes is repealed.

9 **SECTION 34.** 50.035 (11) of the statutes is repealed.

10 **SECTION 35.** 50.04 (4) (d) of the statutes is repealed.

11 **SECTION 36.** 50.04 (4) (e) 3. of the statutes is amended to read:

12 50.04 (4) (e) 3. In any petition for judicial review under s. 50.02 (3r) of a decision
13 by the division under subd. 2., the department, if not the petitioner who was in the
14 proceeding before the division under subd. 1., shall be the named respondent.

15 **SECTION 37.** 50.04 (5) (e) of the statutes is amended to read:

16 50.04 (5) (e) *Forfeiture appeal hearing.* A nursing home may contest an
17 assessment of forfeiture by sending, within 10 days after receipt of notice of a
18 contested action, a written request for hearing under s. 227.44 to the division of
19 hearings and appeals created under s. 15.103 (1). The administrator of the division
20 may designate a hearing examiner to preside over the case and recommend a decision
21 to the administrator under s. 227.46. The decision of the administrator of the
22 division shall be the final administrative decision. The division shall commence the
23 hearing within 30 days of receipt of the request for hearing and shall issue a final
24 decision within 15 days after the close of the hearing. Proceedings before the division
25 are governed by ch. 227. In any petition for judicial review under s. 50.02 (3r) of a

1 decision by the division, the party, other than the petitioner, who was in the
2 proceeding before the division shall be the named respondent.

3 **SECTION 38.** 50.04 (5) (f) of the statutes is amended to read:

4 50.04 (5) (f) *Forfeitures paid within 10 days.* All forfeitures shall be paid to the
5 department within 10 days of receipt of notice of assessment or, if the forfeiture is
6 contested under par. (e), within 10 days of receipt of the final decision after
7 exhaustion of administrative review, unless the final decision is appealed and the
8 order is stayed by court order under s. ~~50.03 (11)~~ 50.02 (3r). The department shall
9 remit all forfeitures paid to the state treasurer for deposit in the school fund.

10 **SECTION 39.** 50.04 (6) (title) of the statutes is renumbered 50.02 (3g) (title) and
11 amended to read:

12 50.02 (3g) (title) CONDITIONAL LICENSE, CERTIFICATION, APPROVAL, OR
13 REGISTRATION.

14 **SECTION 40.** 50.04 (6) (a) of the statutes is renumbered 50.02 (3g) (a) (intro.)
15 and amended to read:

16 50.02 (3g) (a) *Power of department.* (intro.) ~~In addition to the right to assess~~
17 ~~forfeitures under sub. (5), the~~ The department may, in addition to assessing
18 forfeitures under sub. (3m) (b), issue a conditional license, certification, approval, or
19 registration, as applicable, to any nursing home if the department finds that either
20 a class "A" or class "B" violation, as defined in sub. (4), continues to exist in such
21 home. of the following, under the following conditions:

22 (b) The issuance of a conditional license shall revoke, certification, approval,
23 or registration to an entity revokes any outstanding license held by the nursing
24 home. The nursing home may seek review of a decision to issue a conditional license

1 as provided under s. 50.03 (5), certification, approval, or registration held under this
2 chapter by the entity.

3 **SECTION 41.** 50.04 (6) (b) of the statutes is renumbered 50.02 (3g) (c) and
4 amended to read:

5 50.02 (3g) (c) ~~Violation correction plan.~~ Prior to the issuance of a conditional
6 license, certification, approval, or registration, the department shall establish a
7 written plan of correction. The plan shall specify the violations ~~which~~ that prevent
8 full licensure, certification, approval, or registration and shall establish a time
9 schedule for correction of the deficiencies. Retention of the conditional license,
10 certification, approval, or registration by an entity shall be conditional on the entity's
11 meeting the requirements of the plan of correction.

12 **SECTION 42.** 50.04 (6) (c) of the statutes is renumbered 50.02 (3g) (d) and
13 amended to read:

14 50.02 (3g) (d) ~~Notice. Written~~ The department shall send to an entity written
15 notice of the decision to issue a conditional license shall be sent to the facility,
16 certification, approval, or registration, together with the proposed plan of correction.
17 The notice shall inform the facility entity of its right to a case conference under par.
18 (e) prior to issuance of the conditional license under par. (d), certification, approval,
19 or registration and of its right under par. (f) to a full hearing under par. (e).

20 **SECTION 43.** 50.04 (6) (d) of the statutes is renumbered 50.02 (3g) (e) and
21 amended to read:

22 50.02 (3g) (e) ~~Case conference.~~ If the facility entity desires to have a case
23 conference it shall, within 4 working days of receipt of the notice under par. ~~(e)~~ (d),
24 send a written request for a case conference to the department. The department
25 shall, within 4 working days from the receipt of the request, hold a case conference

1 in the county in which the facility entity is located. Following this conference the
2 department may affirm or overrule its previous decision, or modify the terms of the
3 conditional license, certification, approval, or registration and plan of correction.
4 ~~The conditional license may be issued~~ department may issue the conditional license,
5 certification, approval, or registration after the case conference, or after the time for
6 requesting a case conference has expired, prior to any further hearing.

