Clearinghouse Rule 06-053

PROPOSED ORDER OF DEPARTMENT OF HEALTH AND FAMILY SERVICES TO ADOPT RULES

The Wisconsin Department of Health and Family Services proposes to **repeal** HFS 132.13 (2), (6), (13), (14), (15), (19), and (33), 132.31 (1) (a) to (c), (e) to (o), (2), (3), (4) (c), (5) and (6) (a) (title), and (b) to (e), 132.32, 132.41 (3), 132.42 (2), 132.43, 132.44 (3), 132.45 (4) (a), (b) and (d) to (f), 132.52 (1), 132.53 (4) (c), 132.60 (1) (a) 2. and 3., (c)1., and (e), (2) (c), (4), (5) (a) 4., (b), (d) 3., 4., 6. and (e), (6) (a), (c), (d), (g) and (Note), (7), and (8) (a) 1., and 2., (b) (Note), and (d) and (Note), 132.61 (1) (c), (2) and (Note), 132.62 (1) (b), (2) (a) 2. b., (b) 2., and (c), and (3) (a) and, (c) to (h), 132.63 (2) (c), (3), (4) (a) 1. to 3., and 5., (b) 2. and 3., (5) (a), (b), (d) to (f), (6), (7) (a), (b) (title), and 1. and (c), and (8), 132.64 (2) (a) and (6) (f) 2. (Note), 132.65 (3) and (6) (a) and (f) 1., 132.66, 132.67 (2) and (4), 132.68 (2) (b) and (4) (b), 132.69 (1) (a) and (b) and (2), 132.695 (3) (a) 1. a. and b., 2., and (b), (4) (a), (b) 2. a. to c., and (c) 1. (title), 2. and 3., 132.70 (2) (a) 1. b., (b), (3) (b) 2. to 9. , (4) (a) and (b), (5) and (6), 132.71 (1) (a), (b) 5., (c) 1. and 3., (2) (b) and (3) to (6), 132.72 (2) (a) to (d), (4) (b), (5) and (Note), and (6) (a), 132.82 (3) (d) and (f) to (i), 132.83 (2), (3) (a) to (c), (5), (6), (7) (b), (c), (d) 2., (e), (f), (g) 1., (h) 1. to 4. and 5. a., and (j) 1. and 2. b., 132.84 (1) (b) 2. and 3., (c), (d), (e), (f), (j), (k), (2) (b) to (d), (e) 1. a. to d. and 2., (f) 1. to 3., 5., (g), (5), (6) (b) to (d), (7) to (14) and (16); **to renumber** HFS 132.31 (6) (a), 132.62 (1) (a), 132.63 (4) (a) 4., (b) 1., and (7) (b) 2. and (Note), 132.65 (6) (f) 2. and Note, 132.68 (2) (a), 132.695 (4) (c) 1. a. to d., 132.70 (2) (a) (intro.), 1. (intro.), 2. and 3., 132.72 (4) (a), 132.83 (7) (d) 1. and (g) 2.; **to renumber and amend** HFS 132.61 (1) (a) and (b), 132.62 (2) (a) 2. (intro.) and a., 132.62 (3) (intro.) and (b), 132.68 (4) (a), 132.69 (1), 132.695 (3) (a) (intro.) and 1. (intro.), 132.70 (2) (a) (intro.), 1. (intro.) and 3., 132.70 (3) (b) (intro.) and 1., 132.83 (7) (h) 5. (intro.) and b., 132.83 (7) (j) 2. (intro.) and a., 132.84 (1) (b) (intro.) and 1., 132.84 (2) (e) (intro.) and 1. (intro.), 132.84 (2) (f) (intro.) and 4.; **to amend** HFS 132.11, HFS 132.14 (4) (b) 2., 3., and 10., 132.31 (1) (intro.) and (4) (a), 132.45 (4) (g) 1., (5) (b) 3. and 5., (c) 4. g., and (6) (h), 132.53 (2) (b) 1., 132.60 (5) (a) 1., (6) (b), and (8) (a) (intro.) , 132.70 (7) (a) 1., 132.84 (1) (a); and to **create** HFS 132.14 (3) (a) 5. and (bm), HFS 132.16, rules relating to nursing homes and affecting small businesses.

SUMMARY OF PROPOSED RULE

Statute interpreted: Sections 49.498, 49.499, 50.02 (1), 50.03, 50.04, 50.05, 50.065, 50.07, 50.09, 50.095, 50.135, and 50.14, Stats.

Statutory authority: Sections 49.498 (14), 50.02 (1), (2) (a), (b) 2., (bm), (bn), (d), and (3) (a) to (d), 50.03 (4) (a) 1. a., 50.095 (3) (am), 50.098, and 227.11 (2) (a), Stats.

