



2009 ASSEMBLY BILL 389

August 18, 2009 – Introduced by Representatives KRUSICK, PETROWSKI, BERCEAU, CULLEN, GRIGSBY, HRAYCHUCK, MASON, PASCH and A. WILLIAMS, cosponsored by Senators CARPENTER, DARLING, ERPENBACH, LEHMAN, TAYLOR, WIRCH and KREITLOW, by request of Wisconsin Board on Aging and Long-Term Care, Coalition of Wisconsin Aging Groups, Disability Rights Wisconsin, AARP Wisconsin and Legal Aid Society of Milwaukee. Referred to Committee on Aging and Long-Term Care.

1 **AN ACT** *to amend* 50.04 (5) (a) 3. (intro.); and *to create* 50.03 (15) and 50.04 (4m)
2 of the statutes; **relating to:** requiring nursing homes to notify residents of
3 certain alleged violations and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Health Services (DHS), as part of its regulatory authority, must inspect each nursing home at least once biennially. Alleged violations by nursing homes of state statutes or rules are of three types, according to seriousness, ranging from a class “A” violation (creation of 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 resident will result) to a class “C” violation (a condition or occurrence that does not directly threaten the health, safety, or welfare of a nursing home resident). If DHS determines that a nursing home’s alleged violation is a class “A” violation, DHS serves a written notice of violation on the nursing home. If a nursing home fails to abate or eliminate a class “A” violation immediately, or within a time specified in the notice of violation, DHS must maintain a court action for injunction or other restraint, although a nursing home may contest a class “A” violation determination by an administrative hearing that is subject to judicial review. A class “A” violation is subject to a forfeiture of not more than \$10,000.

Also under current law, for nursing homes that are certified to provide care to Medicare beneficiaries or Medical Assistance (MA) recipients, DHS may also act as the federal agent in enforcing federal standards of operation. If DHS determines

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that an alleged violation by a nursing home creates immediate jeopardy (a situation in which the nursing home's noncompliance with one or more requirements of federal financial participation has caused or is likely to cause serious injury, harm, impairment, or death to a resident), DHS, acting as the federal agent, may serve a written statement of deficiency on the nursing home. Various federal actions are available against a nursing home if there is a situation of immediate jeopardy, including appointment of a temporary manager, termination of a Medicare or MA provider agreement, transfer of residents, and other remedies.

This bill requires a nursing home that receives a written notice of a class "A" violation or a federal statement of deficiency that indicates a finding of immediate jeopardy to provide to each nursing home resident identified in the notice or statement and the resident's legal representative, if any, within 15 days after receiving the notice or statement, a written notice. The notice must include a copy of the notice of violation or statement of deficiency and provide certain other information. Failure by a nursing home to provide the information required is a class "C" violation, subject to a forfeiture of not more than \$2,500.

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.** 50.03 (15) of the statutes is created to read:

2 **50.03 (15)** PROVISION OF CERTAIN INFORMATION TO A RESIDENT. The relevant
3 subunit of the department that deals with quality assurance shall, upon request,
4 provide a resident or a resident's legal representative with a statement of final
5 disposition, if s. 50.04 (4m) (b) 2. c. applies.

6 **SECTION 2.** 50.04 (4m) of the statutes is created to read:

7 **50.04 (4m)** NOTICE TO RESIDENT OF ALLEGED VIOLATION. (a) In this subsection,
8 "immediate jeopardy" means a situation in which the nursing home's noncompliance
9 with one or more requirements of federal financial participation has caused, or is
10 likely to cause, serious injury, harm, impairment, or death to a resident.

11 (b) Within 15 days after receipt by a nursing home of a written notice of a class
12 "A" violation served under sub. (4) (a) 1. or after receipt of a federal statement of

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1 deficiency that indicates a finding of immediate jeopardy, the nursing home shall
2 provide to each resident identified in the notice of violation or the statement of
3 deficiency and to the resident's legal representative, if any, a written notice that
4 includes all of the following:

5 1. A copy of the written notice of the class "A" violation or of the statement of
6 deficiency.

7 2. A statement that informs the resident and his or her legal representative,
8 if any, of all of the following:

9 a. The anonymous identifier that is used to designate the resident in the notice
10 of the class "A" violation or the statement of deficiency.

11 b. The address, telephone number, and electronic mail address of the relevant
12 regional office of the subunit of the department that deals with quality assurance.

13 c. That the subunit of the department that deals with quality assurance will,
14 after final disposition of the alleged class "A" violation or finding of immediate
15 jeopardy has been made, provide the resident or his or her legal representative, upon
16 request, with a statement of the final disposition.

17 (c) Failure by a nursing home to provide the information required under par.
18 (b) is a class "C" violation under sub. (4).

19 **SECTION 3.** 50.04 (5) (a) 3. (intro.) of the statutes is amended to read:

20 50.04 (5) (a) 3. (intro.) A class "C" violation may be subject to a forfeiture of not
21 more than \$500, except that a class "C" violation under sub. (4m) (c) may be subject
22 to a forfeiture of not more than \$2,500. No forfeiture may be assessed for a class "C"
23 violation unless at least one of the following applies:

24 **SECTION 4. Initial applicability.**

