



TODAY
State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-1686/84
DAK:cjs&jld:lf

D. NOTE

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

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

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, changes the term "provisional" to "probationary." In addition, the bill changes from 24 months 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.

SECTION 6

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), (c), (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

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as affected by 2001 Wisconsin Act ... (this act),

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 ~~eases~~ 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) (c),~~
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) (c),~~ 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

**2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1686/4ins
DAK:ejs&jld:kjf

INSERT 18-8

****NOTE: This is reconciled s. 50.034 (8). ✓ This SECTION has been affected by drafts with the following LRB numbers: LRB-0428/2 and LRB-1686/3.

INSERT 18-9

****NOTE: This is reconciled s. 50.035 (11). ✓ This SECTION has been affected by drafts with the following LRB numbers: LRB-0428/2 and LRB-1686/3.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1686/4dn
DAK:jld:rs

February 7, 2001

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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State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-1686/4
DAK:cjs&jld:rs

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

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

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, changes the term "provisional" to "probationary." In addition, the bill changes from 24 months 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), 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), (c), (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 procedurcs for application for licensurc, 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, as effected by 2001 Wisconsin Act ...
9 (this act), is repealed.

****NOTE: This is reconciled s. 50.034 (8). This SECTION has been affected by drafts
with the following LRB numbers: LRB-0428/2 and LRB-1686/3.

10 **SECTION 34.** 50.035 (11) of the statutes, as effected by 2001 Wisconsin Act ...
11 (this act), is repealed.

****NOTE: This is reconciled s. 50.035 (11). This SECTION has been affected by drafts
with the following LRB numbers: LRB-0428/2 and LRB-1686/3.

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

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

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

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

18 50.04 (5) (e) *Forfeiture appeal hearing.* A nursing home may contest an
19 assessment of forfeiture by sending, within 10 days after receipt of notice of a
20 contested action, a written request for hearing under s. 227.44 to the division of
21 hearings and appeals created under s. 15.103 (1). The administrator of the division
22 may designate a hearing examiner to preside over the case and recommend a decision

1 to the administrator under s. 227.46. The decision of the administrator of the
2 division shall be the final administrative decision. The division shall commence the
3 hearing within 30 days of receipt of the request for hearing and shall issue a final
4 decision within 15 days after the close of the hearing. Proceedings before the division
5 are governed by ch. 227. In any petition for judicial review under s. 50.02 (3r) of a
6 decision by the division, the party, other than the petitioner, who was in the
7 proceeding before the division shall be the named respondent.

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

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

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

17 50.02 (3g) (title) CONDITIONAL LICENSE, CERTIFICATION, APPROVAL, OR
18 REGISTRATION.

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

21 50.02 (3g) (a) *Power of department.* (intro.) ~~In addition to the right to assess~~
22 ~~forfeitures under sub. (5), the~~ The department may, in addition to assessing
23 forfeitures under sub. (3m) (b), issue a conditional license, certification, approval, or
24 registration, as applicable, to any nursing home if the department finds that either

1 a class “A” or class “B” violation, as defined in sub. (4), continues to exist in such
2 home. of the following, under the following conditions:

3 (b) The issuance of a conditional license shall revoke, certification, approval,
4 or registration to an entity revokes any outstanding license held by the nursing
5 home. The nursing home may seek review of a decision to issue a conditional license
6 as provided under s. 50.03 (5), certification, approval, or registration held under this
7 chapter by the entity.

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

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

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

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

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

3 50.02 (3g) (e) ~~Case conference.~~ If the facility entity desires to have a case
4 conference it shall, within 4 working days of receipt of the notice under par. ~~(e)~~ (d),
5 send a written request for a case conference to the department. The department
6 shall, within 4 working days from the receipt of the request, hold a case conference
7 in the county in which the facility entity is located. Following this conference the
8 department may affirm or overrule its previous decision, or modify the terms of the
9 conditional license, certification, approval, or registration and plan of correction.
10 ~~The conditional license may be issued~~ department may issue the conditional license,
11 certification, approval, or registration after the case conference, or after the time for
12 requesting a case conference has expired, prior to any further hearing.

