

**2003 DRAFTING REQUEST**

**Assembly Amendment (AA-AB842)**

Received: 02/13/2004

Received By: dkennedy

Wanted: As time permits

Identical to LRB:

For: Peggy Krusick (608) 266-1733

By/Representing: Herself

This file may be shown to any legislator: NO

Drafter: dkennedy

May Contact: Dick Sweet, BOALTC

Addl. Drafters:

Subject: Health - facility licensure

Extra Copies:

Submit via email: YES

Requester's email: Rep.Krusick@legis.state.wi.us

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Fit and qualified; nursing home conditional licensure

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**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	dkennedy 02/17/2004	kgilfoy 02/17/2004		_____			
/1			jfrantze 02/18/2004	_____	sbasford 02/18/2004	sbasford 02/18/2004	

02/18/2004 08:34:11 AM

Page 2

FE Sent For:

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/?	dkennedy	1-2/17 Kmg	2/18	2/18			

FE Sent For:

<END>

## Kennedy, Debora

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**From:** Moran, Christian  
**Sent:** Friday, February 13, 2004 2:12 PM  
**To:** Kennedy, Debora; Sweet, Richard; Potaracke, George  
**Cc:** Donaldson, Bill  
**Subject:** Fit and Qualified Language



Fit and Qualified  
proposal\_020...

Here's the F&Q language from DHFS.

George, please let us know if you think anything needs to be added.

Christian

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

**From:** Welsh, Diane  
**Sent:** Friday, February 13, 2004 1:17 PM  
**To:** Peggy Krusick  
**Subject:** Fit and Qualified

FYI



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  
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P.O. BOX 7850  
MADISON WI 53707-7850

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dhfs.wisconsin.gov

MEMORANDUM

DRAFT

**Date:** February 4, 2004

**To:** Secretary Helene Nelson  
Sinikka Santala, Division Administrator, DDES

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

**CC:** Susan Schroeder, Bureau Director

**Subject:** "Fit and Qualified" Proposed Language

The Bureau of Quality Assurance (BQA or "bureau") seeks to have drafted as a companion bill for LRB 2032/7 language that gives it the ability to consider whether a licensee continues to be "fit and qualified" after a license is granted to operate a facility in Wisconsin. The additional language is desired for the following reasons.

- (1) BQA seeks the specific statutory authority to consider whether a licensee's convictions are "substantially related" to the operation of a nursing home.  
Under current law, in determining whether an applicant for a license is fit to operate a facility, the department shall consider the applicant's past record of law violations relevant to the operation of a residential or health care facility. See, sec. 50.03(4)(a)2., Wis. Stats. In addition, the Wisconsin Caregiver Law, sec. 50.065, Wis. Stats., precludes persons with certain backgrounds from being approved to operate a facility. Although persons with certain serious convictions may not operate a facility, the department is not authorized to act when the records checks of licensed individuals show convictions of crimes that are not listed under the caregiver law but are "substantially related" to the operation of a residential or health care facility or health related activities. Therefore, the bureau wishes to be able to consider a licensee's convictions of relevant violations to determine whether the person continues to be fit to operate a facility in Wisconsin.
- (2) BQA seeks specific statutory authority to request from an operator information about its plans to ensure the health, safety, and welfare of residents when the department has reason to believe the facility is facing financial difficulties.  
An increasing number of providers are facing financial difficulties in operating facilities. Under sec. 50.02(1), Wis. Stats., the department "may consult with nursing homes as needed" and may provide "specialized consultations when

requested” by a nursing home. “Specialized consultation” is defined as providing technical or professional advice, including systems analysis and crisis resolution, to assist the facility. Sec. HFS 132.13(33), Wis. Admin. Code. The bureau wishes to close the gap between being able to consult with a facility and being asked for assistance. There have been situations when the bureau received credible information that a facility was having trouble meeting its obligations to employees or vendors. In those cases, the bureau wanted to be able to contact the facility operators to obtain information about the specific plans the facility had to meet its obligations without risking harm to the health, safety or welfare of the facility’s residents. In some cases, when asked owners have resisted providing specific financial information to the bureau. (A recent example of this was Honey Creek.) When the bureau has had concerns about facilities’ abilities to meet their obligations to vendors, employees and residents, the bureau placed monitors in facilities. These monitors were paid for by BQA. Having the specific statutory ability to request that the facility demonstrate that it has sufficient resources to permit continued operation of the facility gives the department the ability to plan ahead, avoid unnecessary additional costs and to further assist facilities in crisis.

