

2009 DRAFTING REQUEST

Bill

Received: **12/18/2008**

Received By: **rryan**

Wanted: **As time permits**

Identical to LRB:

For: **Peggy Krusick (608) 266-1733**

By/Representing: **Christian Moran**

This file may be shown to any legislator: **NO**

Drafter: **tdodge**

May Contact:

Addl. Drafters:

Subject: **Health - facility licensure**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Krusick@legis.wisconsin.gov**

Carbon copy (CC:) to: **robin.ryan@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Notice to nursing home residents of certain citations

Instructions:

See attached

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>
/?	rryan 01/22/2009 dkennedy 01/26/2009	nmatzke 02/23/2009		_____			S&L
/1	tdodge 04/02/2009	nmatzke 04/06/2009	rschluet 02/23/2009	_____	lparisi 02/23/2009		S&L
/2			mduchek 04/06/2009	_____	mbarman 04/06/2009	cduerst 08/10/2009	

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For: "1/2" @ intro, 8/17/09

<END>

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	dkennedy 01/26/2009	/2 nwn	ND	PH			
/1			rschluet 02/23/2009		lparisi 02/23/2009		

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1?	rryan 01/22/2009 dkennedy	1 nwn 2/16		_____	_____	_____	_____

FE Sent For:

<END>

Ryan, Robin

From: Moran, Christian
Sent: Thursday, December 18, 2008 11:07 AM
To: Ryan, Robin
Cc: Sweet, Richard
Subject: bill drafting request

Robin,

Could you please draft a bill that would do the following. I'm copying Dick Sweet because he is familiar with this proposal, after having attended a meeting Peggy and I had with DQA at which it was discussed. Please feel free to call me or Dick with any questions.

Thanks,

Christian

Christian Moran
 Office of Representative Peggy Krusick
 State Capitol, 128 North
 Madison, WI 53708
 608-266-1733

Bill Draft Request

Within 10 days of receipt of a class "A" violation under ch. 50.04 (4) (b) 1. or a federal finding of Immediate Jeopardy, the nursing home shall provide written notice to the resident, or to the resident's legal representative, of each resident identified in a class "A" or Immediate Jeopardy citation.

The written notice shall include:

- A copy of the class "A" or Immediate Jeopardy citation issued by the department.
- A statement informing the resident or the legal representative how the resident was identified in the citation.?
- Information that the department's Division of Quality Assurance will be able to provide final disposition of the statement of deficiency upon request.
- The address, telephone number and e-mail address of the department's Division of Quality Assurance regional office assigned to the facility.

Failure to comply with this subsection is a class "C" violation under ch. 50.04 (4) (b) 3. and not withstanding ch. 50.04 (5) (a) 3. may be subject to a forfeiture of not more than \$2,500 for each violation.

Paul Peshek 7-0351, 219-0088
 (DQA)

12/18/2008

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

1/23/08 From Paul Plohek (DHS, DQA) 7-0351, 219-0088

Definition of "immediate jeopardy" 42 CFR 489.3

"How resident was identified in citation" -
where anonymous identifier was used

Statement of deficiency - same as
notice of violation



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1231/31

DAK: +...
nwn

D-NOTE

In edit 1/26

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA ✓
X-ref ✓

1 AN ACT ...; ^{Gen.} relating to: requiring nursing homes to notify residents of certain
2 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 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 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 and his or her legal representative, if any, within ten 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:

SECTION 1. ^{X^} 50.03 (15) of the statutes is created to read:

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

SECTION 2. ^{X^} 50.04 (4m) of the statutes is created to read:

50.04 (4m) NOTICE TO RESIDENT OF ALLEGED VIOLATION. (a) In this subsection, "immediate jeopardy" means 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.

(b) Within 10 days after receipt by a nursing home of a written notice of a class "A" violation served under sub. (4) (a) 1. or after receipt of a federal statement of deficiency that indicates a finding of immediate jeopardy, the nursing home shall

identified in the notice or statement and the resident's

1 provide to each resident identified in the notice of violation or the statement of
2 deficiency and to the resident's legal representative, if any, a written notice that
3 includes all of the following:

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

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

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

10 b. The address, telephone number, and e-mail address of the relevant regional
11 office of the subunit of the department that deals with quality assurance.✓

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

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

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

19 50.04 (5) (a) 3. (intro.) A class "C" violation may be subject to a forfeiture of not
20 more than \$500, except that a class "C" violation under sub. (4m) (c) may be subject
21 to a forfeiture of not more than \$2,500. No forfeiture may be assessed for a class "C"
22 violation unless at least one of the following applies:✓

23 **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; 2007 a. 20, 153.

