



## 2003 BILL

REGENERATE

1 AN ACT *to repeal* 49.498 (20); *to renumber and amend* 50.04 (5) (a) 6.; *to*  
2 *amend* 50.03 (5) (a), 50.04 (4) (b) 4., 50.04 (4) (d) 2., 50.04 (4) (e) 1., 50.04 (5)  
3 (title), 50.04 (5) (a) (intro.), 50.04 (5) (a) 1., 2. and 3. (intro.), 50.04 (5) (a) 4., 50.04  
4 (5) (a) 5. a., b. and d., 50.04 (5) (a) 5m., 50.04 (5) (b) (intro.), 50.04 (5) (c), 50.04  
5 (5) (d) (title), 50.04 (5) (d) 1., 50.04 (5) (d) 2. (intro.), 50.04 (5) (dm) (intro.), 50.04  
6 (5) (e), 50.04 (5) (f), 50.04 (5) (fm), 50.04 (5) (fr) and 50.04 (5) (g); *to repeal and*  
7 *recreate* 50.04 (4) (d) 1. a., 50.04 (4) (d) 1. b. and 50.04 (6) (a); and *to create*  
8 20.435 (6) (ge), 50.01 (1k), 50.01 (1nd), 50.01 (1ng), 50.04 (4) (am) and 50.15 of  
9 the statutes; **relating to:** regulation of nursing homes, requiring the exercise  
10 of rule-making authority, and making an appropriation.

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### *Analysis by the Legislative Reference Bureau*

#### *Federal and state requirements for nursing homes*

Under current law, a nursing home that receives Medicaid or Medicare funding for the care of a resident is subject to both federal and state requirements. The Department of Health and Family Services (DHFS) enforces both federal and state requirements for nursing homes. Currently, for nursing homes that are Medicaid

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practice and may recommend federal remedies  
and impose state sanctions

issue

citations

and Medicare providers, DHFS may ~~impose~~ both federal and state ~~sanctions~~ for the same ~~deficiency~~. This bill prohibits DHFS from issuing a notice of violation of a state requirement to a nursing home that is a Medical Assistance provider if DHFS has, in a statement of deficiency, cited the nursing home for a violation of a federal requirement.

that is based on the same facts

or Medicare

**Appeals**

Currently, in order to appeal a DHFS finding that the nursing home violated a state requirement, a nursing home must request a hearing on the finding within ten days of receiving notice of the violation. If DHFS assesses a forfeiture for the violation and the nursing home wishes to appeal the forfeiture, the nursing home must request a separate hearing on the forfeiture within ten days of receiving notice of a contested action. Upon request of the nursing home, the hearing on the finding of violation may be stayed until DHFS assesses a forfeiture so that the hearing on the finding of violation and the hearing on the forfeiture may be consolidated.

The bill extends the deadline for a nursing home to request a hearing on a finding that the nursing home violated a state requirement to 60 days after receipt of the notice of violation. The bill also extends the deadline for requesting a hearing on a forfeiture to 60 days after receipt of notice of the forfeiture. The bill further provides that, if a nursing home timely appeals both a finding of violation and a forfeiture, the hearings on the violation and the forfeiture will be consolidated.

**Monetary penalties**

Under current law, DHFS may assess a forfeiture against a nursing home for a violation of a state requirement. The maximum amount of the forfeiture varies according to the classification of the violation and ranges from \$500 to \$10,000. There is no time limit for DHFS to assess a forfeiture for a violation. Nursing homes must pay forfeitures to DHFS within ten days after receipt of notice of imposition of the forfeiture or after receipt of the final decision after exhaustion of administrative review. If a nursing home does not contest a notice of violation and a forfeiture and pays the forfeiture within ten days after receipt of the notice, DHFS must reduce the forfeiture amount by 35 percent. Forfeitures collected for violations of state requirements are deposited in the school fund.

The bill reduces the maximum forfeiture amounts permitted for violations of state requirements and requires that DHFS impose a penalty assessment on a nursing home whenever DHFS assesses a forfeiture for a violation of a state requirement. The bill further requires DHFS to impose a forfeiture and penalty assessment within 120 days of notifying a nursing home of a violation or lose the authority to impose a forfeiture and penalty assessment. The bill changes to 60 days the time period by which nursing home must pay forfeitures and penalty assessments to DHFS after receipt of the notice of imposition or the final decision after exhaustion of administrative review, and also changes to 60 days the time period within which a nursing home may pay a forfeiture and penalty assessment and have the forfeiture and penalty assessment amounts reduced by 35 percent. The bill allocates moneys collected from the penalty assessments for nursing home quality-of-care improvement grants.

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**Conditional licenses**

Currently, in addition to the right to impose a forfeiture on a nursing home for violations, DHFS may issue a conditional license to a nursing home in which DHFS finds that a class "A" or a class "B" violation continues to exist. (A class "A" violation creates a condition or occurrence relating to the operation and maintenance of a nursing home that presents a substantial probability that death or serious mental or physical harm to a nursing home resident will result. A class "B" violation creates a condition or occurrence relating to the operation and maintenance of a nursing home that directly threatens the health, safety, or welfare of a nursing home resident.) Issuing a conditional license revokes any outstanding license held by the nursing home.

This bill expands the standard for issuance by DHFS of a conditional license for a nursing home to also include a violation that constitutes immediate jeopardy, high risk of death or substantial harm, or ~~direct threat or~~ actual harm ~~as defined in the bill~~ to a nursing home resident.

**Suspension of admissions**

Under current law, DHFS must suspend new admissions to a nursing home if the nursing home received notices of a class "A" violation or three or more class "B" violations in the previous 12 months; and if the nursing home received notices of a class "A" violation or three or more class "B" violations in any 12-month period during the three years immediately preceding the previous 12 months. Suspension of admissions begins 90 days after a nursing home receives its last notice of a class "A" or class "B" violation if DHFS determines that the violation is uncorrected or on the day that DHFS makes a return visit to the nursing home and determines that the violation has not been corrected.

This bill expands the standard for suspension of new admissions to a nursing home to include circumstances under which a nursing home received written notice of a violation that involved immediate jeopardy or high risk of death or substantial harm to a resident in the previous 12 months and in any 12-month period immediately preceding the previous 12 months. The bill clarifies that a suspension of admissions begins on the date on which DHFS determines that a nursing home's violation remains uncorrected 90 days after the nursing home has received written notice of the violation and remains in effect until the nursing home has corrected the violation.

**Suspension or revocation of licensure**

Currently, DHFS may, after providing notice to a nursing home applicant or licensee, suspend or revoke the license if DHFS finds that the nursing home substantially failed to comply with applicable state statutes or rules. No state or federal funds passing through the state treasury may be paid to a nursing home that does not have a valid license. This bill also permits DHFS to suspend or revoke a nursing home license if the nursing home has substantially failed to comply with specified federal law and modifies the restriction on payment of federal or state funds in instances in which other state or federal law compels payment.

*continuing of Federal law*

*not involving immediate jeopardy*

*or that directly threatens, as defined in the bill, such a resident*

*INSERT ANAL 1*

*INSERT ANAL 2*

*state law or with*

*requirements related to the operation of a nursing home*

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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. 20.435 (6) (ge) of the statutes is created to read:

2 20.435 (6) (ge) *Nursing home improvement grants*. All moneys received from  
3 penalty assessments imposed by the department under s. 50.04 (5), for nursing home  
4 improvement grants under s. 50.15. *Directly threatened*

~~SECTION 2. 49.498 (20) of the statutes is repealed.~~

6 SECTION 3. 50.01 (1k) of the statutes is created to read:

7 50.01 (1k) *Direct threat or actual harm* means a condition or occurrence  
8 relating to nursing home operation and maintenance that ~~has caused~~ injury, ~~harm~~  
9 or impairment to a resident or ~~that directly threatens~~ the health, safety, or welfare  
10 of a resident. *of* *harm to* *created* *could reasonably be expected to lead to*

11 SECTION 4. 50.01 (1nd) of the statutes is created to read:

12 50.01 (1nd) "High risk of death or substantial harm" means a condition or  
13 occurrence relating to nursing home operation and maintenance that presents a  
14 substantial probability of the death or serious mental or physical injury, harm, or  
15 impairment of a resident.