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

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

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

1 50.02 (3g) (g) *Term; inspection.* ~~A conditional license shall be issued~~ The
2 department may issue a conditional license, certification, approval, or registration
3 for a period specified by the department, but in no event for more than one year 12
4 months. The department shall periodically inspect any nursing home entity that is
5 operating under a conditional license, certification, approval, or registration. If the
6 department finds substantial failure by the nursing home entity to follow the plan
7 of correction, the conditional license may be revoked department may revoke the
8 conditional license, certification, approval, or registration as provided under s. 50.03
9 (5) sub. (3m) (bm). The licensee entity is entitled to a hearing under sub. (3m) (e) on
10 the revocation under s. 50.03 (5), but the department may rely on facts found in a
11 hearing under par. (e) (f) as grounds for revocation.

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

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

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

1 50.05 (2) (b) The department has ~~suspended or~~ revoked the existing license of
2 the facility.

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

4 50.05 (2) (c) The department has initiated revocation procedures under s. 50.03
5 ~~(5)~~ 50.02 (3m) (bm) and has determined that the lives, health, safety, or welfare of
6 the residents cannot be adequately assured pending a full hearing on license
7 revocation.

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

10 50.02 (3m) (em) ~~Case conference.~~ The department may hold a case conference
11 with the parties to any contested action under this ~~subchapter~~ chapter to resolve any
12 or all issues prior to formal hearing. Unless any party to the contested case objects,
13 the department may delay the commencement of the formal hearing in order to hold
14 the case conference.

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

16 50.09 (6) (d) The facility shall attach a statement, which summarizes
17 complaints or allegations of violations of rights established under this section, to the
18 report required under s. 50.03 (4) (c) ~~1. or 2.~~ 2m. or (cm) 2. The statement shall
19 contain the date of the complaint or allegation, the name of the persons involved, the
20 disposition of the matter and the date of disposition. The department shall consider
21 the statement in reviewing the report.

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

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

24 **50.35 Application and approval.** Application for approval to maintain a
25 hospital shall be made to the department on forms provided by the department. On

1 receipt of an application, the department shall, except as provided in s. 50.498, issue
2 a certificate of approval if the applicant and hospital facilities meet the requirements
3 established by the department. Except as provided in s. 50.498, this approval shall
4 be in effect until, for just cause and in the manner herein prescribed, it is suspended
5 or revoked. The certificate of approval may be issued only for the premises and
6 persons or governmental unit named in the application and is not transferable or
7 assignable. The department shall withhold, ~~suspend or, under s. 50.02 (3m) (bm),~~
8 revoke approval for a failure to comply with s. 165.40 (6) (a) 1. or 2., but, except as
9 provided in s. 50.498, otherwise may not withhold, ~~suspend or, under s. 50.02 (3m)~~
10 ~~(bm),~~ revoke approval unless for a substantial failure to comply with ss. 50.32 to
11 50.39 or the rules and standards adopted by the department after giving a reasonable
12 notice, a fair hearing and a reasonable opportunity to comply. Failure by a hospital
13 to comply with s. 50.36 (3m) shall be considered to be a substantial failure to comply
14 under this section.

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

16 50.37 (1) ~~Suspended or revoked~~ Revoked the hospital's approval under s. ~~50.35~~
17 50.02 (3m) (bm).

18 **SECTION 54.** 50.49 (6) (b) of the statutes is amended to read:

19 50.49 (6) (b) A home health agency license is valid until ~~suspended or~~ revoked,
20 except as provided in s. 50.498.

21 **SECTION 55.** 50.49 (7) of the statutes is repealed.

22 **SECTION 56.** 50.49 (9) of the statutes is repealed.

23 **SECTION 57.** 50.49 (10) of the statutes is amended to read:

24 50.49 (10) ~~PROVISIONAL~~ PROBATIONARY LICENSES. Except as provided in s. 50.498,
25 a ~~provisional~~ probationary license if approved by the department may be issued to

1 any home health agency, the facilities of which are in use or needed for patients, but
2 which is temporarily unable to conform to all the rules established under this section.
3 A ~~provisional~~ probationary license may not be issued for more than one year.

4 **SECTION 58.** 50.498 (1) (c) of the statutes is amended to read:

5 50.498 (1) (c) A ~~provisional~~ probationary license under s. 50.49 (10).

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

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

16 **SECTION 60.** 50.498 (3) of the statutes is amended to read:

17 50.498 (3) Except as provided in sub. (1m), the department shall deny an
18 application for the issuance of a certificate of approval, ~~license or provisional~~ or a
19 license specified in sub. (1) if the applicant does not provide the information specified
20 in sub. (1).