Therefore, the bureau proposes that the following underlined, italicized language be added to chapter 50, Wis. Stats..

Sec. 50.04(3) INSPECTION REPORTS. (a) *Inspection*. The department shall make or cause to be made at least one inspection biennially of each nursing home. The department may determine if conditions and practices comply with applicable standards by examining only a portion of the residents, records or physical plant when it conducts an inspection. *The department shall consider whether the licensee has<sup>1</sup> substantial or repeated violations of applicable state laws and rules and federal regulations in the operation of any health or social care facility or service organization or in the care of dependent persons, or<sup>2</sup> a charge or conviction of fraud or of a crime substantially related to care of a dependent person or the activities of a residential or health care facility or in any other health related activity or<sup>3</sup> a crime against a minor.* To ensure the protection of the health, safety or welfare of residents, the department may request<sup>2</sup> that the nursing home demonstrate that it has sufficient resources to permit continued operation of the nursing home for at least 60 days.

#48 + 150  
 entity, as defined in caregiver bkgd.  
 substantially related  
 Rules + Website lists crimes  
 50.065 (1)(c)

Sec. 50.03(5) SUSPENSION AND REVOCATION OF NURSING HOME LICENSES. (a) *Powers of department*. The department, after notice to a nursing home applicant or licensee, may suspend or revoke a license in any case in which the department finds that the nursing home *or licensee* has substantially failed to comply with the applicable requirements of this

<sup>1</sup> The language is identical to the requirement applying to CBRFs under sec. HFS 83.11(b), Wis. Admin. Code. It is proposed in part to provide consistency across BQA’s residential settings.

<sup>2</sup> Through a BQA memo, the department will clarify that only the Bureau Director may authorize such a request.

subchapter and the rules promulgated under this subchapter or has substantial or repeated violations of applicable state laws and rules and federal regulations in the operation of any health or social care facility or service organization or in the care of dependent persons, or a charge or conviction of fraud or of a crime substantially related to care of a dependent person or the activities of a residential or health care facility or in any other health related activity or a crime against a minor. No state or federal funds passing through the state treasury may be paid to a nursing home that does not have a valid license issued under this section.

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

The bureau asks that you support this proposed statutory language so that it may be promptly developed into a companion bill to accompany LRB 2032/7, the “forfeitures and penalty assessment” bill.

## Kennedy, Debora

---

**From:** Moran, Christian  
**Sent:** Monday, February 16, 2004 10:15 AM  
**To:** Kennedy, Debora  
**Subject:** FW: Fit and Qualified Language

Hi Debora--

I left a message this morning for Bill, asking him to call you about these F&Q changes to make sure you have all the information you need for the amendment.

Of course, please feel free to call me if you need anything.

Christian  
6-1733

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

**From:** Moran, Christian  
**Sent:** Friday, February 13, 2004 3:40 PM  
**To:** Kennedy, Debora; Sweet, Richard  
**Subject:** FW: Fit and Qualified Language

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

**From:** Donaldson, Bill  
**Sent:** Friday, February 13, 2004 3:38 PM  
**To:** Moran, Christian  
**Cc:** Potaracke, George  
**Subject:** RE: Fit and Qualified Language

Christian:

Thanks for the memo.

We do have several major concerns. There is one item that we believe takes the change in the wrong direction and two other things that we want to see in an effective change to the F&Q standard that do not appear in these amendments to the current law.

1. The proposal, on page 2, in the first italicized section, requires "sufficient resources to permit continued operation of the nursing home for at least 60 days." The current standard at the time of application for an initial license is 6 months. We feel that the extension should, at minimum, use the same time standard.

2. When calculating "resources" for the purpose of this review, there should be a specified limit on the amount of debt that can be counted as "ready reserves" (eg. no more than 20% of the reserves may be accounted for by letters of credit). Similarly, if the facility claims that the parent corporation will support any shortfall (supply the reserves), the department should be able to examine the corporate balance sheet and receive assurance from the headquarters office that this financing is available.