7 **SECTION 44.** 50.04 (6) (e) of the statutes is renumbered 50.02 (3g) (f) and
8 amended to read:

9 50.02 (3g) (f) *Hearing.* If after the case conference the licensee entity desires
10 to contest the basis for issuance of a conditional license, certification, approval, or
11 registration or the terms of the ~~license~~ conditional license, certification, approval, or
12 registration or plan of correction, the licensee ~~shall send a written request for~~
13 ~~hearing to the department within 4 working days after issuance of the conditional~~
14 ~~license. The department shall hold the hearing within 30 days of receipt of such~~
15 ~~notice and shall immediately notify the licensee of the date and location of the~~
16 ~~hearing~~ entity is entitled to a hearing under sub. (3m) (e).

17 **SECTION 45.** 50.04 (6) (f) of the statutes is renumbered 50.02 (3g) (g) and
18 amended to read:

19 50.02 (3g) (g) *Term; inspection.* A conditional license shall be issued The
20 department may issue a conditional license, certification, approval, or registration
21 for a period specified by the department, but in no event for more than ~~one year~~ 12
22 months. The department shall periodically inspect any ~~nursing home~~ entity that is
23 operating under a conditional license, certification, approval, or registration. If the
24 department finds substantial failure by the ~~nursing home~~ entity to follow the plan
25 of correction, the ~~conditional license may be revoked~~ department may revoke the

1 conditional license, certification, approval, or registration as provided under ~~s. 50.03~~
2 ~~(5) sub. (3m) (bm)~~. The licensee entity is entitled to a hearing under sub. (3m) (e) on
3 the revocation under ~~s. 50.03 (5)~~, but the department may rely on facts found in a
4 hearing under ~~par. (e) (f)~~ as grounds for revocation.

5 **SECTION 46.** 50.04 (6) (g) of the statutes is renumbered 50.02 (3g) (h) and
6 amended to read:

7 50.02 (3g) (h) *Expiration.* If the department determines that a the conditional
8 license, certification, approval, or registration of an entity shall expire without
9 renewal or replacement of the conditional license, certification, approval, or
10 registration by a regular license, certification, approval, or registration, the
11 department shall so notify the licensee entity at least 30 days prior to expiration of
12 the conditional license, certification, approval, or registration. The notice shall
13 ~~comply with notice requirements under s. 50.03 (5) be written, shall state the~~
14 ~~grounds for the expiration without renewal or replacement and shall explain the~~
15 ~~process for appealing the expiration without renewal or replacement.~~ The licensee
16 entity is entitled to a hearing under ~~s. 50.03 (5) sub. (3m) (e)~~ prior to expiration of the
17 license conditional license, certification, approval, or registration.

18 **SECTION 47.** 50.05 (2) (b) of the statutes is amended to read:

19 50.05 (2) (b) The department has ~~suspended or revoked~~ the existing license of
20 the facility.

21 **SECTION 48.** 50.05 (2) (c) of the statutes is amended to read:

22 50.05 (2) (c) The department has initiated revocation procedures under s. 50.03
23 ~~(5) 50.02 (3m) (bm)~~ and has determined that the lives, health, safety, or welfare of
24 the residents cannot be adequately assured pending a full hearing on license
25 revocation.

1 **SECTION 49.** 50.053 of the statutes is renumbered 50.02 (3m) (em) and amended
2 to read:

3 50.02 (3m) (em) ~~Case conference.~~ The department may hold a case conference
4 with the parties to any contested action under this subchapter chapter to resolve any
5 or all issues prior to formal hearing. Unless any party to the contested case objects,
6 the department may delay the commencement of the formal hearing in order to hold
7 the case conference.

8 **SECTION 50.** 50.09 (6) (d) of the statutes is amended to read:

9 50.09 (6) (d) The facility shall attach a statement, which summarizes
10 complaints or allegations of violations of rights established under this section, to the
11 report required under s. 50.03 (4) (c) ~~1. or 2.~~ 2m. or (cm) 2. The statement shall
12 contain the date of the complaint or allegation, the name of the persons involved, the
13 disposition of the matter and the date of disposition. The department shall consider
14 the statement in reviewing the report.

15 **SECTION 51.** 50.14 (6) of the statutes is repealed.

16 **SECTION 52.** 50.35 of the statutes is amended to read:

17 **50.35 Application and approval.** Application for approval to maintain a
18 hospital shall be made to the department on forms provided by the department. On
19 receipt of an application, the department shall, except as provided in s. 50.498, issue
20 a certificate of approval if the applicant and hospital facilities meet the requirements
21 established by the department. Except as provided in s. 50.498, this approval shall
22 be in effect until, for just cause ~~and in the manner herein prescribed,~~ it is suspended
23 ~~or~~ revoked. The certificate of approval may be issued only for the premises and
24 persons or governmental unit named in the application and is not transferable or
25 assignable. The department shall withhold, ~~suspend~~ or, under s. 50.02 (3m) (bm),

1 revoke approval for a failure to comply with s. 165.40 (6) (a) 1. or 2., but, except as
2 provided in s. 50.498, otherwise may not withhold, ~~suspend or, under s. 50.02 (3m)~~
3 ~~(bm)~~, revoke approval unless for a substantial failure to comply with ss. 50.32 to
4 50.39 or the rules and standards adopted by the department after giving a reasonable
5 notice, a fair hearing and a reasonable opportunity to comply. Failure by a hospital
6 to comply with s. 50.36 (3m) shall be considered to be a substantial failure to comply
7 under this section.