16 SECTION 5. 50.01 (1ng) of the statutes is created to read:

17 50.01 (1ng) "Immediate jeopardy" means a situation in which a resident ~~is~~

~~residing in a nursing home is experiencing or is at imminent risk of experiencing death or~~

18 ~~substantial harm.~~ *a nursing home's noncompliance with one or more  
19 Federal requirements related to the operation*

20 SECTION 6. 50.03 (5) (a) of the statutes is amended to read:

*of a nursing home has caused, or is likely to cause, death or serious injury, harm, or impairment to a resident*

**BILL**

*with federal requirements related to the operation of a nursing home. No plain*

PWFF

1 50.03 (5) (a) *Power of department.* The department, after notice to a nursing  
2 home applicant or licensee, may suspend or revoke a license in any case in which the  
3 department finds that the nursing home has substantially failed to comply with the  
4 applicable requirements of this subchapter and the rules promulgated under this  
5 subchapter ~~with s. 49.498 or 42 USC 1395i-3 (b), (c), or (d) or 1396r (b), (c),~~  
6 ~~or (d). Unless otherwise required by state or federal law, no~~ state or federal funds  
7 passing through the state treasury may be paid to a nursing home that does not have  
8 a valid license issued under this section.

*Federal requirements related to the operation of a nursing home*

**SECTION 7.** 50.04 (4) (am) of the statutes is created to read:

10 50.04 (4) (am) *Dual federal and state violations.* If an act or omission  
11 constitutes a violation of ~~both~~ this subchapter or the rules promulgated under this  
12 subchapter ~~and~~ s. 49.498 or ~~42 USC 1395i-3 (b), (c), or (d) or 1396r (b), (c), or (d),~~  
13 the department may not issue under s. 50.04 (4) (a) a notice of violation of this subchapter  
14 ~~or~~ the rules promulgated under this subchapter ~~if~~ *or s. 49.498* the department has, in a statement  
15 of deficiency, cited the nursing home for the violation under ~~s. 49.498 or 42 USC~~  
16 ~~1395i-3 (b), (c), or (d) or 1396r (b), (c), or (d).~~

*Federal requirements related to the operation of a nursing home*

**SECTION 8.** 50.04 (4) (b) 4. of the statutes is amended to read:

18 50.04 (4) (b) 4. Each day of violation constitutes a separate violation. Except  
19 as provided in sub. (5) (a) 4., the department shall have the burden of showing that  
20 a violation existed on each day for which a forfeiture and penalty assessment is  
21 assessed imposed. No forfeiture or penalty assessment may be assessed imposed for  
22 a condition for which the nursing home has received a variance or waiver of a  
23 standard.

**SECTION 9.** 50.04 (4) (d) 1. a. of the statutes is repealed and recreated to read:

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15

1 50.04 (4) (d) 1. a. In the previous ~~12~~ months, the nursing home received written  
2 notice of a violation of a state statute or rule or a federal statute or regulation that  
3 involved either immediate jeopardy or high risk of death or substantial harm to a  
4 resident; a class "A" violation; or 3 or more class "B" violations or situations that  
5 constituted ~~a direct threat or~~ actual harm.

either

6 SECTION 10. 50.04 (4) (d) 1. b. of the statutes is repealed and recreated to read:

7 50.04 (4) (d) 1. b. In any ~~12~~ month period during the 36 months immediately  
8 preceding the period specified in subd. 1. a., the nursing home received written notice  
9 of a violation of a state statute or rule or a federal statute or regulation that involved  
10 either immediate jeopardy or high risk of death or substantial harm to a resident  
11 a class "A" violation; or ~~2~~ or more class "B" violations or situations that constituted  
12 ~~a direct threat or~~ actual harm.

3

13 SECTION 11. 50.04 (4) (d) 2. of the statutes is amended to read:

14 50.04 (4) (d) 2. A suspension of admissions under subd. 1. shall begin 90 days  
15 after a nursing home received its last notice of violation for a class "A" or class "B"  
16 violation if the department determines that the violation remains uncorrected 90  
17 days after the nursing home received the last notice of the violation. If the nursing  
18 home indicates to the department that the violation has been corrected, but the  
19 department is unable to verify that the violation has been corrected, a suspension of  
20 admissions under subd. 1. shall begin on the day that the department makes a return  
21 visit to the nursing home and determines that the violation has not been corrected  
22 on the date on which the department determines that a nursing home's violation  
23 under subd. 1. remains uncorrected 90 days after the nursing home received written  
24 notice of the violation. A suspension of admissions under subd. 1. shall remain in  
25 effect until the department determines that all class "A" and class "B" violations by

not involving immediate jeopardy to  
a resident or directly threatened  
a resident

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1 ~~the nursing home have been corrected the nursing home has corrected the violation.~~  
2 Admission of a new resident during the period for which admissions have been  
3 suspended constitutes a class "B" violation.

↓  
INSERT  
7-3

4 SECTION 12. 50.04 (4) (e) 1. of the statutes is amended to read:

5 50.04 (4) (e) 1. If a nursing home desires to contest any department action  
6 under this subsection, it shall send a written request for a hearing under s. 227.44  
7 to the division of hearings and appeals created under s. 15.103 (1) within ~~10~~ 60 days  
8 of receipt of notice of the contested action. Department action that is subject to a  
9 hearing under this subsection includes service of a notice of a violation of this  
10 subchapter or rules promulgated under this subchapter, a notation in the report  
11 under sub. (3) (b), imposition of a plan of correction, and rejection of a nursing home's  
12 plan of correction, but does not include a correction order. Upon the request of the  
13 nursing home, the division shall grant a stay of the hearing under this paragraph  
14 until the department assesses a forfeiture, and penalty assessment, so that its hearing under this paragraph  
15 is consolidated with the forfeiture appeal hearing held under sub. (5) (e). All agency  
16 action under this subsection arising out of a violation, deficiency, or rejection and  
17 imposition of a plan of correction shall be the subject of a single hearing. Unless a  
18 stay is granted under this paragraph, the division shall commence the hearing  
19 within 30 days of the request for hearing, within 30 days of the department's  
20 acceptance of a nursing home's plan of correction, or within 30 days of the  
21 department's imposition of a plan of correction, whichever is later. The division shall  
22 send notice to the nursing home in conformance with s. 227.44. Issues litigated at  
23 the hearing may not be relitigated at subsequent hearings under this paragraph  
24 arising out of the same violation or deficiency.

25 SECTION 13. 50.04 (5) (title) of the statutes is amended to read:

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1           50.04 (5) (title) FORFEITURES AND PENALTY ASSESSMENTS.

2           **SECTION 14.** 50.04 (5) (a) (intro.) of the statutes is amended to read:

3           50.04 (5) (a) *Amounts.* (intro.) Any operator or owner of a nursing home ~~which~~  
4 that is in violation of this subchapter or any rule promulgated thereunder under this  
5 subchapter may be subject to the forfeitures specified in this section. If the  
6 department imposes a forfeiture under this subsection, the department shall also  
7 impose a penalty assessment under this subsection.

8           **SECTION 15.** 50.04 (5) (a) 1., 2. and 3. (intro.) of the statutes are amended to  
9 read:

10           50.04 (5) (a) 1. A class “A” violation may be subject to a forfeiture of not more  
11 than \$250 and a penalty assessment of not more than \$10,000 for each violation.

12           2. A class “B” violation may be subject to a forfeiture of not more than \$125 and  
13 a penalty assessment of not more than \$5,000 for each violation.

14           3. (intro.) A class “C” violation may be subject to a forfeiture of not more than  
15 \$60 and a penalty assessment of not more than \$500. No forfeiture or penalty  
16 assessment may be assessed imposed for a class “C” violation unless at least one of  
17 the following applies:

18           **SECTION 16.** 50.04 (5) (a) 4. of the statutes is amended to read:

19           50.04 (5) (a) 4. Notwithstanding subds. 1., 2. and 3., if the violation or group  
20 of violations results from inadequate staffing, the combined amount of the forfeiture  
21 and penalty assessment that the department may ~~assess~~ impose shall be no less than  
22 the difference between the cost of the staff actually employed and the estimated cost  
23 of the staff required. The number of staff required shall be determined by the  
24 provider contract, the court order, or the department, by rule, whichever is greatest.

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1 The inadequate staff shall be presumed to exist from the date of the notice of  
2 violation.