3. We want to see the department empowered to consider violations by the licensee in hir, her or its operations in other states when making a determination of fitness and qualification. This is not to say that a bad record in another venue is sufficient to cause an examination of an otherwise apparently stable operation in Wisconsin, but rather, that if the Wisconsin operation is marginally in trouble, a look at the entity's other operations should be part of the review.

Questions . . . ?? . . call me.

b

Bill Donaldson  
Counsel to the Board on Aging and Long Term Care

608.246.7018  
bill.donaldson@ltc.state.wi.us

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

From: Moran, Christian  
Sent: Friday, February 13, 2004 2:12 PM  
To: Kennedy, Debora; Sweet, Richard; Potaracke, George  
Cc: Donaldson, Bill  
Subject: Fit and Qualified Language

Here's the F&Q language from DHFS.

George, please let us know if you think anything needs to be added.

Christian

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

From: Welsh, Diane  
Sent: Friday, February 13, 2004 1:17 PM  
To: Peggy Krusick  
Subject: Fit and Qualified

FYI

department finds that a condition or occurrence relating to the operation and maintenance of a CBRF directly threatens the health, safety or welfare of a resident.

**(11) LICENSE DENIAL OR REVOCATION.** The department may refuse to grant a license if it determines that the applicant is not fit and qualified pursuant to s. 50.03 (4) (a) 1., Stats., and s. HFS 83.11 (1) or fails to meet the requirements for licensure in this chapter and ch. 50, Stats. The department may revoke a license pursuant to s. 50.03 (5g), Stats., if the applicant or licensee or any administrator, employee, or any other person affiliated with or living in the CBRF who has contact with residents:

(a) Is the subject of a pending criminal charge that substantially relates to the care of adults or minors, the funds or property of adults or minors or activities of the CBRF.

(b) Has been convicted of a felony, misdemeanor or other offense which substantially relates to the care of adults or minors, the funds or property of adults or minors or activities of the CBRF.

(c) Has a record of violating applicable laws and regulations of the United States or this or any other state in the operation of a residential or health care facility, or in any other health-related activity.

(d) Has substantially failed to comply with any provision of this chapter or ch. 50, Stats.

**Note:** Examples of actions the department will consider in making a determination that an act substantially relates to the care of adults or minors, the funds or property of adults or minors or activities of the CBRF are: abuse, neglect, sexual assault, indecent exposure, lewd and lascivious behavior, or any crime involving non-consensual sexual conduct; child abuse, sexual exploitation of children, child abduction, child neglect, contributing to the delinquency or neglect of a child, enticing a child, enticing a child for immoral purposes, exposing a minor to pornography or other harmful materials, incest, or any crime involving children as victims or participants; armed robbery, aggravated battery, false imprisonment, kidnapping, homicide, any crimes involving bodily harm or threat of bodily harm, any crime involving use of a dangerous weapon, or any crime evidencing disregard to health and safety; cruelty, neglect, or abandonment of animals and instigating fights between animals; burglary, extortion, forgery, concealing identity, embezzlement, and arson; crimes involving a substantial misrepresentation of any material fact to the public including bribery, fraud, racketeering or allowing an establishment to be used for illegal purposes; offenses involving narcotics, alcohol and controlled substances that result in a felony conviction; operating a motor vehicle while under the influence of an intoxicant or other drug, operating after revocation, and leaving the scene of an accident after injury or death to a person or damage to a vehicle driven or attended by any person.

**(12) SUMMARY SUSPENSION OF A LICENSE.** Pursuant to ss. 227.51 (3) and 50.03 (5g), Stats., the department may, by written order, summarily suspend a license when the department finds that public health, safety or welfare imperatively requires emergency action.

**(13) APPEAL.** (a) Any person whose application for a license is denied or whose license is revoked may request a hearing on that decision under ss. 227.42 and 50.03 (5g) (f), Stats.

(b) A request for a hearing shall be filed in the department of administration's division of hearing and appeals within 10 days after the date of the notice under sub. (11) or (12).

**Note:** A request for a hearing should be submitted to the Division of Hearings and Appeals, P. O. Box 7875, Madison, Wisconsin 53707.