8 **SECTION 53.** 50.37 (1) of the statutes is amended to read:

9 50.37 (1) ~~Suspended or revoked~~ Revoked the hospital's approval under s. ~~50.35~~
10 50.02 (3m) (bm).

11 **SECTION 54.** 50.38 of the statutes is repealed.

12 **SECTION 55.** 50.49 (6) (b) of the statutes is amended to read:

13 50.49 (6) (b) A home health agency license is valid until ~~suspended or~~ revoked,
14 except as provided in s. 50.498.

15 **SECTION 56.** 50.49 (7) of the statutes is repealed.

16 **SECTION 57.** 50.49 (9) of the statutes is repealed.

17 **SECTION 58.** 50.49 (10) of the statutes is amended to read:

18 50.49 (10) ~~PROVISIONAL PROBATIONARY LICENSES.~~ Except as provided in s. 50.498,
19 a ~~provisional~~ probationary license if approved by the department may be issued to
20 any home health agency, the facilities of which are in use or needed for patients, but
21 which is temporarily unable to conform to all the rules established under this section.
22 A ~~provisional~~ probationary license may not be issued for more than one year.

23 **SECTION 59.** 50.498 (1) (c) of the statutes is amended to read:

24 50.498 (1) (c) A ~~provisional~~ probationary license under s. 50.49 (10).

25 **SECTION 60.** 50.498 (1m) of the statutes is amended to read:

1 50.498 (1m) If an individual who applies for a certificate of approval,~~license~~
2 ~~or provisional license~~ or a license as specified under sub. (1) does not have a social
3 security number, the individual, as a condition of obtaining the certificate of
4 approval,~~license or provisional~~ or the license, shall submit a statement made or
5 subscribed under oath or affirmation to the department that the applicant does not
6 have a social security number. The form of the statement shall be prescribed by the
7 department of workforce development. A certificate of approval,~~license or~~
8 ~~provisional~~ or a license issued in reliance upon a false statement submitted under
9 this subsection is invalid.

10 **SECTION 61.** 50.498 (3) of the statutes is amended to read:

11 50.498 (3) Except as provided in sub. (1m), the department shall deny an
12 application for the issuance of a certificate of approval,~~license or provisional~~ or a
13 license specified in sub. (1) if the applicant does not provide the information specified
14 in sub. (1).

15 **SECTION 62.** 50.498 (4) of the statutes is amended to read:

16 50.498 (4) The department shall deny an application for the issuance of a
17 certificate of approval,~~license or provisional~~ or a license specified in sub. (1) or shall,
18 notwithstanding s. 50.02 (3m) (bm), revoke a certificate of approval,~~license or~~
19 ~~provisional~~ or a license specified in sub. (1), if the department of revenue certifies
20 under s. 73.0301 that the applicant for or holder of the certificate of approval,~~license~~
21 ~~or provisional~~ or the license is liable for delinquent taxes.

22 **SECTION 63.** 50.498 (5) of the statutes is amended to read:

23 50.498 (5) ~~An~~ Notwithstanding s. 50.02 (3m) (e), an action taken under sub. (3)
24 or (4) is subject to review only as provided under s. 73.0301 (2) (b) and (5).

25 **SECTION 64.** 50.51 (2) (b) of the statutes is amended to read:

1 50.51 (2) (b) Minimum requirements for issuance of a ~~provisional license or a~~
2 ~~regular~~ license to rural medical centers.

3 **SECTION 65.** 50.52 (2) (intro.) of the statutes is amended to read:

4 50.52 (2) (intro.) The department shall issue a ~~provisional license or a regular~~
5 license as a rural medical center to an applicant if all of the following are first done:

6 **SECTION 66.** 50.52 (4) of the statutes is amended to read:

7 50.52 (4) A regular license issued to a rural medical center is valid until it is
8 ~~suspended or revoked. A provisional license issued to a rural medical center is valid~~
9 ~~for 6 months from the date of issuance.~~

10 **SECTION 67.** 50.55 (1) of the statutes is repealed.

11 **SECTION 68.** 50.55 (2) (title) of the statutes is repealed and recreated to read:

12 50.55 (2) (title) PENALTY.

13 **SECTION 69.** 50.925 of the statutes is amended to read:

14 **50.925 Use of name or advertising prohibited.** No entity that is not a
15 hospice licensed or conditionally licensed under this subchapter or an applicant for
16 a license ~~or a provisional license~~ under this subchapter may designate itself as a
17 “hospice” or use the word “hospice” to represent or tend to represent the entity as a
18 hospice or services provided by the entity as services provided by a hospice.