3 **SECTION 17.** 50.04 (5) (a) 5. a., b. and d. of the statutes are amended to read:

4 50.04 (5) (a) 5. a. A nursing home that violates a statute or rule resulting in a  
5 class “A” violation and that has received a notice of violation for a class “A” “A”  
6 violation within the previous 3-year period involving the same situation shall be  
7 subject to a forfeiture 3 times the forfeiture amount authorized for a class “A”  
8 violation and a penalty assessment 3 times the penalty assessment amount  
9 authorized for a class “A” violation.

10 b. Except as provided in subd. 5. a., a nursing home that violates a statute or  
11 rule resulting in a class “A” or class “B” violation and that has received a notice of a  
12 class “A” or class “B” violation of the same statute or rule within the previous 3-year  
13 period may be subject to a forfeiture 3 times the forfeiture amount authorized for the  
14 most recent class of violation involved and a penalty assessment 3 times the penalty  
15 assessment amount authorized for the most recent class of violation involved.

16 d. The forfeiture amount and penalty assessment amounts that is are tripled  
17 under this subdivision shall be the amount assessed forfeiture and penalty  
18 assessment amounts imposed after all appeals have been exhausted. If an  
19 assessment imposition of a forfeiture and penalty assessment is not contested and  
20 the forfeiture is and penalty assessment are paid as provided in par. (fm), the  
21 forfeiture amount and penalty assessment amounts that is are tripled is are the  
22 amount assessed amounts imposed after the reduction specified in par. (fm).

Fix comp. (23) **SECTION 18.** 50.04 (5) (a) 5m. of the statutes is ~~amended to read~~ repealed.

24 50.04 (5) (a) 5m. Beginning on December 8, 1987, the The department may  
25 consider, for purposes of applying triple forfeitures and penalty assessments under

**BILL**

1 subd. 5., any notice of violation issued by the department within the 2-year period  
2 preceding December 8, 1987, or issued by the department on or after December 8,  
3 1987 after December 7, 1985.

4 SECTION 19. 50.04 (5) (a) 6. of the statutes is renumbered 50.04 (5) (a) 6. (intro.)  
5 and amended to read:

6 50.04 (5) (a) 6. (intro.) If a licensee fails to correct a violation within the time  
7 specified in the notice of violation or approved plan of correction, or within the  
8 extended correction time granted under sub. (4) (c) 4., or if a violation continues after  
9 a report of correction, the department may assess upon the licensee a- for each day  
10 of the continuing violation whichever of the following is applicable:

11 a. A separate forfeiture of not more than \$10,000 \$250 and a separate penalty  
12 assessment of not more than \$10,000 for a class "A" violations, and may assess a  
13 violation.

14 b. A separate forfeiture of not more than \$5,000 \$125 and a separate penalty  
15 assessment of not more than \$5,000 for a class "B" violations, for each day of  
16 continuing violation.

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17 SECTION 20. 50.04 (5) (b) (intro.) of the statutes is amended to read:

18 50.04 (5) (b) Factors in assessment imposition of forfeitures and penalty  
19 assessments. (intro.) In determining whether to impose a forfeiture is to be imposed

20 and penalty assessment for a violation and in fixing the amount ~~amounts~~ of the

21 ~~forfeiture to be imposed and~~ penalty assessment, if any, for a violation, the following  
22 factors shall be considered:

23 SECTION 21. 50.04 (5) (c) of the statutes is amended to read:

24 50.04 (5) (c) Assessment Imposition of forfeitures and penalty assessments;  
25 powers and duties of department. The department may directly assess impose

**BILL**

1 forfeitures and penalty assessments provided for under par. (a). If the department  
2 determines that a forfeiture and penalty assessment should be ~~assessed~~ imposed for  
3 a particular violation or for failure to correct it, ~~it~~ the department shall send a notice  
4 of ~~assessment~~ imposition of forfeiture and penalty assessment to the nursing home.  
5 The notice shall specify the ~~amount~~ amounts of the forfeiture ~~assessed~~ and penalty  
6 assessment imposed, the violation, and the statute or rule alleged to have been  
7 violated, and shall inform the licensee of the right to hearing under par. (e). If the  
8 department does not issue a notice of forfeiture and penalty assessment within 120  
9 days after the date on which a nursing home receives the notice of a violation, the  
10 department may not impose a forfeiture or penalty assessment for the violation.

11 **SECTION 22.** 50.04 (5) (d) (title) of the statutes is amended to read:

12 50.04 (5) (d) (title) *Forfeiture and penalty assessment period.*

13 **SECTION 23.** 50.04 (5) (d) 1. of the statutes is amended to read:

14 50.04 (5) (d) 1. In the case of a class “B” violation, no forfeiture or penalty  
15 assessment may be ~~assessed~~ imposed for the violation from the day following the  
16 date of discovery until the date of notification. If the department fails to approve or  
17 reject a plan of correction within 15 days after its receipt of a complete plan, no  
18 forfeiture or penalty assessment may be imposed for the period beginning with the  
19 15th day after receipt and ending when notice of approval or rejection is received by  
20 the home. If a plan of correction is approved and carried out, no forfeiture or penalty  
21 assessment may be ~~assessed~~ imposed during the time period specified in the  
22 approved plan of correction, commencing on the day the plan of correction is received  
23 by the department.

24 **SECTION 24.** 50.04 (5) (d) 2. (intro.) of the statutes is amended to read:

**BILL**

1           50.04 (5) (d) 2. (intro.) In the case of a class “C” violation for which a notice of  
2 violation has been served, a forfeiture and penalty assessment may be assessed  
3 imposed for whichever of the following periods is applicable:

4           **SECTION 25.** 50.04 (5) (dm) (intro.) of the statutes is amended to read:

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

8           **SECTION 26.** 50.04 (5) (e) of the statutes is amended to read:

9           50.04 (5) (e) *Forfeiture and penalty assessment appeal hearing.* A nursing  
10 home may contest an assessment imposition of a forfeiture and penalty assessment  
11 by sending, within ~~10~~ 60 days after receipt of notice of ~~a contested action~~ the  
12 imposition of the forfeiture and penalty assessment, a written request for hearing  
13 under s. 227.44 to the division of hearings and appeals created under s. 15.103 (1).  
14 The administrator of the division may designate a hearing examiner to preside over  
15 the case and recommend a decision to the administrator under s. 227.46. The  
16 decision of the administrator of the division shall be the final administrative  
17 decision. The division shall commence the hearing within 30 days of receipt of the  
18 request for hearing and shall issue a final decision within 15 days after the close of  
19 the hearing. Proceedings before the division are governed by ch. 227. In any petition  
20 for judicial review of a decision by the division, the party, other than the petitioner,  
21 who was in the proceeding before the division shall be the named respondent. If,  
22 after receipt of notice of imposition of a forfeiture and penalty assessment, a nursing  
23 home timely requests<sup>ed</sup> a hearing under sub. (4) (e) on the ~~contested action~~ under sub.  
24 (4) for which the forfeiture and penalty assessment were imposed<sup>ed</sup> and requests a  
25 hearing under this paragraph on the imposition of the forfeiture and penalty

that has

notice of violation

## BILL

notice of violation

1 assessment, the hearing on the ~~contested action~~ under sub. (4) and the hearing on  
2 the imposition of the forfeiture and penalty assessment shall be consolidated.

3 SECTION 27. 50.04 (5) (f) of the statutes, as affected by 2003 Wisconsin Act 33,  
4 is amended to read:

5 50.04 (5) (f) *Forfeitures and penalty assessments paid within 10 60 days. All*  
6 *forfeitures and penalty assessments shall be paid to the department within 10 60*  
7 *days of receipt of notice of assessment imposition of the forfeiture and penalty*  
8 *assessment or, if the forfeiture or penalty assessment is contested under par. (e),*  
9 *within 10 60 days of receipt of the final decision after exhaustion of administrative*  
10 *review, unless the final decision is appealed and the order is stayed by court order*  
11 *under s. 50.03 (11). The department shall remit all forfeitures paid to the secretary*  
12 *of administration for deposit in the school fund. All moneys collected as penalty*  
13 *assessments under this subsection shall be credited to the appropriation account*  
14 *under s. 20.435 (6) (ge).*

15 SECTION 28. 50.04 (5) (fm) of the statutes is amended to read:

16 50.04 (5) (fm) *Forfeiture and penalty assessment reduction for timely payment.*  
17 *If a nursing home does not contest a notice of violation under sub. (4) (e) and does not*  
18 *contest an assessment imposition of a forfeiture and penalty assessment under par.*  
19 *(e) for a class "A" or class "B" violation and pays the forfeiture and penalty*  
20 *assessment to the department within 10 60 days after receipt of the notice of*  
21 *assessment imposition of the forfeiture and penalty assessment, the department*  
22 *shall reduce the amount of the ~~assessment~~ forfeiture and penalty assessment by 35%*  
23 *35 percent.*

24 SECTION 29. 50.04 (5) (fr) of the statutes is amended to read:

**BILL**

1           50.04 (5) (fr) *Report to the legislature.* Annually, the department shall submit  
 2 a report to the legislature under s. 13.172 (2) that specifies for the previous year the  
 3 number of class “A” violations, the ~~amount~~ amounts of the forfeiture assessment and  
 4 penalty assessment imposed for each of those violations and, if known, the ~~amount~~  
 5 amounts of the forfeiture and penalty assessment actually paid and collected with  
 6 respect to those violations. The report shall also include an explanation for any  
 7 ~~assessment that was~~ imposition of a forfeiture and penalty assessment that totaled  
 8 less than \$2,500 for the violations specified in the report.