Explanation of agency authority:
The Department has general authority under s. 50.02, (1) Stats., to provide uniform, statewide, licensing, inspection and regulation of nursing homes. The Department is required under ss. 50.02 (2), (3), 50.04 (4), 50.095 (3) (am) and 50.098, Stats., to promulgate rules relating to standards for care, treatment, health, safety, rights, welfare and comfort of residents in nursing homes; for the construction, general hygiene, maintenance and operation of nursing homes; fee schedules for plan reviews; minimum hours of nursing care provided to residents; time periods and methods for nursing homes to

provide the information required under s. 50.04 (2g), Stats., relating to resource centers under s. 47.283, Stats., and the family care benefit under s. 46.281, Stats.; waiver and variances of standards; procedures for admission, evaluation and care of short-term care nursing home residents; qualifications and fitness of applicants for nursing home licensure; criteria for determining nursing staff and resident ratios; and appeals on transfers and discharges of residents from nursing homes.

Section 49.498 (14), Stats., requires the Department to promulgate rules relating to hearing appeals on transfers and discharges of residents from nursing facilities; specifying instruments for use in assessing the functional capacity of residents; establishing criteria for the denial of payment to a facility when a person admitted to a nursing facility after notice of violations of 42 USC 1396 to 1396s; and establishing the rate of interest on forfeitures that can be assessed facilities for violating s. 49.498, Stats., or any rules promulgated under s. 49.498, Stats.

Related statute or rule: Sections 49.498 (14), 50.02 (1), (2) (a), (b) 2., (bm), (bn), (d), and (3) (a) to (d), 50.03 (4) (a) 1. a., 50.095 (3) (am), 50.098, Stats., and chs. HFS 105, and Comm 61 to 65.

Plain language analysis:

Nursing homes are regulated by the Department under ch. HFS 132, ch. 50, Stats., and, if a nursing home participates as a provider in the Medicaid and Medicare programs, the nursing home is also regulated by the Department under 42 CFR 483. Nursing home construction and remodeling is regulated by the Department of Commerce under chs. Comm 61 to 65, the Commercial Building Code. Many of the provisions in ch. HFS 132 are outdated and overly prescriptive, or are duplicative of ch. 50, Stats., 42 CFR 483, or chs. Comm 61 to 65. Through this rulemaking order the Department proposes to repeal or revise outdated or overly prescriptive rule provisions, and to repeal provisions that are duplicative of the requirements that are already stated in and monitored under ch. 50, Stats., 42 CFR 483, or chs. Comm 61 to 65.

In addition, the Department also proposes to create rule provisions requiring applicants for nursing home licensure to disclose the qualifications of any person with authority to manage the nursing home; any occurrences that required closure of a residential or health care facility or that required moving its residents; and any financial difficulties that a person or business entity connected with the nursing home has had in operating a residential or health care facility. The Department further proposes to create a quality assurance and improvement committee to distribute funds as allowed under ss. 49.499 (2m), Stats., to nursing homes for innovative projects that improve the efficiency and cost effectiveness of operating a nursing home and that improve the quality of life of residents.

The Department believes that the proposed revisions to ch. HFS 132 will not have an adverse effect on the health, safety, and welfare of existing or future residents of nursing homes as provisions that the Department believes provide greater protection of the health, safety, and welfare of residents than either ch. 50, Stats., 42 CFR 483, or chs. Comm 65 to 66 are retained. The additional application requirements are not expected to result in any increase in costs and the proposed removal of outdated, prescriptive, and duplicative provisions from ch. HFS 132 will make it easier for nursing homes to achieve compliance and provide care to residents in a cost effective manner and ensure residents are protected from unanticipated closures due to financial instability of nursing home licensees and in fact lower costs. The proposed creation of the quality assurance committee and subsequent distribution of funds under s. 49.499 (2m), Stats., is expected to not only improve residents quality of life in nursing homes, but is expected to stimulate innovation and competition within and among nursing homes in a way that will result in the highest quality care to residents.

The proposed removal of outdated, overly prescriptive, or duplicative provisions include provisions relating to residents rights, community organization access, general medical records requirements, oxygen use, resident care planning, medical services, certain dietary standards related to sanitation, meal services and staff hygiene, pharmacy consultant, diagnostic services, emergency dental services, social worker qualification requirements, activity staffing requirements, certain active treatment requirements, requirements regarding short-term care admissions, general housekeeping and maintenance items, building requirements relative to corridor width, doors, locks, exit stairways, oxygen storage services, mechanical systems such as sewage, plumbing, telephone, lighting and ventilation, and certain design areas such as windows, bed capacity, grab bars, dining and activity areas, design of the food service area and ancillary areas. As indicated above, these requirements duplicate other rules or are outdated or overly prescriptive.