19 **SECTION 70.** 50.93 (1) (intro.) of the statutes is amended to read:

20 50.93 (1) APPLICATION. (intro.) The application for a license ~~or for a provisional~~
21 license shall:

22 **SECTION 71.** 50.93 (2) (a) of the statutes is amended to read:

23 50.93 (2) (a) A hospice license is valid until ~~suspended or revoked.~~

24 **SECTION 72.** 50.93 (3) of the statutes is amended to read:

1 50.93 (3) PROVISIONAL PROBATIONARY LICENSE. If the applicant has not been
2 previously licensed under this subchapter or if the hospice is not in operation at the
3 time that application is made, the department may issue a provisional probationary
4 license. Unless sooner ~~suspended or~~ revoked under sub. (4), a provisional
5 probationary license shall be valid for ~~24~~¹² months from the date of issuance. Within
6 30 days prior to the termination of a provisional probationary license, the
7 department shall fully and completely inspect the hospice and, if the hospice meets
8 the applicable requirements for licensure, shall issue a regular license under sub. (2).
9 If the department finds that the hospice does not meet the requirements for
10 licensure, the department may not issue a regular license under sub. (2).

11 **SECTION 73.** 50.93 (3g) of the statutes is created to read:

12 50.93 (3g) **SUBSTANTIAL NONCOMPLIANCE.** A hospice that is in substantial
13 noncompliance, as defined by the department by rule under s. 50.95 (7), with a
14 federal statute or regulation or with an applicable provision of this chapter shall
15 demonstrate, including by providing financial or other information requested by the
16 department, that the hospice continues to be fit and qualified, as defined by the
17 department by rule under s. 50.95 (5), to operate.

18 **SECTION 74.** 50.93 (4) of the statutes is repealed and recreated to read:

19 50.93 (4) **EFFECT OF LICENSE INVALIDITY.** No state or federal funds passing
20 through the state treasury may be paid to a hospice that does not have a valid license
21 issued under this section.

22 **SECTION 75.** 50.95 (7) of the statutes is created to read:

23 50.95 (7) The definition of "substantial noncompliance" for the purposes of s.
24 50.93 (3g).

25 **SECTION 76.** 50.98 (title) and (1) of the statutes are repealed.

1 **SECTION 77.** 50.98 (2) of the statutes is renumbered 50.02 (3m) (b) 3. and
2 amended to read:

3 50.02 **(3m)** (b) 3. In determining whether a forfeiture is to be imposed under
4 subd. 1. and in fixing the amount of the forfeiture to be imposed under subd. 2., if any,
5 for a violation, the department shall consider the following factors ~~shall be~~
6 ~~considered~~:

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

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

16 c. Any previous violations committed by the licensee entity.

17 d. The financial benefit to the hospice entity of committing or continuing the
18 violation.

19 **SECTION 78.** 50.98 (3) to (6) of the statutes are repealed.

20 **SECTION 79.** 51.032 (1) (b) of the statutes is amended to read:

21 51.032 (1) (b) A certification issued under s. 51.04 (2).

22 **SECTION 80.** 51.032 (1) (e) of the statutes is amended to read:

23 51.032 (1) (e) An approval issued under s. ~~51.45 (8)~~ 51.04 (1).

24 **SECTION 81.** 51.032 (4) of the statutes is amended to read:

1 51.032 (4) The department shall deny an application for the issuance of a
2 certification or approval specified in sub. (1) or shall, notwithstanding s. 51.04 (4),
3 revoke a certification or approval specified in sub. (1) if the department of revenue
4 certifies under s. 73.0301 that the applicant for or holder of a certification or approval
5 is liable for delinquent taxes.

6 **SECTION 82.** 51.032 (5) of the statutes is amended to read:

7 51.032 (5) ~~An~~ Notwithstanding s. 51.04 (4), action taken under sub. (3) or (4)
8 is subject to review only as provided under s. 73.0301 (2) (b) and (5).

9 **SECTION 83.** 51.04 of the statutes is repealed and recreated to read:

10 **51.04 Treatment facilities. (2) CERTIFICATION.** Except as provided in s.
11 51.032, an approved treatment facility may apply to the department for certification
12 of the facility for the receipt of funds for services provided as a benefit to a medical
13 assistance recipient under s. 49.46 (2) (b) 6. f. or to a community aids funding
14 recipient under s. 51.423 (2) or provided as mandated coverage under s. 632.89. The
15 department shall annually charge a fee for each certification.

16 **(3) CONDITIONAL APPROVAL.** (a) The department may, in addition to assessing
17 forfeitures under sub. (4) (a), issue a conditional approval to any treatment facility
18 if the department finds that a violation by the treatment facility of an applicable
19 provision of this chapter or of a rule promulgated under an applicable provision of
20 this chapter continues to exist.

21 (b) The issuance of a conditional approval to a treatment facility revokes any
22 outstanding approval held under this section by the treatment facility.

23 (c) Prior to the issuance of a conditional approval, the department shall
24 establish a written plan of correction. The plan shall specify the violations that
25 prevent full approval and shall establish a time schedule for correction of the

1 deficiencies. Retention of the conditional approval by a treatment facility shall be
2 conditional on the treatment facility's meeting the requirements of the plan of
3 correction.