9           **SECTION 30.** 50.04 (5) (g) of the statutes is amended to read:

10           50.04 (5) (g) *Enforcement by attorney general.* The attorney general may bring  
 11 an action in the name of the state to collect any forfeiture or penalty assessment  
 12 imposed under this section if the forfeiture or penalty assessment has not been paid  
 13 following the exhaustion of all administrative and judicial reviews. The only issue  
 14 to be contested in any such action shall be whether the forfeiture or penalty  
 15 assessment has been paid.

16           **SECTION 31.** 50.04 (6) (a) of the statutes is repealed and recreated to read:

17           50.04 (6) (a) *Power of department.* 1. In addition to the right to impose  
 18 forfeitures and penalty assessments under sub. (5), the department may issue a  
 19 conditional license to any nursing home if the department finds that any of the  
 20 following is true:

21           a. A class “A” or class “B” violation, as defined in sub. (4), continues to exist in  
 22 the nursing home. *federal*

23           b. A violation continues to exist that constitutes immediate jeopardy, high risk  
 24 of death ~~or~~ <sup>(1)</sup> substantial harm, ~~or direct threat or actual harm to~~ <sup>(2)</sup> a resident.

*that directly threatens*

*or actual harm not involving immediate jeopardy to a resident,*

**BILL**

1           2. The issuance of a conditional license shall revoke any outstanding license  
2 held by the nursing home.

3           3. The nursing home may seek review of a decision to issue a conditional license  
4 as provided in s. 50.03 (5).

5           **SECTION 32.** 50.15 of the statutes is created to read:

6           **50.15 Nursing home improvement grants.** From the appropriation  
7 account under s. 20.435 (6) (ge), the department shall make grants to nursing homes  
8 to fund quality-of-care improvement projects. The department shall promulgate  
9 rules that specify the eligibility criteria and application procedures for receipt of a  
10 grant under this section.

11           **SECTION 33. Nonstatutory provisions.**

12           (1) **NURSING HOME IMPROVEMENT GRANTS.** The department of health and family  
13 services shall submit in proposed form the rules required under section 50.15 of the  
14 statutes, as created by this act, to the legislative council staff under section 227.15  
15 (1) of the statutes no later than the first day of the 13th month beginning after the  
16 effective date of this subsection.

17           **SECTION 34. Initial applicability.**

18           (1) **HEARING REQUESTS.** The treatment of section 50.04 (4) (e) 1. and (5) (e) of the  
19 statutes first applies to requests for hearings related to a notice of violation, a report  
20 notation, a plan correction, or a rejection of a plan correction that is issued on the  
21 effective date of this subsection.

22           (2) **CONDITIONAL LICENSURE.** The treatment of sections 50.01 (1k), (1nd), and  
23 (1ng) and 50.04 (6) (a) of the statutes first applies to violations committed on the  
24 effective date of this subsection.

**BILL**

*received*

*written notice of*

1 (3) SUSPENSION OF ADMISSIONS. The treatment of sections 50.01 (1k), (1nd), and  
 2 (1ng) and 50.04 (4) (d) 1. a. and b. and (d) 2. of the statutes first applies to violations  
 3 ~~committed~~ on the effective date of this subsection.

4 (4) SUSPENSION OR REVOCATION OF LICENSURE. The treatment of section 50.03 (5)  
 5 (a) of the statutes first applies to ~~violations committed~~ on the effective date of this  
 6 subsection.

7 (END)

*findings made  
 by the  
 department of  
 health and  
 family services*

2003-2004 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-2032/6ins  
DAK:kmg:pg

INSERT ANAL 1 ✓

(N/A) A suspension must remain in effect until DHFS determines that the nursing home has corrected all class "A" and class "B" violations.

INSERT ANAL 2 ✓

(N/A) ; a class "A" violation; or three or more class "B" violations or situations that either constituted actual harm not involving immediate jeopardy to a resident or directly threatened, as defined in the bill, a resident. These circumstances must have occurred both in the previous 15 months and in any 15-month period during the 36 months immediately preceding the previous 15 months. Under the bill, suspension of admissions must remain in effect until DHFS determines that the nursing home has corrected the violation in question.

INSERT 7-3 ✓

1           **SECTION 1.** 50.04 (4) (d) 2. of the statutes is amended to read:  
2           50.04 (4) (d) 2. A suspension of admissions under subd. 1. shall begin 90 days  
3 after a nursing home received its last notice of violation for a class "A" or class "B"  
4 violation if the department determines that the violation remains uncorrected 90  
5 days after the nursing home received the last notice of the violation. If the nursing  
6 home earlier indicates to the department that the violation has been corrected, but  
7 ~~the department is unable to verify that the violation has been corrected,~~ a suspension  
8 of admissions under subd. 1. shall begin on the day that the department makes a  
9 return visit to the nursing home and determines that the violation has not been  
10 corrected. A suspension of admissions under subd. 1. shall remain in effect until the  
11 department determines that ~~all class "A" and class "B" violations by the nursing~~  
12 ~~home have been~~ has corrected the violation. Admission of a new resident during the  
13 period for which admissions have been suspended constitutes a class "B" violation.

**History:** 1977 c. 170 ss. 6, 29; 1977 c. 272; 1979 c. 34; 1981 c. 20, 121, 317, 391; 1983 a. 27 s. 2200 (1); 1985 a. 29; 1985 a. 182 s. 57; 1985 a. 332 s. 251 (1), (7); 1987 a. 27, 127, 399; 1989 a. 31, 336; 1991 a. 39, 269, 315; 1995 a. 27; 1997 a. 27, 114, 237, 252, 280; 1999 a. 9, 32, 103; 2003 a. 33.

## Kennedy, Debora

---

**From:** Brian Purtell [brian@whca.com]  
**Sent:** Friday, January 30, 2004 1:22 PM  
**To:** Dawson, Linda; Liedl, Kimberly  
**Cc:** Kennedy, Debora; Santala, Sinikka; Schroeder, Susan; Welsh, Diane  
**Subject:** Re: Latest nursing home bill draft for you to check over

Linda: I agree with all the points you made. 1 and 3 are clear things we missed. The second item reflects what I suggested so the Department did not have to conduct the factors in determining amounts twice, however, Debora indicated that she felt there was some problem with the way we proposed to do this. I seemed to remember that she tried to get us to the same point, but via a different path. She might be better able to explain. Either way, I am in agreement with all your points.

Brian R. Purtell  
Director of Legal Services  
Wisconsin Health Care Association  
(608) 257-0125  
brian@whca.com

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

**From:** "Dawson, Linda" <DAWSOL@dhfs.state.wi.us>  
**To:** <brian@whca.com>; "Liedl, Kimberly" <Kimberly.Liedl@legis.state.wi.us>  
**Cc:** "Kennedy, Debora" <Debora.Kennedy@legis.state.wi.us>; "Santala, Sinikka" <SantaSS@dhfs.state.wi.us>; "Schroeder, Susan" <SchroSH@dhfs.state.wi.us>; "Welsh, Diane" <WelshDM@dhfs.state.wi.us>  
**Sent:** Friday, January 30, 2004 10:29 AM  
**Subject:** Re: Latest nursing home bill draft for you to check over

> I noted a couple of changes that I believe need to be made. Those changes  
> are  
> explained in the attached memo. If I've misunderstood or you have  
> questions,  
> please contact me.