**(14) POSTING OF CITATIONS AND NOTICES.** (a) The licensee shall post next to the CBRF license any citation of deficiency, notice of revocation and any other notice of enforcement action initiated by the department on forms and in correspondence received from the department. Citations of deficiency, notices of revocation and other notices of enforcement action shall be posted immediately upon their receipt. Citations of deficiency shall remain posted for 30 days following receipt or until compliance is achieved, whichever is longer. Notices of revocation and other notices of enforcement action shall remain posted until a final determination is made.

(b) The licensee shall make available, upon request, to a resident or prospective resident, the resident's or prospective resident's guardian, and the resident's or prospective resident's family members, designated representative and case manager, the results of all department surveys, monitoring visits and complaint investigations, if any, for the period of 12 months preceding the request.

**(15) POSTING OF OMBUDSMAN INFORMATION.** The licensee or his or her designee shall post in a conspicuous location in the community-based residential facility a statement, provided by the board on aging and long-term care, concerning the long-term care ombudsman program under s. 16.009 (2) (b), Stats., which includes the name, address and telephone number of the ombudsman.

**History:** Cr. Register, July, 1996, No. 487, eff. 1-1-97; correction in (13) (b) made under s. 13.93 (2m) (b) 6., Register, October, 1999, No. 526; am. (6) (b) 2., (11), (13) and (14), r. and recr. (7), Register, August, 2000, No. 536, eff. 9-1-00.

## Subchapter II — Administrative Management

**HFS 83.11 Licensee. (1) QUALIFICATIONS.** (a) A CBRF licensee or license applicant shall, on request of the department, produce evidence of financial stability to permit operation of the facility for at least 60 days.

**Note:** Program contracts or agency agreements would meet the intent of this requirement.

(b) A CBRF licensee or license applicant shall be fit and qualified pursuant to s. 50.03 (4), Stats. In assessing whether the licensee or license applicant is fit and qualified, the department shall consider evidence of any type of abuse, neglect or mistreatment of a person or misappropriation of the property of a person by the licensee or license applicant, fraud or substantial or repeated violations of applicable laws and rules in the operation of any health or social care facility or service organization, or in the care of dependent persons, or a charge or conviction of a crime substantially related to care of a dependent person or the activities of a residential or health care facility or in any other health related activity, or a crime against a minor.

(c) A CBRF licensee or license applicant shall be at least 21 years of age.

**(2) CRIMINAL RECORDS CHECK.** (a) Prior to issuing an initial license the department shall conduct a criminal records check with the department of justice on each applicant for an initial license, and may conduct a criminal records check on any adult relative of the license applicant who lives in the facility and any other occupant. At least every second year following the issuance of an initial license the department shall conduct a criminal records check with the department of justice on each licensee, and may conduct a criminal records check on any adult relative of the licensee who lives in the facility and any other occupant. The department shall, at the same times the criminal records checks are made with the department of justice, require the license applicant or licensee, and may require any adult relative of the license applicant or licensee who lives in the facility and any other occupant, to complete the department's background information disclosure form HFS-64. If any of these persons has a conviction record or a pending criminal charge which substantially relates to the care of adults or minors, the funds or property of adults or minors or activities of a residential or health care facility or in any other health related activity, the department may deny, revoke, refuse to renew or suspend the license, initiate other enforcement action provided in this chapter or in ch. 50, Stats., or place conditions on the license.

(b) If the applicant, licensee, any adult relative of the applicant or licensee who lives in the facility, or any other occupant has experience as a nurse assistant, home health aide or hospice aide, as defined under ch. HFS 129, the department shall check its registry for nurse assistants, home health aides and hospice aides [caregiver registry] to determine if there is on the registry a substantiated finding that the person abused or neglected a client or misappropriated the funds or property of a client. If any of these persons has a substantiated finding of one or more of these offenses, the department may deny, revoke, refuse to renew or suspend the license, initiate other enforcement action provided in this chapter or in ch. 50, Stats., or place conditions on the license.