4 (d) The department shall send to a treatment facility written notice of the
5 decision to issue a conditional approval, together with the proposed plan of
6 correction. The notice shall inform the treatment facility of its right to a case
7 conference prior to issuance of the conditional approval and of its right under par. (f)
8 to a hearing.

9 (e) If the treatment facility desires to have a case conference it shall, within 4
10 working days of receipt of the notice under par. (d), send a written request for a case
11 conference to the department. The department shall, within 4 working days from the
12 receipt of the request, hold a case conference in the county in which the treatment
13 facility is located. Following this conference the department may affirm or overrule
14 its previous decision, or modify the terms of the conditional approval and plan of
15 correction. The department may issue the conditional approval after the case
16 conference, or after the time for requesting a case conference has expired, prior to any
17 further hearing.

18 (f) If after the case conference the treatment facility desires to contest the basis
19 for issuance of a conditional approval or the terms of the conditional approval or plan
20 of correction, the treatment facility is entitled to a hearing as specified under sub.
21 (4) (d).

22 (g) The department may issue a conditional approval for a period specified by
23 the department, but in no event for more than 12 months. The department shall
24 periodically inspect any treatment facility that is operating under a conditional
25 approval. If the department finds substantial failure by the treatment facility to

1 follow the plan of correction, the department may revoke the conditional approval as
2 provided under sub. (4) (b). The treatment facility is entitled to a hearing as specified
3 under sub. (4) (d) on the revocation, but the department may rely on facts found in
4 a hearing under par. (f) as grounds for revocation.

5 (h) If the department determines that the conditional approval of a treatment
6 facility shall expire without renewal or replacement of the conditional approval by
7 an approval under sub. (1), the department shall so notify the treatment facility at
8 least 30 days prior to expiration of the conditional approval. The notice shall be
9 written, shall state the grounds for the expiration without renewal or replacement,
10 and shall explain the process for appealing the expiration without renewal or
11 replacement. The treatment facility is entitled to a hearing as specified under sub.
12 (4) (d) prior to expiration of the conditional approval.

13 (4) SANCTIONS AND PENALTIES. (a) If the department provides to a treatment
14 facility written notice of the sanction or penalty, the grounds for the sanction or
15 penalty, an explanation of the types of sanctions or penalties that the department
16 may impose under this subsection, and an explanation of the process for appealing
17 a sanction or penalty imposed under this subsection, the department may impose
18 any of the following against a treatment facility or other person who violates the
19 applicable provisions of this chapter or rules promulgated under the applicable
20 provisions of this chapter:

21 1. A daily forfeiture amount per violation of not less than \$10 nor more than
22 \$2,000 for each violation, with each day of violation constituting a separate offense.
23 All of the following apply to a forfeiture under this subdivision:

24 a. Within the limits specified in this subdivision, the department may, by rule,
25 set daily forfeiture amounts and payment deadlines based on the size of the

1 treatment facility, the type of the treatment facility, and the seriousness of the
2 violation.

3 b. The department may directly assess a forfeiture imposed under this
4 subdivision by specifying the amount of that forfeiture in the notice provided under
5 this paragraph.

6 c. A treatment facility assessed a forfeiture shall pay the forfeiture to the
7 department within 10 days after receipt of notice of assessment or, if the forfeiture
8 is contested under par. (d), within 10 days after receipt of the final decision after
9 exhaustion of administrative review, unless the final decision is appealed and the
10 order is stayed by court order under sub. (5). The department shall remit all
11 forfeitures paid under this subdivision to the state treasurer for deposit in the school
12 fund.

13 d. The attorney general may bring an action in the name of the state to collect
14 any forfeiture imposed under this subdivision if the forfeiture has not been paid
15 following the exhaustion of all administrative and judicial reviews. The only issue
16 to be contested in any such action shall be whether the forfeiture has been paid.

17 2. Suspension of approval for the treatment facility.

18 3. Revocation of approval or of conditional approval as specified in pars. (b) to
19 (e).

20 (b) Under the procedure specified in par. (c), the department may revoke an
21 approval for a treatment facility for any of the following reasons:

22 1. The department has imposed a sanction or penalty on the treatment facility
23 under par. (a) and the treatment facility continues to violate or resumes violation of
24 an applicable provision of approval or of conditional approval or a rule relating to the
25 treatment facility promulgated under this chapter.

1 2. The treatment facility or a person under the supervision of the treatment
2 facility has substantially violated a provision of approval applicable to the treatment
3 facility or a rule relating to the treatment facility promulgated under this chapter.

4 3. The treatment facility or a person under the supervision of the treatment
5 facility has acted in relation to or has created a condition relating to the operation
6 or maintenance of the treatment facility that directly threatens the health, safety,
7 or welfare of a patient of the treatment facility.

8 4. The treatment facility or a person under the supervision of the treatment
9 facility has repeatedly violated the same or similar provisions of approval or
10 conditional approval applicable to the treatment facility or rules relating to the
11 treatment facility promulgated under this chapter.