> LD

> >>> Liedl, Kimberly 1/29/04 9:14:07 AM >>>

> \* \* \* \* \*

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> consistent with applicable laws, regulations and agreements. If you  
> received  
> this email in error, please notify the sender; delete the email; and do  
> not  
> use, disclose or store the information it contains.

> Linda Dawson  
> Deputy Chief Legal Counsel  
> Dept. of Health and Family Services  
> Phone: (608) 266-0355  
> Fax: (608) 267-1434  
> Email: dawsol@dhfs.state.wi.us

> Mailing Address:

> Rm 651, 1 W. Wilson St.

> PO Box 7850

> Madison, WI 53707-7850

>

>

>

>

## Kennedy, Debora

---

**From:** Brian Purtell [brian@whca.com]  
**Sent:** Friday, January 30, 2004 1:23 PM  
**To:** Dawson, Linda; Liedl, Kimberly  
**Cc:** Kennedy, Debora; Santala, Sinikka; Schroeder, Susan; Welsh, Diane  
**Subject:** Re: Latest nursing home bill draft for you to check over

Forgot to mention, I have already indicated to Rep. Pettis' office that I am in agreement with your points.

Brian R. Purtell  
Director of Legal Services  
Wisconsin Health Care Association  
(608) 257-0125  
brian@whca.com

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

**From:** "Dawson, Linda" <DAWSOL@dhfs.state.wi.us>  
**To:** <brian@whca.com>; "Liedl, Kimberly" <Kimberly.Liedl@legis.state.wi.us>  
**Cc:** "Kennedy, Debora" <Debora.Kennedy@legis.state.wi.us>; "Santala, Sinikka" <SantaSS@dhfs.state.wi.us>; "Schroeder, Susan" <SchroSH@dhfs.state.wi.us>; "Welsh, Diane" <WelshDM@dhfs.state.wi.us>  
**Sent:** Friday, January 30, 2004 10:29 AM  
**Subject:** Re: Latest nursing home bill draft for you to check over

> I noted a couple of changes that I believe need to be made. Those changes  
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> >>> Liedl, Kimberly 1/29/04 9:14:07 AM >>>

> \* \* \* \* \*

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> Linda Dawson  
> Deputy Chief Legal Counsel  
> Dept. of Health and Family Services  
> Phone: (608) 266-0355  
> Fax: (608) 267-1434  
> Email: dawsol@dhfs.state.wi.us  
> Mailing Address:  
> Rm 651, 1 W. Wilson St.  
> PO Box 7850  
> Madison, WI 53707-7850

**Kennedy, Debora**

---

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**Sent:** Friday, January 30, 2004 10:29 AM  
**To:** brian@whca.com; Liedl, Kimberly  
**Cc:** Kennedy, Debora; Santala, Sinikka; Schroeder, Susan; Welsh, Diane  
**Subject:** Re: Latest nursing home bill draft for you to check over



LRB 2032

3\_Memo\_Proposed chang..

I noted a couple of changes that I believe need to be made. Those changes are explained in the attached memo. If I've misunderstood or you have questions, please contact me.

LD

>>> Liedl, Kimberly 1/29/04 9:14:07 AM >>>

\* \* \* \* \*

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Linda Dawson  
Deputy Chief Legal Counsel  
Dept. of Health and Family Services  
Phone: (608) 266-0355  
Fax: (608) 267-1434  
Email: dawsol@dhfs.state.wi.us  
Mailing Address:  
Rm 651, 1 W. Wilson St.  
PO Box 7850  
Madison, WI 53707-7850



Jim Doyle  
Governor

Helene Nelson  
Secretary

**State of Wisconsin**

Department of Health and Family Services

**OFFICE OF LEGAL COUNSEL**  
Linda Dawson  
Deputy Chief Legal Counsel  
1 WEST WILSON STREET  
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TELEPHONE: 608-266-0355  
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E MAIL: dawsol@dhfs.state.wi.us  
dhfs.wisconsin.gov

**MEMORANDUM**

**Date:** January 30, 2004

**To:** Rep. Mark Pettis  
Rep. Kitty Rhoades  
Brian Purtell  
Debra Kennedy

**From:** Linda Dawson  
Deputy Chief Legal Counsel

**Subject:** **LRB 2032/6**

Thank you for providing us the opportunity to review the latest version of LRB 2032. Based on its review and discussions, DHFS believes that the draft for the most part accurately reflects the agreements reached. There are some changes needed that may reflect oversights. Therefore, we propose the following revisions to LRB 2032/6.

**Proposed changes to LRB 2032/6:**

- (1) **Section 10, page 6, line 15.** To be consistent with the provisions of sec. 50.04(4)(d), we believe that the language in line 15 should be amended to include a reference to federal violations (as found in Section 9, lines 8-12).
- ✓ (2) **Section 14, page 8, lines 8-12.** Delete "not more than" in lines 8-9, 10, and 12. Our understanding was that the amounts of the forfeitures would be a fixed amount (as found in Section 18 on pages 9-10).
- ✓ (3) **Section 33, page 15, line 15.** Strike the word "committed" and replace it with "that continue to exist".

Please contact me with any questions or concerns.



## 2003 BILL

1 AN ACT *to repeal* 50.04 (5) (a) 5m.; *to renumber and amend* 50.04 (5) (a) 6.;  
2 *to amend* 50.03 (5) (a), 50.04 (4) (b) 4., 50.04 (4) (d) 2., 50.04 (4) (e) 1., 50.04 (5)  
3 (title), 50.04 (5) (a) (intro.), 50.04 (5) (a) 1., 2. and 3. (intro.), 50.04 (5) (a) 4., 50.04  
4 (5) (a) 5. a., b. and d., 50.04 (5) (b) (intro.), 50.04 (5) (c), 50.04 (5) (d) (title), 50.04  
5 (5) (d) 1., 50.04 (5) (d) 2. (intro.), 50.04 (5) (dm) (intro.), 50.04 (5) (e), 50.04 (5)  
6 (f), 50.04 (5) (fm), 50.04 (5) (fr) and 50.04 (5) (g); *to repeal and recreate* 50.04  
7 (4) (d) 1. a., 50.04 (4) (d) 1. b. and 50.04 (6) (a); and *to create* 20.435 (6) (ge),  
8 50.01 (1k), 50.01 (1nd), 50.01 (1ng), 50.04 (4) (am) and 50.15 of the statutes;  
9 **relating to:** regulation of nursing homes, requiring the exercise of  
10 rule-making authority, and making an appropriation.

---

### *Analysis by the Legislative Reference Bureau*

#### *Federal and state requirements for nursing homes*

Under current law, a nursing home that receives Medicaid or Medicare funding for the care of a resident is subject to both federal and state requirements. The Department of Health and Family Services (DHFS) enforces both federal and state requirements for nursing homes. Currently, for nursing homes that are Medicaid

**BILL**

and Medicare providers, DHFS may issue both federal and state citations for the same practice and may recommend federal remedies and impose state sanctions. This bill prohibits DHFS from issuing a notice of violation of a state requirement to a nursing home that is a Medical Assistance or Medicare provider if DHFS has, in a statement of deficiency, cited the nursing home for a violation of a federal requirement that is based on the same facts.

***Appeals***

Currently, in order to appeal a DHFS finding that the nursing home violated a state requirement, a nursing home must request a hearing on the finding within ten days of receiving notice of the violation. If DHFS assesses a forfeiture for the violation and the nursing home wishes to appeal the forfeiture, the nursing home must request a separate hearing on the forfeiture within ten days of receiving notice of a contested action. Upon request of the nursing home, the hearing on the finding of violation may be stayed until DHFS assesses a forfeiture so that the hearing on the finding of violation and the hearing on the forfeiture may be consolidated.

The bill extends the deadline for a nursing home to request a hearing on a finding that the nursing home violated a state requirement to 60 days after receipt of the notice of violation. The bill also extends the deadline for requesting a hearing on a forfeiture to 60 days after receipt of notice of the forfeiture. The bill further provides that, if a nursing home timely appeals both a finding of violation and a forfeiture, the hearings on the violation and the forfeiture will be consolidated.