The Department proposes to retain provisions that the Department believes provide greater protection of the health, safety, and welfare of residents than either ch. 50, Stats., 42 CFR 483, or chs. Comm 65 to 66 or those that are not addressed in other law or regulations, including provisions relating to the following:

- Rules requiring a facility to notify residents of basic services and fees, and practice nondiscriminatory treatment based on pay source were kept as these regulations afford residents greater protection that was not available in either ch. 50, Stats., or federal regulation.

- Rules pertaining to locked units were retained as no other regulations address this issue.

- Rules pertaining to the nursing home administrator were retained. Although federal regulations address this requirement, ch. HFS 132 is more prescriptive requiring the administrator be full-time and requiring prompt notice to the Department when a vacancy occurs.

- Rules addressing admissions of residents who are developmentally disabled, under the age of eighteen and day care clients were also kept as no other rules govern their care.

- Rules relating to involuntary discharge. In this area, ch. HFS 132 provides greater protection for residents.

- Rules requiring the provision of basic nursing care. These provisions reflect a basic standard of practice not found in other regulations.

- Several nurse staffing rules. There are no comparable federal standards. Chapter HFS 132 requires a registered nurse to be on duty based on the number of residents in need of skilled nursing care.

- Provisions relating to pharmacy services were also retained because there is no federal counterpart.

- Requirements were also kept for specific resident care equipment such as mattresses, pillows, linens, over bed tables, window coverings, etc., as the federal regulations are too broad.

- Rules requiring a disaster plan and training for staff were maintained because there is no federal counterpart.

Summary of, and comparison with, existing or proposed federal regulations:
Federal conditions of participation in Medicaid and Medicare for nursing homes are found in 42 CFR 483. These federal regulations and ch. HFS 132 address similar subject areas, including resident rights, quality of care; health, nursing, dietary, and pharmacy services; staffing, and physical environment. As stated under the "Plain Language Analysis" section, the Department is proposing to remove requirements from ch. HFS 132 that are duplicative of 42 CFR 483.

Comparison with rules in adjacent states:

In general, the administrative rules for nursing homes in Minnesota, Iowa, Michigan and Illinois are substantially similar to ch. HFS 132 in that they address many of the same subject areas, including resident rights, quality of care; physician services, restorative care, activity programming, social services, dietary and pharmacy services; minimum nurse staffing, and physical environment. Many states have parallel rules because states often use 42 CFR 483 as the basis for their administrative code for nursing homes. Each of the four adjacent states has made some effort to include federal language in their administrative rules. However, the degree to which each state has done so varies greatly. Both Minnesota and Illinois adopted significant portions of the federal rules requiring the facility to provide care to enable residents to reach their highest level of well being and functional ability. Both rules expect the facility to provide services to ensure that a resident's abilities do not diminish unless circumstances of the resident's clinical condition demonstrate that diminution was unavoidable. Iowa and Michigan rules are similar to ch. HFS 132 in that these rules are quite detailed and prescriptive. Both rules require nursing homes to provide basic care to residents but do not adopt the federal language relative to level of well being and functional ability.

Illinois adopted federal language requiring facilities to provide care and services to enable residents to reach their highest level of physical, mental and psychological well-being. Restorative measures must be supervised by a licensed nurse who successfully completed training in restorative nursing. All nursing personnel must assist and encourage residents so that residents do not experience a reduction in range of motion, activities of daily living, pressure sores, bowel and bladder control unless the resident's clinical condition demonstrates that the reduction is unavoidable. Staffing must be based on the needs of the resident and determined by figuring the number of hours of nursing time on each shift of the day. Residents needing skilled care are to receive 2.5 hours of nursing personnel care each day, of which 20% must be licensed nurse time. At least 40% of the minimum required time must be on the day shift, at least 25% on the evening shift and 15% on the night shift.

The facility must also provide an ongoing program of activities to meet the interests and preferences of each resident. Activities must be coordinated to make use of community resources. The facility must have policies controlling the use of physical restraints. Restraints may not be used for the purposed of convenience or discipline. Chemical restraints are prohibited.

The Illinois nursing home code is 77 III Admin Code 300 Skilled and Intermediate Care Facilities code.

Michigan code states that residents must receive preventive, supportive, maintenance and rehabilitative nursing care directed to the physiologic and psychosocial needs and well-being of the resident. Nursing care and services must include grooming, oral hygiene, bathing, skin care and positioning. Restorative care must be provided and directed to restoring and maintaining a resident's optimal level of independence particularly in the area of activities of daily living.