(END)

D-NOTE

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1231 ¹ ~~in~~

DAK: [.....]

nwn

Date

To Representative Krusick:

This bill subjects a nursing home to a class "C" violation for failure to provide to a resident the information required in the bill (although the forfeiture amount for the violation is up to \$2,500, rather than up to \$500). Please note that, generally, a forfeiture for a class "C" violation cannot be assessed unless one of the conditions under s. 50.04 (5) (a) 3., stats., applies. Is that all right with you?

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

Debora has retired. Please contact me with any questions or redraft instructions.

RLR

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1231/1dn
DAK:nwn:rs

February 23, 2009

To Representative Krusick:

This bill subjects a nursing home to a class "C" violation for failure to provide to a resident the information required in the bill (although the forfeiture amount for the violation is up to \$2,500, rather than up to \$500). Please note that, generally, a forfeiture for a class "C" violation cannot be assessed unless one of the conditions under s. 50.04 (5) (a) 3., stats., applies. Is that all right with you?

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

Debora has retired. Please contact me with any questions or redraft instructions.

Robin Ryan
Legislative Attorney
Phone: (608) 261-6927
E-mail: robin.ryan@legis.wisconsin.gov

Dodge, Tamara

From: Ryan, Robin
Sent: Thursday, March 19, 2009 2:53 PM
To: Moran, Christian
Cc: Dodge, Tamara
Subject: RE: Bill redraft request (LRB-1231/1)

Christian, Tami Dodge is going to do the redraft.

Robin

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

From: Moran, Christian
Sent: Thursday, March 19, 2009 9:50 AM
To: Ryan, Robin
Subject: Bill redraft request (LRB-1231/1)

Hi Robin,

Could you please make the changes noted on the attached LRB-1231/1, which relates to requiring nursing homes to notify residents of certain alleged violations and providing a penalty. Debora drafted this bill.

There are 4 revisions, which were suggested by DHS at our request. They can be found as follows:

Page 1, line 2 of the LRB analysis
Page 2, line 4
Page 2, line 11
Page 3, line 3

Thanks for your help. Just call with any questions.

Christian

Christian Moran
Office of Representative Peggy Krusick
State Capitol, 128 North
Madison, WI 53708
608-266-1733



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1231/1
DAK:nwn:rs

2009 BILL

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.

at least

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 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

BILL

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 ten 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 with a statement of final disposition, if s. 50.04 (4m) (b) 2. c.
5 applies. *or a resident's legal representative*

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~~10~~ 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

BILL

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 or 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 e-mail address of the relevant regional
12 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.

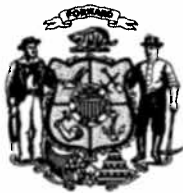
17 (c) Failure by a nursing home to provide the information required under par.
18 (b) is a class "C" violation under sub. (4).

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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 (END)





State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-123111-2

DAK:mwn:rs

In: 4/2/09

2009 BILL

See request page also

TUN

KANE

SAV

Regen.

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
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5 applies.

[✓] or a resident's legal representative ✓

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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
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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 e-mail address of the relevant regional
12 office of the subunit of the department that deals with quality assurance. *electronic mail*

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).

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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 (END)

D-W

*INS
3-24*

**2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1231/2ins
TJD:.....

1 INSERT 3-24

2 **SECTION 1. Initial applicability.**

3 (1) This act first applies to a written notice of a class "A" violation or a federal
4 statement of deficiency indicating a finding of immediate jeopardy that is received
5 by a nursing home on the effective date of this subsection.✓

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1231/2dn

TJD:./:....

nwn

Date

To Christian Moran:

I added an intial applicability provision to this draft to make it clear that a nursing home needs to comply with the notice requirements only for those written notices of a class "A" violation or a federal statement of deficiency indicating a finding of immediate jeopardy it receives on or after the date the law goes into effect. Is that okay?

Should you have any questions, please contact me.✓

Tamara J. Dodge
Legislative Attorney
Phone: (608) 267-7380
E-mail: tamara.dodge@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1231/2dn
TJD:nwn:md

April 6, 2009

To Christian Moran:

I added an initial applicability provision to this draft to make it clear that a nursing home needs to comply with the notice requirements only for those written notices of a class "A" violation or a federal statement of deficiency indicating a finding of immediate jeopardy it receives on or after the date the law goes into effect. Is that okay?

Should you have any questions, please contact me.

Tamara J. Dodge
Legislative Attorney
Phone: (608) 267-7380
E-mail: tamara.dodge@legis.wisconsin.gov

Duerst, Christina

From: Moran, Christian
Sent: Monday, August 10, 2009 9:54 AM
To: LRB.Legal
Subject: Jacket request: LRB-1231/2

Please jacket the following bill draft for introduction in the **Assembly**:

LRB-1231/2 relating to: requiring nursing homes to notify residents of certain alleged violations and providing a penalty.

Christian Moran
Office of Representative Peggy Krusick
State Capitol, 128 North
Madison, WI 53708
(608) 266-1733