21 **SECTION 61.** 50.498 (4) of the statutes is amended to read:

22 50.498 (4) The department shall deny an application for the issuance of a
23 certificate of approval, ~~license or provisional~~ or a license specified in sub. (1) or shall,
24 notwithstanding s. 50.02 (3m) (bm), revoke a certificate of approval, ~~license or~~
25 ~~provisional~~ or a license specified in sub. (1), if the department of revenue certifies

1 under s. 73.0301 that the applicant for or holder of the certificate of approval, ~~license~~
2 ~~or provisional or the license~~ is liable for delinquent taxes.

3 **SECTION 62.** 50.498 (5) of the statutes is amended to read:

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

6 **SECTION 63.** 50.51 (2) (b) of the statutes is amended to read:

7 50.51 (2) (b) Minimum requirements for issuance of a ~~provisional license or a~~
8 ~~regular~~ license to rural medical centers.

9 **SECTION 64.** 50.52 (2) (intro.) of the statutes is amended to read:

10 50.52 (2) (intro.) The department shall issue a ~~provisional license or a regular~~
11 license as a rural medical center to an applicant if all of the following are first done:

12 **SECTION 65.** 50.52 (4) of the statutes is amended to read:

13 50.52 (4) A regular license issued to a rural medical center is valid until it is
14 ~~suspended or revoked. A provisional license issued to a rural medical center is valid~~
15 ~~for 6 months from the date of issuance.~~

16 **SECTION 66.** 50.55 (1) of the statutes is repealed.

17 **SECTION 67.** 50.55 (2) (title) of the statutes is repealed and recreated to read:

18 50.55 (2) (title) PENALTY.

19 **SECTION 68.** 50.925 of the statutes is amended to read:

20 **50.925 Use of name or advertising prohibited.** No entity that is not a
21 hospice licensed or conditionally licensed under this subchapter or an applicant for
22 a license ~~or a provisional license~~ under this subchapter may designate itself as a
23 “hospice” or use the word “hospice” to represent or tend to represent the entity as a
24 hospice or services provided by the entity as services provided by a hospice.

25 **SECTION 69.** 50.93 (1) (intro.) of the statutes is amended to read:

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

3 **SECTION 70.** 50.93 (2) (a) of the statutes is amended to read:

4 50.93 (2) (a) A hospice license is valid until ~~suspended or~~ revoked.

5 **SECTION 71.** 50.93 (3) of the statutes is amended to read:

6 50.93 (3) ~~PROVISIONAL~~ PROBATIONARY LICENSE. If the applicant has not been
7 previously licensed under this subchapter or if the hospice is not in operation at the
8 time that application is made, the department may issue a ~~provisional~~ probationary
9 license. Unless sooner ~~suspended or~~ revoked under sub. (4), a ~~provisional~~
10 probationary license shall be valid for ~~24~~ 12 months from the date of issuance. Within
11 30 days prior to the termination of a ~~provisional~~ probationary license, the
12 department shall fully and completely inspect the hospice and, if the hospice meets
13 the applicable requirements for licensure, shall issue a regular license under sub. (2).
14 If the department finds that the hospice does not meet the requirements for
15 licensure, the department may not issue a regular license under sub. (2).

16 **SECTION 72.** 50.93 (3g) of the statutes is created to read:

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

23 **SECTION 73.** 50.93 (4) of the statutes is repealed and recreated to read:

1 50.93 (4) EFFECT OF LICENSE INVALIDITY. No state or federal funds passing
2 through the state treasury may be paid to a hospice that does not have a valid license
3 issued under this section.

4 **SECTION 74.** 50.95 (7) of the statutes is created to read:

5 50.95 (7) The definition of “substantial noncompliance” for the purposes of s.
6 50.93 (3g).

7 **SECTION 75.** 50.98 (title) and (1) of the statutes are repealed.

8 **SECTION 76.** 50.98 (2) of the statutes is renumbered 50.02 (3m) (b) 3. and
9 amended to read:

10 50.02 (3m) (b) 3. In determining whether a forfeiture is to be imposed under
11 subd. 1. and in fixing the amount of the forfeiture to be imposed under subd. 2., if any,
12 for a violation, the department shall consider the following factors ~~shall be~~
13 ~~considered:~~

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

18 b. Good faith exercised by the ~~licensee~~ entity. Indications of good faith include,
19 but are not limited to, awareness of the applicable statutes and regulation and
20 reasonable diligence in complying with such requirements, prior accomplishments
21 manifesting the licensee’s desire to comply with the requirements, efforts to correct
22 and any other mitigating factors in favor of the ~~licensee~~ entity.