Michigan requires facilities to provide 2.25 hours direct care staff averaged daily. Staff to resident ratios include one direct care staff to 8 residents on the day shift, 1 direct care staff to 12 residents on the evening shift and one direct care staff to 15 residents on the night shift.

The facility is required to provide an ongoing activities program that stimulates and promotes social interaction, communication and constructive living. Individual and group activities must be available 7 days a week and be suited to a resident's need, capabilities and interest.

The Michigan nursing home code is Public Health Code 325 Nursing Homes and Nursing Care Facilities.

Iowa requires facilities to provide restorative care to maintain good body alignment and proper positioning, range of motion exercise and encourage residents to achieve independence in activities of daily living by teaching self-care. Required services include bathing, oral hygiene, range of motion, bowel and bladder training programs, colostomy care, ambulation, grooming, nail care and meal time assistance.

Facilities are required to provide 2.0 hours of direct care staff for each resident averaged weekly, 20% must be licensed nurse time.

Facilities must provide a resident activity program for group and individual residents which includes evening and weekend programs. The program must be designed to meet the needs and interests of each resident and assist residents in continuing normal activities. The facility must also provide a variety of supplies and equipment to fit the needs and interests of residents.

Restraints may only be used on order of a physician and not for convenience or for a substitute for staff supervision or programming. The facility must provide staff orientation and ongoing education program in the proper use of restraints.

The Iowa nursing home code is Iowa Code Chapter 58 Nursing Facilities.

Minnesota adopted federal language requiring facilities to provide an active program of rehabilitative nursing care directed toward assisting each resident to achieve and maintain the highest level of physical, mental and psychosocial well-being. Residents who enter the facility with normal range of motion may not experience a reduction in range motion unless the decline is avoidable. Resident must be given appropriate services to maintain or improve abilities in activities of daily living. A resident who enters the facility without pressure sores should not develop pressure sores unless the individual's clinical condition demonstrates and a physician authenticates that they were unavoidable.

In 2001, Minnesota repealed the hours of direct care staff per day with conversion to a Medicaid payment methodology based on the Minimum Data Set.

Activities must be provided that meet the interest, strengths and needs of the resident. The activity and recreation program must be provided with space both with in the facility out of doors. A nursing home may not charge a resident for any portion of the program.

Residents must be free from any physical or chemical restraints not required to treat a resident's medical symptoms. The decision to apply a restraint must be based on a comprehensive assessment. The least restrictive restraint must be used and incorporated into the plan of care.

The Minnesota nursing home code is Admin Rule Chapter 4658 Nursing Homes.

Summary of factual data and analytical methodologies:
The Department relied on all of the following sources to draft the proposed rules or to determine the impact on small businesses, specifically nursing homes:

- The Department formed an advisory committee consisting of Department staff, and staff from the University of Wisconsin Center for Health Systems Research to review existing state and federal regulations affecting nursing homes and potential administrative burdens on Wisconsin's health care, long-term care, and community service providers. The committee initiated the regulatory update assessment project to identify ways to modernize ch. HFS 132 to be consistent with promoting health and safety in a cost-effective manner. The committee's work was reviewed by representatives of the Wisconsin Board on Aging and Long Term Care, Disability Rights Wisconsin, the Wisconsin Association of Homes and Services for the Aging and the Wisconsin Health Care Association.

- The 2002 Economic Census – Wisconsin Geographic Series, compiled by the U.S. census bureau every 5 years for each year ending in "2" and "7" and contains the latest available economic data compiled on businesses located in Wisconsin.

- Criteria adopted by the Department and approved by the Wisconsin Small Business Regulatory Review Board to determine whether the Department's proposed rules have a significant economic impact on a substantial number of small businesses. Pursuant to the Department's criteria, a proposed rule will have a significant economic impact on a substantial number of small businesses if at least 10% of the businesses affected by the proposed rules are small businesses and if operating expenditures, including annualized capital expenditures, increase by more than the prior year's consumer price index or reduces revenues by more than the prior year's consumer price index. For the purposes of this rulemaking, 2005 is the index year. The consumer price index is compiled by the U.S. Department of Labor, Bureau of Labor Statistics and for 2005 is 3.4 percent.

- DHFS databases including the Facilities Licensing and Certification information System (FL/CIS) that contains demographic, licensing, program, and compliance history of nursing homes in Wisconsin.