***Monetary penalties***

Under current law, DHFS may assess a forfeiture against a nursing home for a violation of a state requirement. The maximum amount of the forfeiture varies according to the classification of the violation and ranges from \$500 to \$10,000. There is no time limit for DHFS to assess a forfeiture for a violation. Nursing homes must pay forfeitures to DHFS within ten days after receipt of notice of imposition of the forfeiture or after receipt of the final decision after exhaustion of administrative review. If a nursing home does not contest a notice of violation and a forfeiture and pays the forfeiture within ten days after receipt of the notice, DHFS must reduce the forfeiture amount by 35 percent. Forfeitures collected for violations of state requirements are deposited in the school fund.

The bill reduces the maximum forfeiture amounts permitted for violations of state requirements and requires that DHFS impose a penalty assessment on a nursing home whenever DHFS assesses a forfeiture for a violation of a state requirement. The bill further requires DHFS to impose a forfeiture and penalty assessment within 120 days of notifying a nursing home of a violation or lose the authority to impose a forfeiture and penalty assessment. The bill changes to 60 days the time period by which nursing home must pay forfeitures and penalty assessments to DHFS after receipt of the notice of imposition or the final decision after exhaustion of administrative review, and also changes to 60 days the time period within which a nursing home may pay a forfeiture and penalty assessment and have the forfeiture and penalty assessment amounts reduced by 35 percent. The bill allocates moneys collected from the penalty assessments for nursing home quality-of-care improvement grants.

**BILL*****Conditional licenses***

Currently, in addition to the right to impose a forfeiture on a nursing home for violations, DHFS may issue a conditional license to a nursing home in which DHFS finds that a class “A” or a class “B” violation continues to exist. (A class “A” violation creates a condition or occurrence relating to the operation and maintenance of a nursing home that presents a substantial probability that death or serious mental or physical harm to a nursing home resident will result. A class “B” violation creates a condition or occurrence relating to the operation and maintenance of a nursing home that directly threatens the health, safety, or welfare of a nursing home resident.) Issuing a conditional license revokes any outstanding license held by the nursing home.

This bill expands the standard for issuance by DHFS of a conditional license for a nursing home to also include a continuing violation of federal law that constitutes immediate jeopardy, high risk of death, substantial harm, or actual harm not involving immediate jeopardy to a nursing home resident or that directly threatens, as defined in the bill, such a resident.

***Suspension of admissions***

Under current law, DHFS must suspend new admissions to a nursing home if the nursing home received notices of a class “A” violation or three or more class “B” violations in the previous 12 months; and if the nursing home received notices of a class “A” violation or three or more class “B” violations in any 12-month period during the three years immediately preceding the previous 12 months. Suspension of admissions begins 90 days after a nursing home receives its last notice of a class “A” or class “B” violation if DHFS determines that the violation is uncorrected or on the day that DHFS makes a return visit to the nursing home and determines that the violation has not been corrected. A suspension must remain in effect until DHFS determines that the nursing home has corrected all class “A” and class “B” violations.

This bill expands the standard for suspension of new admissions to a nursing home to include circumstances under which a nursing home received written notice of a violation that involved immediate jeopardy or high risk of death or substantial harm to a resident; a class “A” violation; or three or more class “B” violations or situations that either constituted actual harm not involving immediate jeopardy to a resident or directly threatened, as defined in the bill, a resident. These circumstances must have occurred both in the previous 15 months and in any 15-month period during the 36 months immediately preceding the previous 15 months. Under the bill, suspension of admissions must remain in effect until DHFS determines that the nursing home has corrected the violation in question.

***Suspension or revocation of licensure***

Currently, DHFS may, after providing notice to a nursing home applicant or licensee, suspend or revoke the license if DHFS finds that the nursing home substantially failed to comply with applicable state statutes or rules. No state or federal funds passing through the state treasury may be paid to a nursing home that does not have a valid license. This bill also permits DHFS to suspend or revoke a nursing home license if the nursing home has substantially failed to comply with

**BILL**

specified state law or with federal requirements related to the operation of a nursing home.

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.** 20.435 (6) (ge) of the statutes is created to read:

2           20.435 (6) (ge) *Nursing home improvement grants.* All moneys received from  
3 penalty assessments imposed by the department under s. 50.04 (5), for nursing home  
4 improvement grants under s. 50.15.

5           **SECTION 2.** 50.01 (1k) of the statutes is created to read:

6           50.01 (1k) “Directly threatened” means created a condition or occurrence  
7 relating to nursing home operation and maintenance that could reasonably be  
8 expected to lead to injury or impairment of a resident or to harm to the health, safety,  
9 or welfare of a resident.

10          **SECTION 3.** 50.01 (1nd) of the statutes is created to read:

11          50.01 (1nd) “High risk of death or substantial harm” means a condition or  
12 occurrence relating to nursing home operation and maintenance that presents a  
13 substantial probability of the death or serious mental or physical injury, harm, or  
14 impairment of a resident.

15          **SECTION 4.** 50.01 (1ng) of the statutes is created to read:

16          50.01 (1ng) “Immediate jeopardy” means a situation in which a nursing home’s  
17 noncompliance with one or more federal requirements related to the operation of a  
18 nursing home has caused, or is likely to cause, death or serious injury, harm, or  
19 impairment to a resident.

20          **SECTION 5.** 50.03 (5) (a) of the statutes is amended to read:

**BILL**

1           50.03 (5) (a) *Power of department.* The department, after notice to a nursing  
2 home applicant or licensee, may suspend or revoke a license in any case in which the  
3 department finds that the nursing home has substantially failed to comply with the  
4 applicable requirements of this subchapter and the rules promulgated under this  
5 subchapter, with s. 49.498, or with federal requirements related to the operation of  
6 a nursing home. No state or federal funds passing through the state treasury may  
7 be paid to a nursing home that does not have a valid license issued under this section.

8           **SECTION 6.** 50.04 (4) (am) of the statutes is created to read:

9           50.04 (4) (am) *Dual federal and state violations.* If an act or omission  
10 constitutes a violation of this subchapter or the rules promulgated under this  
11 subchapter, s. 49.498, or federal requirements related to the operation of a nursing  
12 home, the department may not issue under s. 50.04 (4) (a) a notice of violation of this  
13 subchapter, the rules promulgated under this subchapter, or s. 49.498 if the  
14 department has, in a statement of deficiency, cited the nursing home for the violation  
15 under federal requirements related to the operation of a nursing home.

16           **SECTION 7.** 50.04 (4) (b) 4. of the statutes is amended to read:

17           50.04 (4) (b) 4. Each day of violation constitutes a separate violation. Except  
18 as provided in sub. (5) (a) 4., the department shall have the burden of showing that  
19 a violation existed on each day for which a forfeiture and penalty assessment is  
20 assessed imposed. No forfeiture or penalty assessment may be assessed imposed for  
21 a condition for which the nursing home has received a variance or waiver of a  
22 standard.

23           **SECTION 8.** 50.04 (4) (d) 1. a. of the statutes is repealed and recreated to read:

24           50.04 (4) (d) 1. a. In the previous 15 months, the nursing home received written  
25 notice of a violation of a state statute or rule or a federal statute or regulation that

**BILL**

a

1 involved either immediate jeopardy or high risk of death or substantial harm to a  
2 resident; a class "A" violation; or 3 or more class "B" violations or situations that  
3 either constituted actual harm not involving immediate jeopardy to a resident or  
4 directly threatened a resident.

5 **SECTION 9.** 50.04 (4) (d) 1. b. of the statutes is repealed and recreated to read:

6 50.04 (4) (d) 1. b. In any 15-month period during the 36 months immediately  
7 preceding the period specified in subd. 1. a., the nursing home received written notice  
8 of a violation of a state statute or rule or a federal statute or regulation that involved  
9 either immediate jeopardy or a high risk of death or substantial harm to a resident;  
10 a class "A" violation; or 3 or more class "B" violations or situations that either  
11 constituted actual harm not involving immediate jeopardy to a resident or directly  
12 threatened a resident.