(c) If an applicant for an initial or a renewal license is a corporation or board of directors which will not be involved in the day-



~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

**ASSEMBLY AMENDMENT ,  
TO 2003 ASSEMBLY BILL 842**

1 At the locations indicated, amend the bill as follows:

2 ✓ 1. Page 4, line 20: delete the material beginning with that line and ending with  
3 page 5, line 7, and substitute:

4 "SECTION 5g. 50.03 (5) (a) of the statutes is repealed and recreated to read:

5 50.03 (5) (a) *Power of department.* 1. The department, after notice to a nursing  
6 home applicant or licensee, may suspend or revoke a license in any case in which the  
7 department finds that the nursing home or licensee has substantially failed to  
8 comply with the applicable requirements of this subchapter and the rules  
9 promulgated under this subchapter, with s. 49.498, or with federal requirements  
10 related to the operation of a nursing home, or that any of the following applies to the  
11 licensee or to any administrator, employee, or other person affiliated with the  
12 nursing home or licensee:

1 a. A pending criminal charge that substantially relates to the care of adults or  
2 minors, the funds or property of adults or minors, or activities of the nursing home  
3 or licensee.

4 b. Conviction of a felony, misdemeanor, or other offense that substantially  
5 relates to the care of adults or minors, the funds or property of adults or minors, or  
6 activities of the nursing home or licensee.

7 c. A record of substantially and repeatedly violating applicable federal laws or  
8 regulations or applicable statutes or rules of this or any other state in the operation  
9 of an entity, as defined in s. 48.685 (1) (b) or 50.065 (1) (c), as applicable, or in any  
10 other health-related activity.

11 2. No state or federal funds passing through the state treasury may be paid to  
12 a nursing home that does not have a valid license issued under this section.

13 **SECTION 5h.** 50.03 (5) (b) of the statutes is amended to read:

14 50.03 (5) (b) *Form of notice.* Notice under this subsection shall include a clear  
15 and concise statement of the findings, determination, or violations on which the  
16 revocation is based, the statute or rule violated and notice of the opportunity for an  
17 evidentiary hearing under par. (c).

History: 1975 c. 413; 1977 c. 29, 170, 205, 272, 418, 447; 1979 c. 221; 1981 c. 20, 72, 121; 1981 c. 314 s. 146; 1985 a. 29 ss. 1058, 3202 (56) (a); 1985 a. 176; 1985 a. 182 s. 57; 1985 a. 332 s. 251 (1), (3); 1987 a. 27, 127, 399; 1989 a. 31, 359; 1991 a. 39, 221; 1993 a. 27, 112, 375, 491; 1995 a. 27 ss. 3227 to 3232, 9126 (19); 1997 a. 27, 114; 2001 a. 16; 2003 a. 33.

18 ~~2. Page 5, line 7: after that line insert:~~

19 **SECTION 5m.** 50.04 (3) (am) of the statutes is created to read:

20 **50.04 (3) (am) 1.** <sup>power of department.</sup> In determining under par. (a) if conditions and practices of a  
21 nursing home comply with applicable standards, the department shall consider  
22 whether any of the following applies to the licensee or to any administrator,  
23 employee, or other person affiliated with the licensee:

1 a. A pending criminal charge that substantially relates to the care of adults or  
2 minors, the funds or property of adults or minors, or activities of the nursing home.

3 b. Conviction of a felony, misdemeanor, or other offense that substantially  
4 relates to the care of adults or minors, the funds or property of adults or minors, or  
5 activities of the nursing home.

6 c. A record of violating applicable federal laws or regulations or applicable  
7 statutes or rules of this or any other state in the operation of an entity, as defined in  
8 s. 48.685 (1) (b) or 50.065 (1) (c), as applicable, or in any other health-related activity.

9 d. Substantial failure to comply with an applicable provision of this subchapter  
10 or an applicable rule promulgated under this subchapter.

11 2. To ensure the protection of the health, safety, or welfare of residents, the  
12 department may request that the nursing home demonstrate that it has sufficient  
13 resources to permit continued operation of the nursing home for at least 6 months,  
14 including that no more than 20<sup>percent</sup> of ready reserves of the nursing home are accounted  
15 for by letters of credit. If the sufficiency of a nursing home's resources depends on  
16 contributions to be made by the nursing home's parent corporation to eliminate a  
17 shortfall, the department may examine the corporate balance sheet and secure  
18 assurances from the corporation that the contributions will be made.”

19 (END)