- The Wisconsin Department of Health and Family Services, Division of Public Health, Bureau of Health Information and Policy. *Wisconsin Nursing Homes and Residents, 2004* (PPH 5374-04). September 2005 which reports data obtained from the Department's 2004 annual survey of nursing homes. The Department used whether nursing homes meet the definition of small business under s. 227.114 (1) (a), Stats., and whether the proposed rules have a significant economic impact on a substantial number of small businesses (nursing homes).

- Section 227.114 (1) (a), Stats., defines "small business" as a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employees 25 or fewer full-time employees or which has gross annual sales of less than $5,000,000.

Analysis and supporting documents used to determine effect on small business:

The Department licenses approximately 340 private and 60 government owned nursing homes to accept patients with specific categories of health care needs. Skilled nursing facilities (SNFs) and intermediate care facilities (ICFs) provide primarily medical care to restore individuals to their rehabilitative potential. Institutions for mental diseases (IMDs) serve residents with psychotic and nonpsychotic mental illness. Ninety percent of these homes are skilled nursing facilities that generally have a permanent core staff of registered or licensed practical nurses and other staff who provide the elderly, and other individuals, with nursing and personal care services that include assistance with activities of daily living such as bathing, toilet use, eating and dressing, skin care, rehabilitative services for mental illness, and special treatment such as tracheostomy care, ostomy care, respiratory treatment, and tube feedings. Analysis of the data compiled in the Wisconsin Department of Health and Family Services, Division of Public Health, Bureau of Health Information and Policy *Wisconsin Nursing Homes and Residents, 2004* (PPH 5374-04) September 2005 suggests that at least 40% of all licensed facilities have 85 or fewer beds and average gross annual revenues below $5 million assuming a 100% occupancy rate and annual per bed charges of $56,000. Approximately 81% of these beds are in privately owned facilities. The department approximates, however, that only about 10% of the privately owned facilities meet the definition of small business because some of these facilities are part of large corporations owning several facilities and employing more than 25 employees.

Through this rulemaking order the Department proposes to do the following:

- Repeal or revise outdated or overly prescriptive rule provisions;
- Repeal provisions that are duplicative of the regulations that are already stated in and monitored under ch. 50, Stats., 42 CFR 483, or chs. Comm 61 to 65;
- Create rule provisions requiring applicants for nursing home licensure to disclose, in the application, the qualifications of any person with authority to manage the nursing home; any occurrences requiring closure of a residential or health care facility and relocating its residents; and any financial difficulties that a person or business entity connected with the nursing home has had in operating a residential or health care facility; and
- Create a quality assurance and improvement committee to distribute funds as allowed under ss. 49.499 (2m), Stats., to nursing homes for innovative projects that improve the efficiency and cost effectiveness of operating a nursing home and that improve the quality of life of residents.

The Department does not expect the new application requirements to result in any increase in costs and believes that the proposed removal of outdated, prescriptive, and duplicative provisions from ch. HFS 132 will make it easier for nursing homes to achieve and maintain compliance, provide care to residents, and ensure that residents are protected from unanticipated closures due to financial instability of nursing home licensees. The proposed creation of the quality assurance committee and subsequent distribution of funds under s. 49.499 (2m), Stats., is expected to not only improve residents quality of life in nursing homes, but is expected to stimulate innovation and competition within and among nursing homes in a way that will result in cost effective, high quality care to residents.

Effect on small business:
Pursuant to criteria adopted by the Department, the proposed rule may affect a substantial number of small businesses because at least 10% of the nursing homes affected by the proposed rules may be considered small businesses. However, the proposed rules will not have a significant economic impact on these nursing homes because the proposed rules do not include increased reporting, design or operational standards, or capital requirements and none of the proposed changes are expected to increase operating expenditures, including annualized capital expenditures, or reduce revenues by

more than the 2005 consumer price index (CPI) of 3.4%. Any costs that may be associated with the additional application requirements most likely will not meet or exceed the 2005 CPI. The proposed removal of outdated, prescriptive, and duplicative provisions are expected to lower costs for all nursing homes.

Therefore, the Department concludes that the proposed rules may affect a substantial number of small businesses that are nursing homes, but the proposed rules will not have an adverse significant economic impact on those businesses.