*or situation specified in subd. 1.a. A*

13 **SECTION 10.** 50.04 (4)(d) 2. of the statutes is amended to read:

14 50.04 (4) (d) 2. A suspension of admissions under subd. 1. shall begin 90 days  
15 after a nursing home received its last notice of violation for a class "A" or class "B"  
16 violation ~~if the department determines that the violation~~ *or situation* remains uncorrected 90  
17 days after the nursing home received the last notice of the violation. ~~If the nursing~~ *or situation*  
18 home earlier indicates to the department that the violation ~~has been corrected, but~~ *or situation*  
19 ~~the department is unable to verify that the violation has been corrected,~~ a suspension  
20 of admissions under subd. 1. shall begin on the day that the department makes a  
21 return visit to the nursing home and determines that the violation ~~has not been~~ *or situation*  
22 corrected. A suspension of admissions under subd. 1. shall remain in effect until the  
23 department determines that all class "A" and class "B" violations by the nursing  
24 home ~~have been~~ has corrected the violation. Admission of a new resident during the  
25 period for which admissions have been suspended constitutes a class "B" violation.

*or situation*

**BILL**

1           **SECTION 11.** 50.04 (4) (e) 1. of the statutes is amended to read:

2           50.04 (4) (e) 1. If a nursing home desires to contest any department action  
3 under this subsection, it shall send a written request for a hearing under s. 227.44  
4 to the division of hearings and appeals created under s. 15.103 (1) within ~~10~~ 60 days  
5 of receipt of notice of the contested action. Department action that is subject to a  
6 hearing under this subsection includes service of a notice of a violation of this  
7 subchapter or rules promulgated under this subchapter, a notation in the report  
8 under sub. (3) (b), imposition of a plan of correction, and rejection of a nursing home's  
9 plan of correction, but does not include a correction order. Upon the request of the  
10 nursing home, the division shall grant a stay of the hearing under this paragraph  
11 until the department assesses a forfeiture and penalty assessment, so that its  
12 hearing under this paragraph is consolidated with the forfeiture and penalty  
13 assessment appeal hearing held under sub. (5) (e). All agency action under this  
14 subsection arising out of a violation, deficiency, or rejection and imposition of a plan  
15 of correction shall be the subject of a single hearing. Unless a stay is granted under  
16 this paragraph, the division shall commence the hearing within 30 days of the  
17 request for hearing, within 30 days of the department's acceptance of a nursing  
18 home's plan of correction, or within 30 days of the department's imposition of a plan  
19 of correction, whichever is later. The division shall send notice to the nursing home  
20 in conformance with s. 227.44. Issues litigated at the hearing may not be relitigated  
21 at subsequent hearings under this paragraph arising out of the same violation or  
22 deficiency.

23           **SECTION 12.** 50.04 (5) (title) of the statutes is amended to read:

24           50.04 (5) (title) FORFEITURES AND PENALTY ASSESSMENTS.

25           **SECTION 13.** 50.04 (5) (a) (intro.) of the statutes is amended to read:

**BILL**

1           50.04 (5) (a) *Amounts.* (intro.) Any operator or owner of a nursing home which  
2 that is in violation of this subchapter or any rule promulgated thereunder under this  
3 subchapter may be subject to the forfeitures specified in this section. If the  
4 department imposes a forfeiture under this subsection, the department shall also  
5 impose a penalty assessment under this subsection.

6           **SECTION 14.** 50.04 (5) (a) 1., 2. and 3. (intro.) of the statutes are amended to  
7 read:

8           50.04 (5) (a) 1. A class “A” violation may be subject to a forfeiture of ~~not more~~  
9 ~~than \$250 and a penalty assessment of not more than \$10,000~~ for each violation.

10           2. A class “B” violation may be subject to a forfeiture of ~~not more than \$125 and~~  
11 a penalty assessment of not more than \$5,000 for each violation.

12           3. (intro.) A class “C” violation may be subject to a forfeiture of ~~not more than~~  
13 \$60 and a penalty assessment of not more than \$500. No forfeiture or penalty  
14 assessment may be assessed imposed for a class “C” violation unless at least one of  
15 the following applies:

16           **SECTION 15.** 50.04 (5) (a) 4. of the statutes is amended to read:

17           50.04 (5) (a) 4. Notwithstanding subds. 1., 2. and 3., if the violation or group  
18 of violations results from inadequate staffing, the combined amount of the forfeiture  
19 and penalty assessment that the department may ~~assess~~ impose shall be no less than  
20 the difference between the cost of the staff actually employed and the estimated cost  
21 of the staff required. The number of staff required shall be determined by the  
22 provider contract, the court order, or the department, by rule, whichever is greatest.  
23 The inadequate staff shall be presumed to exist from the date of the notice of  
24 violation.

25           **SECTION 16.** 50.04 (5) (a) 5. a., b. and d. of the statutes are amended to read:

**BILL**

1           50.04 (5) (a) 5. a. A nursing home that violates a statute or rule resulting in a  
2 class “A” violation and that has received a notice of violation for a class “A” “A”  
3 violation within the previous 3–year period involving the same situation shall be  
4 subject to a forfeiture 3 times the forfeiture amount authorized for a class “A”  
5 violation and a penalty assessment 3 times the penalty assessment amount  
6 authorized for a class “A” violation.

7           b. Except as provided in subd. 5. a., a nursing home that violates a statute or  
8 rule resulting in a class “A” or class “B” violation and that has received a notice of a  
9 class “A” or class “B” violation of the same statute or rule within the previous 3–year  
10 period may be subject to a forfeiture 3 times the forfeiture amount authorized for the  
11 most recent class of violation involved and a penalty assessment 3 times the penalty  
12 assessment amount authorized for the most recent class of violation involved.

13           d. The ~~forfeiture amount~~ and penalty assessment amounts that is are tripled  
14 under this subdivision shall be the ~~amount–assessed~~ forfeiture and penalty  
15 assessment amounts imposed after all appeals have been exhausted. If an  
16 ~~assessment imposition~~ of a forfeiture and penalty assessment is not contested and  
17 the forfeiture is and penalty assessment are paid as provided in par. (fm), the  
18 forfeiture ~~amount~~ and penalty assessment amounts that is are tripled is are the  
19 ~~amount assessed~~ amounts imposed after the reduction specified in par. (fm).

20           **SECTION 17.** 50.04 (5) (a) 5m. of the statutes is repealed

21           **SECTION 18.** 50.04 (5) (a) 6. of the statutes is renumbered 50.04 (5) (a) 6. (intro.)  
22 and amended to read:

23           50.04 (5) (a) 6. (intro.) If a licensee fails to correct a violation within the time  
24 specified in the notice of violation or approved plan of correction, or within the  
25 extended correction time granted under sub. (4) (c) 4., or if a violation continues after

**BILL**

1 a report of correction, the department may assess upon the licensee ~~a-~~ for each day  
2 of the continuing violation whichever of the following is applicable:

3 a. A separate forfeiture of not more than \$10,000 \$250 and a separate penalty  
4 assessment of not more than \$10,000 for a class “A” violations, and may assess a  
5 violation.

6 b. A separate forfeiture of not more than \$5,000 \$125 and a separate penalty  
7 assessment of not more than \$5,000 for a class “B” violations, for each day of  
8 continuing violation.

9 **SECTION 19.** 50.04 (5) (b) (intro.) of the statutes is amended to read:

10 50.04 (5) (b) *Factors in assessment imposition of forfeitures and penalty*  
11 *assessments.* (intro.) In determining whether to impose a forfeiture is to be imposed  
12 and penalty assessment for a violation and in fixing the amount of the forfeiture to  
13 be imposed penalty assessment, if any, for a violation, the following factors shall be  
14 considered:

15 **SECTION 20.** 50.04 (5) (c) of the statutes is amended to read:

16 50.04 (5) (c) *Assessment Imposition of forfeitures and penalty assessments;*  
17 *powers and duties of department.* The department may directly assess impose  
18 forfeitures and penalty assessments provided for under par. (a). If the department  
19 determines that a forfeiture and penalty assessment should be assessed imposed for  
20 a particular violation or for failure to correct it, it the department shall send a notice  
21 of assessment imposition of forfeiture and penalty assessment to the nursing home.  
22 The notice shall specify the ~~amount~~ amounts of the forfeiture assessed and penalty  
23 assessment imposed, the violation, and the statute or rule alleged to have been  
24 violated, and shall inform the licensee of the right to hearing under par. (e). If the  
25 department does not issue a notice of forfeiture and penalty assessment within 120

**BILL**

1 days after the date on which a nursing home receives the notice of a violation, the  
2 department may not impose a forfeiture or penalty assessment for the violation.