12 (c) 1. The department may revoke an approval or conditional approval for a
13 treatment facility for the reason specified in par. (b) 1., 2., 3., or 4. if the department
14 provides the treatment facility with written notice of revocation, the grounds for the
15 revocation, and an explanation of the process for appealing the revocation, at least
16 30 days before the date of revocation. The department may revoke the approval or
17 conditional approval only if the violation remains substantially uncorrected on the
18 date of revocation or expiration of the approval or conditional approval.

19 2. The department may revoke an approval or conditional approval for a
20 treatment facility for the reason specified in par. (b) 2. or 3. immediately if the
21 department provides the treatment facility with written notice of revocation, the
22 grounds for the revocation, and an explanation of the process for appealing the
23 revocation.

24 3. The department may deny an approval or conditional approval for treatment
25 facility whose approval or conditional approval was revoked under this paragraph.

1 (d) If a treatment facility desires to contest the suspension or revocation of an
2 approval or conditional approval or the imposition of a sanction or penalty, including
3 an assessment of a forfeiture under par. (a), the treatment facility shall, within 10
4 days after receipt of notice under par. (a), notify the department in writing of its
5 request for a hearing under s. 227.44. The department shall hold a prehearing
6 conference within 30 days after receipt of the notice and shall send notice to the
7 treatment facility of a hearing as provided under s. 227.44 (2).

8 (e) 1. Subject to s. 227.51 (3), revocation shall become effective on the date set
9 by the department in the notice of revocation, upon final action after hearing under
10 ch. 227, or after court action if a stay is granted under sub. (5), whichever is later.

11 2. The department may extend the effective date of revocation of an approval
12 or a conditional approval in any case in order to permit orderly removal and
13 relocation of patients.

14 (5) JUDICIAL REVIEW. (a) All administrative remedies shall be exhausted before
15 an agency determination under this chapter is subject to judicial review. Final
16 decisions after hearing are subject to judicial review exclusively as provided in s.
17 227.52, except that a treatment facility shall file any petition for review of
18 department action under this chapter within 15 days after receipt of notice of the
19 final agency determination.

20 (b) The court may stay enforcement under s. 227.54 of the agency's final
21 decision if a showing is made that there is a substantial probability that the party
22 seeking review will prevail on the merits and will suffer irreparable harm if a stay
23 is not granted, and that the treatment facility will meet the applicable requirements
24 of this chapter and the rules promulgated under this chapter during the stay. If a
25 stay is granted, the court may impose such conditions on the granting of the stay as

1 may be necessary to safeguard the lives, health, rights, safety, and welfare of patients
2 and to assure compliance by the treatment facility with the requirements of this
3 chapter.

4 (c) The attorney general may delegate to the department the authority to
5 represent the state in any action brought to challenge department actions prior to
6 exhaustion of administrative remedies and final disposition by the agency.

7 **SECTION 84.** 51.08 of the statutes is amended to read:

8 **51.08 Milwaukee County Mental Health Complex.** Any county having a
9 population of 500,000 or more may, pursuant to s. 46.17, establish and maintain a
10 county mental health complex. The county mental health complex shall be a hospital
11 devoted to the detention and care of drug addicts, alcoholics, chronic patients, and
12 mentally ill persons whose mental illness is acute. ~~Such~~ The hospital shall be
13 governed ~~pursuant to~~ under s. 46.21. Treatment of alcoholics at the county mental
14 health complex is subject to approval by the department under s. ~~51.45 (8)~~ 51.04 (1).
15 The county mental health complex established ~~pursuant to~~ under this section is
16 subject to rules promulgated by the department concerning hospital standards.

17 **SECTION 85.** 51.09 of the statutes is amended to read:

18 **51.09 County hospitals.** Any county having a population of less than 500,000
19 may establish a hospital or facilities for the detention and care of mentally ill
20 persons, alcoholics, and drug addicts; and in connection therewith a hospital or
21 facility for the care of ~~cases~~ persons afflicted with pulmonary tuberculosis. County
22 hospitals established ~~pursuant to~~ under this section are subject to rules promulgated
23 by the department concerning hospital standards, including standards for alcoholic
24 treatment facilities under s. ~~51.45 (8)~~ 51.04 (1).

25 **SECTION 86.** 51.30 (10) (b) of the statutes is amended to read:

1 51.30 (10) (b) ~~Whoever~~ Notwithstanding s. 51.04 (4) (a), whoever negligently
2 discloses confidential information under this section is subject to a forfeiture of not
3 more than \$1,000 for each violation.

4 **SECTION 87.** 51.45 (2) (b) of the statutes is amended to read:

5 51.45 (2) (b) “Approved private treatment facility” means a private agency
6 meeting the standards ~~prescribed in sub. (8) (a) of,~~ and approved under sub. (8) (e),
7 s. 51.04 (1).

8 **SECTION 88.** 51.45 (2) (c) of the statutes is amended to read:

9 51.45 (2) (c) “Approved public treatment facility” means a treatment agency
10 operating under the direction and control of the department or providing treatment
11 under this section through a contract with the department under sub. (7) (g) or with
12 the county department under s. 51.42 (3) (ar) 2., and meeting the standards
13 ~~prescribed in sub. (8) (a) of,~~ and approved under sub. (8) (e), s. 51.04 (1).