Agency contact person:
Otis Woods, Director
Department of Health and Family Services
Bureau of Quality Assurance
1 West Wilson, Room 1150
P.O. Box 2969
Madison, WI 53701-2969
phone: (608) 267-7185, fax: (608) 267-0352
e-mail: Woodsol@dhfs.state.wi.us

Place where comments are to be submitted and deadline for submission:
Comments may be submitted to the agency contact person that is listed above and via the Wisconsin Administrative Rules Website at http://adminrules.wisconsin.gov until 4:30 p.m. on August 1, 2006. Public hearings will be held in 5 locations across the state. All hearings will be held from 9:00 a.m. to 3:00 p.m. at each of the following locations and dates:

- July 24, 2006 - Southeastern Regional Office, 819 North 6th Street, Room 40, Milwaukee, WI;
- July 25, 2006 - Wilson Street State Office Building, 1 West Wilson Street, Room 751, Madison, WI;
- July 26, 2006 - Northeastern Regional Office, 200 North Jefferson Street, Room 152 A, Green Bay, WI;
- July 28, 2006 - Northern Regional Office, 2187 North Stevens Street, Large Conference Room, Rhinelander, WI;
- July 31, 2006 - Western Regional Office, 610 Gibson Street, Room 123, Eau Claire, WI.

The notice of public hearing is posted on the Wisconsin Administrative Rules website at http://adminrules.wisconsin.gov.

TEXT OF PROPOSED RULE

SECTION 1. HFS 132.11 is amended to read:

HFS 132.11 Statutory authority. This chapter is promulgated under the authority of ~~s.~~ ss. 49.498 (14), 49.499 (2m), 50.02, 50.03, 50.095 50.098, Stats., to provide conditions of licensure for nursing homes.

SECTION 2. HFS 132.13 (2), (6), (13), (14), (15), (19), and (33) are repealed.

SECTION 3. HFS 132.14 (3) (a) 5. and (bm) are created to read:

HFS 132.14 (3) (a) 5. Disclosure of any financial failures directly or indirectly involving any person or business entity identified in the application concerning the operation of a residential or health care facility that resulted in any debt consolidation or restructuring, insolvency proceeding or mortgage foreclosure or in the closing of a residential or health care facility or the moving of its residents. "Insolvency" means bankruptcies, receiverships, assignments for the benefit of creditors, and similar court-supervised proceedings.

(bm) The applicant shall provide information to demonstrate that any person having the authority to directly manage the operation of the facility has the education, training or experience to operate and manage a health care facility to provide for the health, safety, and welfare of its residents in substantial compliance with state and federal requirements.

SECTION 4. HFS 132.14 (4) (b) 2., 3., and 10. are amended to read:

HFS 132.14 (4) (b) 2. Any adverse action against the applicant or any person or business entity named in the application by the licensing agency of this state or any other state relating to the applicant's or any person or business entity named in the application's operation of a residential or health care facility. In this subdivision,"adverse action" means an action initiated by a state licensing agency which resulted in a conditional license, the placement of a monitor or the appointment of a receiver, or the denial, suspension or revocation of the license of a residential or health care facility operated by the applicant or any person or business entity named in the application;

3. Any adverse action against the applicant or any person or business entity named in the application based upon noncompliance with federal statutes or regulations in the applicant's or any person or business entity named in the application's operation of a residential or health care facility in this or any other state. In this subdivision, "adverse action" means an action by a state or federal agency which resulted in the imposition of Category 3 remedies pursuant to 42 CFR sec. 488.408 (e), placement of a state monitor or the appointment of a receiver, transfer of residents, or the denial, non-renewal, cancellation or termination of certification of a residential or health care facility operated by the applicant;

10. Any prior financial failures of the applicant and any person and related business entity identified in the application concerning the operation of a residential or health care facility that resulted in any debt consolidation or restructuring, insolvency proceeding or mortgage foreclosure ~~bankruptcy~~ or in the closing of ~~an inpatient~~a residential or health care facility or the moving of its residents. "Insolvency" has the meaning provided in s. 132.14 (3) (a) 5.

SECTION 5. HFS 132.16 is created to read:

HFS 132.16 Quality assurance and improvement projects. (1) FUNDS. Pursuant to s. 49.499 (2m), Stats., the department may, from the appropriation under s. 20.435 (6) (g), Stats., distribute funds for innovative projects designed to protect the property and the health, safety and welfare of residents in a facility and to improve the efficiency and cost effectiveness of the operation of a facility so as to improve the quality of life, care and treatment of its residents.

(2) QUALITY ASSURANCE AND IMPROVEMENT COMMITTEE. (a) The department shall establish and maintain a quality assurance and improvement committee to review proposals and award funds to facilities for innovative projects approved by the committee under sub. (3).

(b) 1. Committee members shall be appointed by the secretary for a term of up to 12 months and include, at the secretary's discretion, one or more representatives from the department, the board on aging and long term care, disability, aging and long term care advocates, facilities, and other persons with an interest or expertise in quality improvement or delivery of long term care services. Facility representatives shall comprise at least half of the committee membership.