23 c. Any previous violations committed by the ~~licensee~~ entity.

24 d. The financial benefit to the ~~hospice~~ entity of committing or continuing the
25 violation.

1 **SECTION 77.** 50.98 (3) to (6) of the statutes are repealed.

2 **SECTION 78.** 51.032 (1) (b) of the statutes is amended to read:

3 51.032 (1) (b) A certification issued under s. 51.04 (2).

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

5 51.032 (1) (e) An approval issued under s. ~~51.45 (8)~~ 51.04 (1).

6 **SECTION 80.** 51.032 (4) of the statutes is amended to read:

7 51.032 (4) The department shall deny an application for the issuance of a
8 certification or approval specified in sub. (1) or shall, notwithstanding s. 51.04 (4),
9 revoke a certification or approval specified in sub. (1) if the department of revenue
10 certifies under s. 73.0301 that the applicant for or holder of a certification or approval
11 is liable for delinquent taxes.

12 **SECTION 81.** 51.032 (5) of the statutes is amended to read:

13 51.032 (5) ~~An~~ Notwithstanding s. 51.04 (4), action taken under sub. (3) or (4)
14 is subject to review only as provided under s. 73.0301 (2) (b) and (5).

15 **SECTION 82.** 51.04 of the statutes is repealed and recreated to read:

16 **51.04 Treatment facilities. (2) CERTIFICATION.** Except as provided in s.
17 51.032, an approved treatment facility may apply to the department for certification
18 of the facility for the receipt of funds for services provided as a benefit to a medical
19 assistance recipient under s. 49.46 (2) (b) 6. f. or to a community aids funding
20 recipient under s. 51.423 (2) or provided as mandated coverage under s. 632.89. The
21 department shall annually charge a fee for each certification.

22 **(3) CONDITIONAL APPROVAL.** (a) The department may, in addition to assessing
23 forfeitures under sub. (4) (a), issue a conditional approval to any treatment facility
24 if the department finds that a violation by the treatment facility of an applicable

1 provision of this chapter or of a rule promulgated under an applicable provision of
2 this chapter continues to exist.

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

5 (c) Prior to the issuance of a conditional approval, the department shall
6 establish a written plan of correction. The plan shall specify the violations that
7 prevent full approval and shall establish a time schedule for correction of the
8 deficiencies. Retention of the conditional approval by a treatment facility shall be
9 conditional on the treatment facility's meeting the requirements of the plan of
10 correction.

11 (d) The department shall send to a treatment facility written notice of the
12 decision to issue a conditional approval, together with the proposed plan of
13 correction. The notice shall inform the treatment facility of its right to a case
14 conference prior to issuance of the conditional approval and of its right under par. (f)
15 to a hearing.

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

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

5 (g) The department may issue a conditional approval for a period specified by
6 the department, but in no event for more than 12 months. The department shall
7 periodically inspect any treatment facility that is operating under a conditional
8 approval. If the department finds substantial failure by the treatment facility to
9 follow the plan of correction, the department may revoke the conditional approval as
10 provided under sub. (4) (b). The treatment facility is entitled to a hearing as specified
11 under sub. (4) (d) on the revocation, but the department may rely on facts found in
12 a hearing under par. (f) as grounds for revocation.

13 (h) If the department determines that the conditional approval of a treatment
14 facility shall expire without renewal or replacement of the conditional approval by
15 an approval under sub. (1), the department shall so notify the treatment facility at
16 least 30 days prior to expiration of the conditional approval. The notice shall be
17 written, shall state the grounds for the expiration without renewal or replacement,
18 and shall explain the process for appealing the expiration without renewal or
19 replacement. The treatment facility is entitled to a hearing as specified under sub.
20 (4) (d) prior to expiration of the conditional approval.

21 (4) SANCTIONS AND PENALTIES. (a) If the department provides to a treatment
22 facility written notice of the sanction or penalty, the grounds for the sanction or
23 penalty, an explanation of the types of sanctions or penalties that the department
24 may impose under this subsection, and an explanation of the process for appealing
25 a sanction or penalty imposed under this subsection, the department may impose

1 any of the following against a treatment facility or other person who violates the
2 applicable provisions of this chapter or rules promulgated under the applicable
3 provisions of this chapter:

4 1. A daily forfeiture amount per violation of not less than \$10 nor more than
5 \$2,000 for each violation, with each day of violation constituting a separate offense.