3 **SECTION 21.** 50.04 (5) (d) (title) of the statutes is amended to read:

4 50.04 (5) (d) (title) *Forfeiture and penalty assessment period.*

5 **SECTION 22.** 50.04 (5) (d) 1. of the statutes is amended to read:

6 50.04 (5) (d) 1. In the case of a class “B” violation, no forfeiture or penalty  
7 assessment may be assessed imposed for the violation from the day following the  
8 date of discovery until the date of notification. If the department fails to approve or  
9 reject a plan of correction within 15 days after its receipt of a complete plan, no  
10 forfeiture or penalty assessment may be imposed for the period beginning with the  
11 15th day after receipt and ending when notice of approval or rejection is received by  
12 the home. If a plan of correction is approved and carried out, no forfeiture or penalty  
13 assessment may be assessed imposed during the time period specified in the  
14 approved plan of correction, commencing on the day the plan of correction is received  
15 by the department.

16 **SECTION 23.** 50.04 (5) (d) 2. (intro.) of the statutes is amended to read:

17 50.04 (5) (d) 2. (intro.) In the case of a class “C” violation for which a notice of  
18 violation has been served, a forfeiture and penalty assessment may be assessed  
19 imposed for whichever of the following periods is applicable:

20 **SECTION 24.** 50.04 (5) (dm) (intro.) of the statutes is amended to read:

21 50.04 (5) (dm) (intro.) *Forfeiture and penalty assessment imposition date.* In  
22 the case of a class “B” violation, the department may not assess impose a forfeiture  
23 or a penalty assessment upon a nursing home until:

24 **SECTION 25.** 50.04 (5) (e) of the statutes is amended to read:

**BILL**

1           50.04 (5) (e) *Forfeiture and penalty assessment appeal hearing.* A nursing  
2 home may contest an assessment imposition of a forfeiture and penalty assessment  
3 by sending, within ~~10~~ 60 days after receipt of notice of ~~a contested action~~ the  
4 imposition of the forfeiture and penalty assessment, a written request for hearing  
5 under s. 227.44 to the division of hearings and appeals created under s. 15.103 (1).  
6 The administrator of the division may designate a hearing examiner to preside over  
7 the case and recommend a decision to the administrator under s. 227.46. The  
8 decision of the administrator of the division shall be the final administrative  
9 decision. The division shall commence the hearing within 30 days of receipt of the  
10 request for hearing and shall issue a final decision within 15 days after the close of  
11 the hearing. Proceedings before the division are governed by ch. 227. In any petition  
12 for judicial review of a decision by the division, the party, other than the petitioner,  
13 who was in the proceeding before the division shall be the named respondent. If,  
14 after receipt of notice of imposition of a forfeiture and penalty assessment, a nursing  
15 home that has timely requested a hearing under sub. (4) (e) on the notice of violation  
16 under sub. (4) for which the forfeiture and penalty assessment were imposed  
17 requests a hearing under this paragraph on the imposition of the forfeiture and  
18 penalty assessment, the hearing on the notice of violation under sub. (4) and the  
19 hearing on the imposition of the forfeiture and penalty assessment shall be  
20 consolidated.

21           **SECTION 26.** 50.04 (5) (f) of the statutes, as affected by 2003 Wisconsin Act 33,  
22 is amended to read:

23           50.04 (5) (f) *Forfeitures and penalty assessments paid within 10 60 days.* All  
24 forfeitures and penalty assessments shall be paid to the department within ~~10~~ 60  
25 days of receipt of notice of assessment imposition of the forfeiture and penalty

**BILL**

1 assessment or, if the forfeiture or penalty assessment is contested under par. (e),  
2 within ~~10~~ 60 days of receipt of the final decision after exhaustion of administrative  
3 review, unless the final decision is appealed and the order is stayed by court order  
4 under s. 50.03 (11). The department shall remit all forfeitures paid to the secretary  
5 of administration for deposit in the school fund. All moneys collected as penalty  
6 assessments under this subsection shall be credited to the appropriation account  
7 under s. 20.435 (6) (ge).

8 **SECTION 27.** 50.04 (5) (fm) of the statutes is amended to read:

9 50.04 (5) (fm) *Forfeiture and penalty assessment reduction for timely payment.*

10 If a nursing home does not contest a notice of violation under sub. (4) (e) and does not  
11 contest an assessment imposition of a forfeiture and penalty assessment under par.  
12 (e) for a class “A” or class “B” violation and pays the forfeiture and penalty  
13 assessment to the department within ~~10~~ 60 days after receipt of the notice of  
14 assessment imposition of the forfeiture and penalty assessment, the department  
15 shall reduce the amount of the ~~assessment~~ forfeiture and penalty assessment by ~~35%~~  
16 35 percent.

17 **SECTION 28.** 50.04 (5) (fr) of the statutes is amended to read:

18 50.04 (5) (fr) *Report to the legislature.* Annually, the department shall submit  
19 a report to the legislature under s. 13.172 (2) that specifies for the previous year the  
20 number of class “A” violations, the ~~amount~~ amounts of the forfeiture ~~assessment and~~  
21 penalty assessment imposed for each of those violations and, if known, the ~~amount~~  
22 amounts of the forfeiture and penalty assessment actually paid and collected with  
23 respect to those violations. The report shall also include an explanation for any  
24 ~~assessment that was~~ imposition of a forfeiture and penalty assessment that totaled  
25 less than \$2,500 for the violations specified in the report.

**BILL**

1           **SECTION 29.** 50.04 (5) (g) of the statutes is amended to read:

2           50.04 (5) (g) *Enforcement by attorney general.* The attorney general may bring  
3 an action in the name of the state to collect any forfeiture or penalty assessment  
4 imposed under this section if the forfeiture or penalty assessment has not been paid  
5 following the exhaustion of all administrative and judicial reviews. The only issue  
6 to be contested in any such action shall be whether the forfeiture or penalty  
7 assessment has been paid.

8           **SECTION 30.** 50.04 (6) (a) of the statutes is repealed and recreated to read:

9           50.04 (6) (a) *Power of department.* 1. In addition to the right to impose  
10 forfeitures and penalty assessments under sub. (5), the department may issue a  
11 conditional license to any nursing home if the department finds that any of the  
12 following is true:

13           a. A class “A” or class “B” violation, as defined in sub. (4), continues to exist in  
14 the nursing home.

15           b. A federal violation continues to exist that constitutes immediate jeopardy,  
16 high risk of death, substantial harm, or actual harm not involving immediate  
17 jeopardy to a resident, or that directly threatens a resident.

18           2. The issuance of a conditional license shall revoke any outstanding license  
19 held by the nursing home.

20           3. The nursing home may seek review of a decision to issue a conditional license  
21 as provided in s. 50.03 (5).

22           **SECTION 31.** 50.15 of the statutes is created to read:

23           **50.15 Nursing home improvement grants.** From the appropriation  
24 account under s. 20.435 (6) (ge), the department shall make grants to nursing homes  
25 to fund quality-of-care improvement projects. The department shall promulgate

**BILL**

1 rules that specify the eligibility criteria and application procedures for receipt of a  
2 grant under this section.

**SECTION 32. Nonstatutory provisions.**

3  
4 (1) NURSING HOME IMPROVEMENT GRANTS. The department of health and family  
5 services shall submit in proposed form the rules required under section 50.15 of the  
6 statutes, as created by this act, to the legislative council staff under section 227.15  
7 (1) of the statutes no later than the first day of the 13th month beginning after the  
8 effective date of this subsection.

**SECTION 33. Initial applicability.**

9  
10 (1) HEARING REQUESTS. The treatment of section 50.04 (4) (e) 1. and (5) (e) of the  
11 statutes first applies to requests for hearings related to a notice of violation, a report  
12 notation, a plan correction, or a rejection of a plan correction that is issued on the  
13 effective date of this subsection.

14 (2) CONDITIONAL LICENSURE. The treatment of sections 50.01 (1k), (1nd), and  
15 (1ng) and 50.04 (6) (a) of the statutes first applies to violations ~~committed~~ on the  
16 effective date of this subsection. *that continue to exist*

17 (3) SUSPENSION OF ADMISSIONS. The treatment of sections 50.01 (1k), (1nd), and  
18 (1ng) and 50.04 (4) (d) 1. a. and b. and (d) 2. of the statutes first applies to written  
19 notice of violations received on the effective date of this subsection.

20 (4) SUSPENSION OR REVOCATION OF LICENSURE. The treatment of section 50.03 (5)  
21 (a) of the statutes first applies to findings made by the department of health and  
22 family services on the effective date of this subsection.

23 (END)