2. A representative's term may be extended at the secretary's discretion.

(3) COMMITTEE RESPONSIBILITIES. The quality assurance and improvement committee shall do all of the following:

(a) Meet at least annually.

(b) Develop and propose for the secretary's approval criteria for review and approval of projects proposed under this section.

(c) Considering the criteria approved by the secretary under par. (b), review proposals submitted by facilities under this section and approve submitted proposals, defer a determination pending additional information, or deny approval of proposals submitted.

(e) Identify areas of need within a facility or corporation, the state or regions as projects to be addressed.

(f) Develop opportunities and strategies for general improvement concerning licensed facilities.

(g) Encourage proposals that develop innovative cost-effective methods for improving the operation and maintenance of facilities and that protect residents' rights, health, safety and welfare and improve residents' quality of life.

(h) Disseminate within the department and to facilities and other interested individuals and organizations the information learned from approved projects.

(i) Prepare an annual report to the secretary.

(4) A decision under sub. (3) (c) to defer or deny approval of or award funds for a proposal may not be appealed.

SECTION 6. HFS 132.31 (6) (a) is renumbered HFS 132.31 (6).

SECTION 7. HFS 132.31 (1) (a) to (c), (e) to (o), (2), (3), (4) (c), (5) and (6) (a) (title), and (b) to (e) are repealed.

SECTION 8. HFS 132.31 (1) (intro.) and (4) (a) are amended to read:

HFS 132.31 Rights of residents. (1) RESIDENTS' RIGHTS. Every resident shall~~, except as provided in sub. (3),~~ have the right to all of the following:

(4) (a) *Serving notice.* ~~Copies of the resident rights provided under this section and the facility's policies and regulations governing resident conduct and responsibilities shall be made available to each~~

~~prospective resident and his or her guardian, if any, and to each member of the facility's staff~~. Facility staff shall verbally explain to each new resident and to that person's guardian, if any, prior to or at the time of the person's admission to the facility, these rights and the facility's policies and regulations governing resident conduct and responsibilities.

SECTION 9. HFS 132.32 is repealed.

SECTION 10. HFS 132.41 (3) is repealed.

SECTION 11. HFS 132.42 (2) is repealed.

SECTION 12. HFS 132.43 is repealed.

SECTION 13. HFS 132.44 (3) is repealed.

SECTION 14. HFS 132.45 (4) (a), (b) and (d) to (f) are repealed.

SECTION 15. HFS 132.45 (4) (g) 1., (5) (b) 3. and 5., (c) 4. g., and (6) (h) are amended to read:

HFS 132.45 (4) (g) *Records documentation.* 1. All entries in medical records shall be accurate, legible, permanently recorded, dated, and authenticated with the name and title of the person making the entry.

(5) MEDICAL RECORDS – Content. (b*) Physician's documentation*. 3. Phsyician progress notes following each visit ~~as required by s. HFS 132.61 (2) (b) 6;~~.

5. Alternate visit schedule, and justification for such alternate visits ~~as described in s. HFS 132.61 (2) (b).~~

(c) *Nursing service documentation*. 4. g. Summary of the use of physical and chemical restraints ~~as required by s. HFS 132.60 (6) (g);~~.

(6) OTHER RECORDS. (h) Funds and property statement. The statement prepared upon a resident's discharge or transfer from the facility that accounts for all funds and property held by the facility for the resident~~, as required under s. HFS 132.31 (1) (c) 3.; and~~.

SECTION 16. HFS 132.52 (1) is repealed.

SECTION 17. HFS 132.53 (2) (b) 1. is amended to read:

HFS 132.53 Transfers and discharges. (2) CONDITIONS. (b) *Alternate placement.* 1. Except for transfers or discharges under par. (a) 2. and 6., for nonpayment or in a medical emergency, no resident may be involuntarily transferred or discharged unless an alternative placement is arranged for the resident ~~pursuant to s. HFS 132.31 (1) (j)~~. The resident shall be given reasonable advance notice of any planned transfer or discharge and an explanation of the need for and alternatives to the transfer or discharge except when there is a medical emergency. The facility, agency, program or person to which the resident is transferred shall have accepted the resident for transfer in advance of the transfer, except in a medical emergency.

SECTION 18. HFS 132.53 (4) (c) is repealed.

SECTION 19. HFS 132.60 (1) (a) 2. and 3., (c)1., and (e), (2) (c), (4), (5) (a) 4., (b), (d) 3., 4., 6. and (e), (6) (a), (c), (d), (g) and (Note), (7), and (8) (a) 1., and 2., (b) (Note), and (d) and (Note) are repealed.