14 **SECTION 89.** 51.45 (8) (title) of the statutes is renumbered 51.04 (1) (title) and
15 amended to read:

16 51.04 (1) (title) ~~STANDARDS FOR PUBLIC AND PRIVATE TREATMENT FACILITIES;~~
17 ~~ENFORCEMENT PROCEDURES~~ APPROVAL.

18 **SECTION 90.** 51.45 (8) (a) of the statutes is renumbered 51.04 (1) (a) and
19 amended to read:

20 51.04 (1) (a) The department shall establish minimum standards for ~~approved~~
21 ~~treatment facilities that must be met for a treatment facility to be approved as a~~
22 ~~public or private treatment facility~~ approval, except as provided in s. 51.032, of public
23 and private treatment facilities and ~~fix~~ shall specify the fees to be charged by the
24 department for the required inspections. The standards may concern only the health
25 standards to be met and standards of treatment to be afforded patients and shall

1 distinguish between facilities rendering different modes of treatment. In setting
2 standards, the department shall consider the residents' needs and abilities, the
3 services to be provided by the facility, and the relationship between the physical
4 structure and the objectives of the program. Nothing in this subsection shall may
5 be construed to prevent county departments from establishing reasonable higher
6 standards.

7 **SECTION 91.** 51.45 (8) (b) of the statutes is renumbered 51.04 (1) (b).

8 **SECTION 92.** 51.45 (8) (c) of the statutes is renumbered 51.04 (1) (c) and
9 amended to read:

10 51.04 (1) (c) ~~Approval of a~~ No treatment facility must be secured that is not
11 approved under this section before application subsection may apply for a
12 grant-in-aid for such facility under s. 51.423 or before treatment in any facility is
13 rendered render treatment to patients.

14 **SECTION 93.** 51.45 (8) (d) of the statutes is renumbered 51.04 (1) (d) and
15 amended to read:

16 51.04 (1) (d) ~~Each~~ An approved ~~public and private~~ treatment facility shall file
17 with the department on request, data, statistics, schedules and information the
18 department reasonably requires, including any data or information specified under
19 s. 46.973 (2m). ~~An approved public or private~~ The approval of a treatment facility
20 that without good cause fails to furnish any data, statistics, schedules or information
21 as requested, or files fraudulent returns thereof, ~~shall be removed from the list of~~
22 approved treatment facilities, is subject to revocation.

23 **SECTION 94.** 51.45 (8) (e) of the statutes is repealed.

24 **SECTION 95.** 51.45 (8) (f) of the statutes is repealed.

25 **SECTION 96.** 73.0301 (1) (d) 3. of the statutes is amended to read:

1 73.0301 (1) (d) 3. A license, certificate of approval, ~~provisional~~ probationary
2 license, ~~conditional license~~, certification, certification card, registration, permit,
3 training permit ~~or~~, approval, or conditional license, certification, approval, or
4 registration specified in s. 50.02 (3g), 50.35, 50.49 (6) (a) or (10), 50.93 (3), 51.038,
5 51.04 (1), (2), or (3), 51.42 (7) (b) 11., 51.421 (3) (a), ~~51.45 (8)~~, 146.40 (3) or (3m), 146.50
6 (5) (a) or (b), (6g) (a), (7) or (8) (a) or (f), 250.05 (5), 252.23 (2), 252.24 (2), 254.176,
7 254.20 (3), 255.08 (2) (a) or 343.305 (6) (a) or a permit for operation of a campground
8 specified in s. 254.47 (1).

9 **SECTION 97.** 165.40 (6) (a) (intro.) of the statutes is amended to read:

10 165.40 (6) (a) (intro.) No certificate of approval to maintain a hospital may be
11 issued under s. 50.35 and a certificate of approval that has been issued under that
12 section shall be ~~suspended or~~ revoked if any of the following occurs:

13 **SECTION 98.** 301.031 (2r) (a) 3. of the statutes is amended to read:

14 301.031 (2r) (a) 3. Is for the treatment of alcoholics in treatment facilities
15 which have not been approved by the department of health and family services in
16 accordance with s. ~~51.45 (8)~~ 51.04 (1) or which have not been conditionally approved
17 by the department of health and family services in accordance with s. 51.04 (3).

18 **SECTION 99.** 343.06 (1) (d) of the statutes is amended to read:

19 343.06 (1) (d) To any person whose dependence on alcohol has attained such
20 a degree that it interferes with his or her physical or mental health or social or
21 economic functioning, or who is addicted to the use of controlled substances or
22 controlled substance analogs, except that the secretary may issue a license if the
23 person submits to an examination, evaluation or treatment in a treatment facility
24 meeting the standards prescribed in s. ~~51.45 (8) (a)~~ 51.04 (1), as directed by the
25 secretary, in accordance with s. 343.16 (5).

1 **SECTION 100.** 632.89 (1) (e) 1. of the statutes is amended to read:

2 632.89 (1) (e) 1. A program in an outpatient treatment facility, if both are
3 approved by the department of health and family services, the program is
4 established and maintained according to rules promulgated under s. 51.42 (7) (b) and
5 the facility is approved and certified under s. 51.04.

