



## WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

**2011 Wisconsin Act 70**  
[2011 Senate Bill 212]

**Licensing and Regulation of  
Nursing Homes**

2011 Wisconsin Act 70 revises certain requirements and procedures with respect to licensing and regulation of nursing homes in Wisconsin, as described below.

### **Prohibition on “Dual Enforcement” of Federal and State Requirements**

**State requirements.** Nursing homes in Wisconsin are subject to certain requirements under state law related to the operation of nursing homes, enforced by the Wisconsin Department of Health Services (DHS). When a nursing home is not in compliance with applicable standards, DHS determines violations according to categories, as follows:

- Class “A” violations are those that present a substantial probability that death or serious mental or physical harm to a nursing home resident will result.
- Class “B” violations are those that directly threaten the health, safety, or welfare of a nursing home resident.
- Class “C” violations are those that do not directly threaten the health, safety, or welfare of a nursing home resident.

**Federal requirements.** A nursing home that receives Medicaid or Medicare funding is also subject to requirements under federal law related to the operation of the nursing home, enforced by DHS, by delegation from the federal government. When DHS finds a violation of federal requirements, it issues a “statement of deficiency.” The majority of nursing homes in Wisconsin are subject to the federal requirements.

**Prior law.** Under prior law, DHS was required to issue a notice of violation to a nursing home for any Class A or B violation of state requirements related to the operation of a nursing home, with the exception of certain self-reported violations. No provision under prior law prevented DHS from issuing

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This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature’s Web site at: <http://www.legis.state.wi.us/>.

a notice of violation to a nursing home if DHS had, in a statement of deficiency, cited it for a violation based on the same facts under the federal requirements.

***Prohibition of dual enforcement.*** Under Act 70, DHS is prohibited from serving a notice of violation to a nursing home for any Class A or B violation of state requirements if DHS has, in a statement of deficiency, cited the nursing home for a violation under federal regulations based on the same facts.

### **Self-Reported Violations**

Under ***prior law***, notwithstanding the general requirement to issue a notice of violation for Class A or B violations, DHS was not required to issue a notice of violation if all of the following were true:

- The nursing home had brought the violation to DHS's attention,
- The nursing home had made every reasonable effort to prevent and correct the violation, *and*
- The violation remained uncorrected due to circumstances beyond the nursing home's control.

***Act 70*** expands the circumstances in which no notice of violation is required for Class A or B violations. Under Act 70, no notice of violation is required if all of the following are true:

- The nursing home brings the violation to DHS's attention,
- The nursing home makes every reasonable effort to prevent and correct the violation, *and*
- The violation remains uncorrected due to circumstances beyond the nursing home's control, *or the nursing home has corrected the violation.*

### **Time Limits Related to Monetary Penalties**

DHS may assess a forfeiture against a nursing home for a violation of a state requirement related to the operation of a nursing home or for failure to correct a violation ("assessment of forfeiture"). In connection with an assessment of forfeiture under ***prior law***:

- There was no time limit for DHS to assess a forfeiture after a notice of violation was served;
- Payment of an assessment of forfeiture was required within 10 days after receipt of notice of the assessment of forfeiture (or, in the case of a contested forfeiture, within 10 days after exhaustion of administrative review); *and*
- In the event of a Class A or B violation, if a nursing home did not contest a notice of violation or assessment of forfeiture and paid the forfeiture to DHS within 10 days after receipt of notice of the assessment of forfeiture, DHS was required to reduce the amount of the assessment by 35%.

Act 70 alters the timelines applicable to these provisions. In connection with an assessment of forfeiture under *Act 70*:

- If DHS desires to assess a forfeiture in a given instance, it must do so within *120 days* of serving the notice of violation, otherwise DHS may not assess a forfeiture for the violation;
- Payment of an assessment of forfeiture is required within *60 days* after receipt of notice of the assessment of forfeiture (or, in the case of a contested forfeiture, within *60 days* after exhaustion of administrative review); *and*
- In the event of a Class A or B violation, if a nursing home does not contest a notice of violation or assessment of forfeiture and pays the forfeiture to DHS within *60 days* after receipt of notice of the assessment of forfeiture, DHS is required to reduce the amount of the assessment by 35%.

### **Appeals**

A nursing home may appeal a notice of violation or an assessment of forfeiture by requesting a hearing from DHS within a specified timeframe. Further, upon request of the nursing home, DHS must grant a stay of the hearing on the violation until DHS assesses a forfeiture so that the hearing on the violation may be consolidated with the hearing on the assessment of forfeiture.

*Prior law* provided that a nursing home could appeal a notice of violation by requesting a hearing from DHS within 10 days of receiving the notice of violation. Also, a nursing home could appeal an assessment of forfeiture by requesting a separate hearing from DHS within 10 days of receiving notice of the assessment of forfeiture.

*Act 70* extends the time period within which a nursing home may request a hearing from DHS regarding a notice of violation to *60 days* after receipt of the notice of violation. It also extends the time period within which a nursing home may request a hearing from DHS regarding an assessment of forfeiture to *60 days* after receipt of notice of the assessment of forfeiture. In addition, *Act 70* provides that if a nursing home timely appeals both a notice of violation and an assessment of forfeiture, the hearings on the notice of violation and the assessment of forfeiture must be consolidated.

### **Injunctions**

DHS may seek an injunction in court to prevent repeat violations of state requirements related to the operation of a nursing home, where the violation affects the health, safety, or welfare of the nursing home residents.

*Act 70* expands DHS's authority in this regard. Under *Act 70*, DHS may also seek an injunction in court to prevent repeat violations of *federal* requirements related to the operation of a nursing home, where the violation affects the health, safety, or welfare of the nursing home residents.