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

7 a. Within the limits specified in this subdivision, the department may, by rule,
8 set daily forfeiture amounts and payment deadlines based on the size of the
9 treatment facility, the type of the treatment facility, and the seriousness of the
10 violation.

11 b. The department may directly assess a forfeiture imposed under this
12 subdivision by specifying the amount of that forfeiture in the notice provided under
13 this paragraph.

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

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

25 2. Suspension of approval for the treatment facility.

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

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

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

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

12 3. The treatment facility or a person under the supervision of the treatment
13 facility has acted in relation to or has created a condition relating to the operation
14 or maintenance of the treatment facility that directly threatens the health, safety,
15 or welfare of a patient of the treatment facility.

16 4. The treatment facility or a person under the supervision of the treatment
17 facility has repeatedly violated the same or similar provisions of approval or
18 conditional approval applicable to the treatment facility or rules relating to the
19 treatment facility promulgated under this chapter.

20 (c) 1. The department may revoke an approval or conditional approval for a
21 treatment facility for the reason specified in par. (b) 1., 2., 3., or 4. if the department
22 provides the treatment facility with written notice of revocation, the grounds for the
23 revocation, and an explanation of the process for appealing the revocation, at least
24 30 days before the date of revocation. The department may revoke the approval or

1 conditional approval only if the violation remains substantially uncorrected on the
2 date of revocation or expiration of the approval or conditional approval.

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

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

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

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

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

23 (5) JUDICIAL REVIEW. (a) All administrative remedies shall be exhausted before
24 an agency determination under this chapter is subject to judicial review. Final
25 decisions after hearing are subject to judicial review exclusively as provided in s.

1 227.52, except that a treatment facility shall file any petition for review of
2 department action under this chapter within 15 days after receipt of notice of the
3 final agency determination.

4 (b) The court may stay enforcement under s. 227.54 of the agency's final
5 decision if a showing is made that there is a substantial probability that the party
6 seeking review will prevail on the merits and will suffer irreparable harm if a stay
7 is not granted, and that the treatment facility will meet the applicable requirements
8 of this chapter and the rules promulgated under this chapter during the stay. If a
9 stay is granted, the court may impose such conditions on the granting of the stay as
10 may be necessary to safeguard the lives, health, rights, safety, and welfare of patients
11 and to assure compliance by the treatment facility with the requirements of this
12 chapter.

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

16 **SECTION 83.** 51.08 of the statutes is amended to read:

17 **51.08 Milwaukee County Mental Health Complex.** Any county having a
18 population of 500,000 or more may, pursuant to s. 46.17, establish and maintain a
19 county mental health complex. The county mental health complex shall be a hospital
20 devoted to the detention and care of drug addicts, alcoholics, chronic patients, and
21 mentally ill persons whose mental illness is acute. ~~Such~~ The hospital shall be
22 governed ~~pursuant to~~ under s. 46.21. Treatment of alcoholics at the county mental
23 health complex is subject to approval by the department under s. ~~51.45 (8)~~ 51.04 (1).
24 The county mental health complex established ~~pursuant to~~ under this section is
25 subject to rules promulgated by the department concerning hospital standards.

1 **SECTION 84.** 51.09 of the statutes is amended to read:

2 **51.09 County hospitals.** Any county having a population of less than 500,000
3 may establish a hospital or facilities for the detention and care of mentally ill
4 persons, alcoholics, and drug addicts; and in connection therewith a hospital or
5 facility for the care of cases persons afflicted with pulmonary tuberculosis. County
6 hospitals established ~~pursuant to~~ under this section are subject to rules promulgated
7 by the department concerning hospital standards, including standards for alcoholic
8 treatment facilities under s. ~~51.45 (8)~~ 51.04 (1).

9 **SECTION 85.** 51.30 (10) (b) of the statutes is amended to read:

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

13 **SECTION 86.** 51.45 (2) (b) of the statutes is amended to read:

14 51.45 (2) (b) "Approved private treatment facility" means a private agency
15 meeting the standards ~~prescribed in sub. (8) (a) of,~~ and approved under ~~sub. (8) (c),~~
16 s. 51.04 (1).