6 **SECTION 9323. Initial applicability; health and family services.**

7 (1) FACILITY LICENSURE, CERTIFICATION, APPROVAL, AND REGISTRATION;
8 ENFORCEMENT. The treatment of sections 50.01 (4r), 50.02 (1), (1d), (2) (am) 2., and
9 (3g) (a) 1., 2., 3., 4., 5., 6., 7., and 8., 50.03 (2) (d), (3) (f), (4) (a) 1. b., (c) 1., 2., and 3.,
10 and (cm) 3., (4m), (5), (5g) (title), (a), (b), (c) (intro.), 1., 2., and 3., (d), (e), (f), and (g)
11 1. and 3., (5m) (a) 2. and 3., (11), and (13) (c), 50.033 (2) and (4), 50.034 (2) (f), (7), and
12 (8), 50.035 (11), 50.04 (4) (d) and (e) 3., (5) (e) and (f), and (6) (title), (a), (b), (c), (d),
13 (e), (f), and (g), 50.05 (2) (b) and (c), 50.053, 50.09 (6) (d), 50.14 (6), 50.35, 50.37 (1),
14 50.38, 50.49 (6) (b), (7), (9), and (10), 50.498 (1) (c), (1m), (3), (4), and (5), 50.51 (2) (b),
15 50.52 (2) (intro.) and (4), 50.55 (1) and (2) (title), 50.925, 50.93 (1) (intro.), (2) (a), (3),
16 (3g), and (4), 50.95 (7), 50.98 (title), (1), (2), (3), (4), (5), and (6), and 165.40 (6) (a)
17 (intro.) of the statutes first applies to licenses, certifications, approvals, and
18 registrations issued; to conditional licenses, certifications, approvals, registrations,
19 and probationary licenses issued; and to violations committed; on the effective date
20 of this subsection.

21 (2) TREATMENT FACILITY APPROVAL AND CONDITIONAL APPROVAL; ENFORCEMENT. The
22 treatment of sections 46.031 (2r) (a) 3., 51.032 (1) (b) and (e), (4), and (5), 51.04, 51.08,
23 51.09, 51.30 (10) (b), 51.45 (2) (b) and (c) and (8) (title), (a), (b), (c), (d), (e), and (f),
24 73.0301 (1) (d) 3., 301.031 (2r) (a) 3., 343.06 (1) (d), and 632.89 (1) (e) 1. of the statutes

1 first applies to approvals and conditional approvals issued and to violations
2 committed on the effective date of this subsection.

3 **SECTION 9423. Effective dates; health and family services.**

4 (1) FACILITY AND TREATMENT FACILITY; ENFORCEMENT. The treatment of sections
5 46.031 (2r) (a) 3., 50.01 (4r), 50.02 (1), (1d), (2) (am) 2., and (3g) (a) 1., 2., 3., 4., 5., 6.,
6 7., and 8., 50.03 (2) (d), (3) (f), (4) (a) 1. b., (c) 1., 2., and 3., and (cm) 3., (5), (5g) (title),
7 (a), (b), (c) (intro.), 1., 2., and 3., (d), (e), (f), and (g) 1. and 3., (5m) (a) 2. and 3., (11),
8 and (13) (c), 50.033 (2) and (4), 50.034 (2) (f), (7), and (8), 50.035 (11), 50.04 (4) (d) and
9 (e) 3., (5) (e) and (f), and (6) (title), (a), (b), (c), (d), (e), (f), and (g), 50.05 (2) (b) and (c),
10 50.053, 50.09 (6) (d), 50.14 (6), 50.35, 50.37 (1), 50.38, 50.49 (6) (b), (7), (9), and (10),
11 50.498 (1) (c), (1m), (3), (4), and (5), 50.51 (2) (b), 50.52 (2) (intro.) and (4), 50.55 (1)
12 and (2) (title), 50.925, 50.93 (1) (intro.), (2) (a), (3), (3g), and (4), 50.95 (7), 50.98 (title),
13 (1), (2), (3), (4), (5), and (6), 51.032 (1) (b) and (e), (4), and (5), 51.04, 51.08, 51.09, 51.30
14 (10) (b), 51.45 (2) (b) and (c), (8) (title), (a), (b), (c), (d), (e), and (f), 73.0301 (1) (d) 3.,
15 165.40 (6) (a) (intro.), 301.031 (2r) (a) 3., 343.06 (1) (d), and 632.89 (1) (e) 1. of the
16 statutes and SECTION 9323 (1) and (2) of this act take effect on the first day of the 7th
17 month beginning after publication.

18 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1686/4dn
DAK: ~~WJK~~ild:kjf

To Gretchen Fossum and Melissa Mullikin:

This draft eliminates the treatment of s. 50.38[✓], and it changes the heading for ss. 50.034 (8) and 50.035 (11). The draft reconciles LRB-0200/1, LRB-0428/2, and LRB-1686/3. LRB-0200, LRB -0428, and LRB-1686 should continue in the compiled bill.

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