### **Conditional Licenses**

If DHS finds that a Class A or B violation continues to exist at a nursing home, DHS may issue a conditional license to the nursing home. Issuance of a conditional license revokes any outstanding license previously issued to the nursing home and subjects the nursing home to increased monitoring and enforcement during the term of the conditional license.

*Act 70* expands DHS's authority to issue conditional licenses. Under *Act 70*, DHS may also issue a conditional license to a nursing home for a continuing violation of a *federal* requirement that constitutes immediate jeopardy, or actual harm not involving immediate jeopardy, to a nursing home resident.

### *Suspension of Admissions*

Under *prior law*, DHS was required to suspend new admissions to a nursing home if both of the following applied, and one or more of the violations remained uncorrected 90 days after the nursing home received the last notice of violation:

- In the previous 12 months, the nursing home was cited for a Class A violation, or three or more Class B violations, *and*
- In any 12-month period during the three years immediately preceding the previous 12 months, the nursing home was cited for a Class A violation, or three or more Class "B" violations.

The suspension of admissions remained in effect until DHS determined that all Class A and Class B violations had been corrected by the nursing home.

*Act 70* broadens the scope of this provision to address repeat citations for state *or federal* violations, within an expanded timeframe. Under *Act 70*, DHS is required to suspend new admissions to a nursing home if both of the following apply, and one or more of the violations remains uncorrected 90 days after the nursing home receives the last notice of violation:

- In the previous 15 months, at least one of the following applied: (a) the nursing home received a notice of violation of a state or federal requirement that involved immediate jeopardy to a resident; (b) the nursing home received notice of a Class A violation; *or* (c) the nursing home received notices of three or more violations that were Class B violations or that constituted actual harm not involving immediate jeopardy to a resident; *and*
- In any 15-month period during the three years immediately preceding the previous 15 months, at least one of the following applied: (a) the nursing home received a notice of violation of a state or federal requirement that involved immediate jeopardy to a resident; (b) the nursing home received notice of a Class "A" violation; *or* (c) the nursing home received notices of three or more violations that were Class B violations or that constituted actual harm not involving immediate jeopardy to a resident.

In addition, whereas prior law required the suspension to remain in effect until the nursing home had corrected all Class A and Class B violations, *Act 70* provides that the suspension will remain in effect until the nursing home corrects the violation that triggered the suspension of applications.

### *Suspension or Revocation of Licensure*

DHS may suspend or revoke the license of a nursing home if DHS finds that it has substantially failed to comply with state requirements related to the operation of the nursing home, under subch. 1, ch. 50, Stats., or the related administrative rules promulgated by DHS.

*Act 70* broadens DHS's authority in this regard. Under *Act 70*, DHS may also suspend or revoke the license of a nursing home if it has substantially failed to comply with:

- State requirements for skilled nursing facilities, under s. 49.498, Stats.; *or*
- Federal requirements under s. 42 C.F.R. 483 related to the operation of a nursing home.

### **Probationary Licenses**

When an applicant for licensure as a nursing home has not been previously licensed or is not in operation at the time of the application, DHS is required to issue the applicant a probationary license. DHS must inspect the nursing home within 12 months after issuance of the probationary license to determine whether it meets the requirements for regular licensure under state law, and DHS may not issue a regular license to the nursing home if it finds that the nursing home does not meet these requirements.

*Act 70* broadens the scope of this provision. Under *Act 70*, as above, if an applicant for licensure as a nursing home has not been previously licensed or is not in operation at the time of the application, DHS is required to issue the applicant a probationary license. When this occurs, DHS must inspect the nursing home within 12 months to determine whether the nursing home:

- Meets the requirements for regular licensure under state law, *and*
- Substantially complies with the *federal* requirements under s. 42 C.F.R. 483 related to the operation of a nursing home.

DHS may not issue a regular license to the nursing home if it finds that the nursing home does not meet the requirements for regular licensure under state law or does not substantially comply with the federal requirements under s. 42 C.F.R. 483, related to the operation of a nursing home.

### **Innovative Projects; Promulgation of Rules**

*Act 70* allows DHS to distribute certain moneys for innovative projects designed to protect the property and the health, safety, and welfare of nursing home residents and to improve the efficiency and cost-effectiveness of the operation of nursing homes. The money that may be used for these purposes includes penalty assessments and interest received by DHS for violations of state requirements for skilled nursing facilities, under s. 49.498, Stats. *Act 70* also requires DHS to establish and maintain a quality assurance and improvement committee to award moneys for innovative projects approved by the committee. *Act 70* requires DHS to promulgate rules to guide the actions of the committee.

### **Initial Applicability**

- Injunctions. The provisions of *Act 70* relating to injunctions first apply to an action for injunction filed by DHS on December 2, 2011.
- Appeals. The provisions of *Act 70* relating to appeals first apply to requests for hearings related to a notice of violation, report notation, plan of correction or rejection of a plan of correction issued on December 2, 2011.

- Conditional licensure. The provisions of Act 70 relating to conditional licensure first apply to violations that continue to exist on December 2, 2011.
- Suspension of admissions. The provisions of Act 70 relating to suspension of admissions first apply to written notices of violations received on December 2, 2011.
- Suspension or revocation of licensure. The provisions of Act 70 relating to suspension or revocation of licensure first apply to findings made by DHS on December 2, 2011.
- Probationary licensure. The provisions of Act 70 relating to probationary licensure first apply to inspections made by DHS on December 2, 2011.

*Effective date:* December 2, 2011

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