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

18 51.45 (2) (c) "Approved public treatment facility" means a treatment agency
19 operating under the direction and control of the department or providing treatment
20 under this section through a contract with the department under sub. (7) (g) or with
21 the county department under s. 51.42 (3) (ar) 2., and meeting the standards
22 ~~prescribed in sub. (8) (a) of,~~ and approved under ~~sub. (8) (c),~~ s. 51.04 (1).

23 **SECTION 88.** 51:45 (8) (title) of the statutes is renumbered 51.04 (1) (title) and
24 amended to read:

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

3 **SECTION 89.** 51.45 (8) (a) of the statutes is renumbered 51.04 (1) (a) and
4 amended to read:

5 51.04 (1) (a) The department shall establish minimum standards for ~~approved~~
6 ~~treatment facilities that must be met for a treatment facility to be approved as a~~
7 ~~public or private treatment facility approval~~, except as provided in s. 51.032, of public
8 and private treatment facilities and ~~fix~~ shall specify the fees to be charged by the
9 department for the required inspections. The standards may concern only the health
10 standards to be met and standards of treatment to be afforded patients and shall
11 distinguish between facilities rendering different modes of treatment. In setting
12 standards, the department shall consider the residents' needs and abilities, the
13 services to be provided by the facility, and the relationship between the physical
14 structure and the objectives of the program. Nothing in this subsection shall may
15 be construed to prevent county departments from establishing reasonable higher
16 standards.

17 **SECTION 90.** 51.45 (8) (b) of the statutes is renumbered 51.04 (1) (b).

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

20 51.04 (1) (c) ~~Approval of a~~ No treatment facility must be secured that is not
21 approved under this ~~section before application~~ subsection may apply for a
22 ~~grant in aid for such facility~~ under s. 51.423 or before treatment in any facility is
23 ~~rendered~~ render treatment to patients.

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

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

8 **SECTION 93.** 51.45 (8) (e) of the statutes is repealed.

9 **SECTION 94.** 51.45 (8) (f) of the statutes is repealed.

10 **SECTION 95.** 73.0301 (1) (d) 3. of the statutes is amended to read:

11 73.0301 (1) (d) 3. A license, certificate of approval, ~~provisional~~ probationary
12 license, ~~conditional license~~, certification, certification card, registration, permit,
13 training permit ~~or~~, approval, or conditional license, certification, approval, or
14 registration specified in s. 50.02 (3g), 50.35, 50.49 (6) (a) or (10), 50.93 (3), 51.038,
15 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
16 (5) (a) or (b), (6g) (a), (7) or (8) (a) or (f), 250.05 (5), 252.23 (2), 252.24 (2), 254.176,
17 254.20 (3), 255.08 (2) (a) or 343.305 (6) (a) or a permit for operation of a campground
18 specified in s. 254.47 (1).

19 **SECTION 96.** 165.40 (6) (a) (intro.) of the statutes is amended to read:

20 165.40 (6) (a) (intro.) No certificate of approval to maintain a hospital may be
21 issued under s. 50.35 and a certificate of approval that has been issued under that
22 section shall be suspended or revoked if any of the following occurs:

23 **SECTION 97.** 301.031 (2r) (a) 3. of the statutes is amended to read:

24 301.031 (2r) (a) 3. Is for the treatment of alcoholics in treatment facilities
25 which have not been approved by the department of health and family services in

1 accordance with s. ~~51.45 (8)~~ 51.04 (1) or which have not been conditionally approved
2 by the department of health and family services in accordance with s. 51.04 (3).

3 **SECTION 98.** 343.06 (1) (d) of the statutes is amended to read:

4 343.06 (1) (d) To any person whose dependence on alcohol has attained such
5 a degree that it interferes with his or her physical or mental health or social or
6 economic functioning, or who is addicted to the use of controlled substances or
7 controlled substance analogs, except that the secretary may issue a license if the
8 person submits to an examination, evaluation or treatment in a treatment facility
9 meeting the standards prescribed in s. ~~51.45 (8) (a)~~ 51.04 (1), as directed by the
10 secretary, in accordance with s. 343.16 (5).

11 **SECTION 99.** 632.89 (1) (e) 1. of the statutes is amended to read:

12 632.89 (1) (e) 1. A program in an outpatient treatment facility, if both are
13 approved by the department of health and family services, the program is
14 established and maintained according to rules promulgated under s. 51.42 (7) (b) and
15 the facility is approved and certified under s. 51.04.

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

17 (1) FACILITY LICENSURE, CERTIFICATION, APPROVAL, AND REGISTRATION;
18 ENFORCEMENT. The treatment of sections 50.01 (4r), 50.02 (1), (1d), (2) (am) 2., and
19 (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.,
20 and (cm) 3., (4m), (5), (5g) (title), (a), (b), (c) (intro.), 1., 2., and 3., (d), (e), (f), and (g)
21 1. and 3., (5m) (a) 2. and 3., (11), and (13) (c), 50.033 (2) and (4), 50.034 (2) (f), (7), and
22 (8), 50.035 (11), 50.04 (4) (d) and (e) 3., (5) (e) and (f), and (6) (title), (a), (b), (c), (d),
23 (e), (f), and (g), 50.05 (2) (b) and (c), 50.053, 50.09 (6) (d), 50.14 (6), 50.35, 50.37 (1),
24 50.49 (6) (b), (7), (9), and (10), 50.498 (1) (c), (1m), (3), (4), and (5), 50.51 (2) (b), 50.52
25 (2) (intro.) and (4), 50.55 (1) and (2) (title), 50.925, 50.93 (1) (intro.), (2) (a), (3), (3g),

1 and (4), 50.95 (7), 50.98 (title), (1), (2), (3), (4), (5), and (6), and 165.40 (6) (a) (intro.)
2 of the statutes first applies to licenses, certifications, approvals, and registrations
3 issued; to conditional licenses, certifications, approvals, registrations, and
4 probationary licenses issued; and to violations committed; on the effective date of
5 this subsection.

6 (2) **TREATMENT FACILITY APPROVAL AND CONDITIONAL APPROVAL; ENFORCEMENT.** The
7 treatment of sections 46.031 (2r) (a) 3., 51.032 (1) (b) and (e), (4), and (5), 51.04, 51.08,
8 51.09, 51.30 (10) (b), 51.45 (2) (b) and (c) and (8) (title), (a), (b), (c), (d), (e), and (f),
9 73.0301 (1) (d) 3., 301.031 (2r) (a) 3., 343.06 (1) (d), and 632.89 (1) (e) 1. of the statutes
10 first applies to approvals and conditional approvals issued and to violations
11 committed on the effective date of this subsection.

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

13 (1) **FACILITY AND TREATMENT FACILITY; ENFORCEMENT.** The treatment of sections
14 46.031 (2r) (a) 3., 50.01 (4r), 50.02 (1), (1d), (2) (am) 2., and (3g) (a) 1., 2., 3., 4., 5., 6.,
15 7., and 8., 50.03 (2) (d), (3) (f), (4) (a) 1. b., (c) 1., 2., and 3., and (cm) 3., (5), (5g) (title),
16 (a), (b), (c) (intro.), 1., 2., and 3., (d), (e), (f), and (g) 1. and 3., (5m) (a) 2. and 3., (11),
17 and (13) (c), 50.033 (2) and (4), 50.034 (2) (f) and (7), 50.04 (4) (d) and (e) 3., (5) (e) and
18 (f), and (6) (title), (a), (b), (c), (d), (e), (f), and (g), 50.05 (2) (b) and (c), 50.053, 50.09
19 (6) (d), 50.14 (6), 50.35, 50.37 (1), 50.49 (6) (b), (7), (9), and (10), 50.498 (1) (c), (1m),
20 (3), (4), and (5), 50.51 (2) (b), 50.52 (2) (intro.) and (4), 50.55 (1) and (2) (title), 50.925,
21 50.93 (1) (intro.), (2) (a), (3), (3g), and (4), 50.95 (7), 50.98 (title), (1), (2), (3), (4), (5),
22 and (6), 51.032 (1) (b) and (e), (4), and (5), 51.04, 51.08, 51.09, 51.30 (10) (b), 51.45
23 (2) (b) and (c), (8) (title), (a), (b), (c), (d), (e), and (f), 73.0301 (1) (d) 3., 165.40 (6) (a)
24 (intro.), 301.031 (2r) (a) 3., 343.06 (1) (d), and 632.89 (1) (e) 1. of the statutes, the

1 repeal of sections 50.034 (8) and 50.035 (11) of the statutes, and SECTION 9323 (1) and
2 (2) of this act take effect on the first day of the 7th month beginning after publication.

3 (END)