SECTION 20. HFS 132.60 (5) (a) 1., (6) (b), and (8) (a) (intro.) are amended to read:

HFS 132.60 (5) TREATMENT AND ORDERS. (a) *Orders.* 1. 'Restriction.' Medications, treatments and rehabilitative therapies shall be administered as ordered by an authorized prescriber subject to the resident's right to refuse them. No medication, treatment or changes in medication or treatment may be administered to a resident or a daycare client without an authorized prescriber's written order which shall be filed in the resident or daycare client's clinical record.

(6) PHYSICIAL AND CHEMICAL RESTRAINTS. (b) *Orders required.* Physical or chemical restraints shall be applied or administered only on the written order of a physician which shall indicate the resident's name, the reason for restraint, and the period during which the restraint is to be applied. ~~The use of restraints shall be consistent with the provisions under s. HFS 132.31 (1) (k).~~

(8) RESIDENT CARE PLANNING. (a) *Development and content of care plans.* Except in the case of a person admitted for short-term care, within 4 weeks following admission a written care plan shall be developed, based on the resident's history and assessments from all appropriate disciplines and the physician's evaluation and orders, as required by s. HFS 132.52~~, which shall include:~~.

SECTION 21. HFS 132.61 (1) (c), (2) and (Note) are repealed.

SECTION 22. HFS 132.61 (1) (a) and (b) are consolidated, renumbered HFS 132.61, and amended to read:

HFS 132.61 Medical Services. ~~MEDICAL DIRECTION IN SKILLED CARE FACILITIES.~~ ~~(a) *Medical director.*~~ Every skilled care facility shall retain, pursuant to a written agreement, a physician to serve as medical director on a part-time or full-time basis as is appropriate for the needs of the residents and the facility. ~~If the facility has an organized medical staff, the medical director shall be designated by the medical staff with approval of the licensee. .(b) *Coordination of medical care.*~~ Medical direction and coordination of medical care in the facility shall be provided by the medical director. ~~The medical director shall develop written rules and regulations which shall be approved by the licensee and include delineation of the responsibilities of attending physicians. If there is an organized medical staff, by-laws also shall be developed by the medical director and approved by the licensee. Coordination of medical care shall include liaison with attending physicians to provide that physicians' orders are written promptly upon admission of a resident, that periodic evaluations of the adequacy and appropriateness of health professional and supportive staff and services are conducted, and that the medical needs of the residents are met.~~

SECTION 23. HFS 132.62 (1) (b), (2) (a) 2. b., (b) 2., and (c), and (3) (a) and, (c) to (h) are repealed.

SECTION 24. HFS 132.62 (1) (a) is renumbered HFS 132.62 (1).

SECTION 25. HFS 132.62 (2) (a) 2. (intro.) and a. are consolidated, renumbered HFS 132.62 (2) (a) 2. and amended to read:

HFS 132.62 (2) (a) 2. 'Qualifications.' The director of nursing services shall~~: a. Be~~be a registered nurse~~; and~~.

SECTION. 26. HFS 132.62 (3) (intro.) and (b) are consolidated, renumbered HFS 132.62 (3) and amended to read:

HFS 132.62 (3) NURSE STAFFING. In addition to the requirements of sub. (2), ~~the following conditions shall be met: (b) *Assignments.* There~~there shall be adequate nursing service personnel assigned to care for the specific needs of each resident on each tour of duty. Those personnel shall be briefed on the condition and appropriate care of each resident.

SECTION 27. HFS 132.63 (2) (c), (3), (4) (a) 1. to 3., and 5., (b) 2. and 3., (5) (a), (b), (d) to (f), (6), (7) (a), (b) (title), and 1. and (c), and (8) are repealed.

SECTION 28. HFS 132.63 (4) (a) 4., (b) 1., and (7) (b) 2. and (Note) are renumbered HFS 132.63 (4) (a) and (b), (7) and (Note).

SECTION 29. HFS 132.64 (2) (a) is repealed.

SECTION 30. HFS 132.65 (3) and (6) (a) and (f) 1. and 2. (Note) are repealed.

SECTION 31. HFS 132.65 (6) (f) 2. is renumbered HFS 132.65 (6) (f).

SECTION 32. HFS 132.66 is repealed.

SECTION 33. HFS 132.67 (2) and (4) are repealed.

SECTION 34. HFS 132.68 (2) (b) and (4) (b) are repealed.

SECTION 35. HFS 132.68 (2) (a) and (4) (a) are renumbered HFS 132.68 (2) and (4) and HFS 132.68 (4), as renumbered, is amended to read:

HFS 132.68 (4) CARE PLANNING. A social services component of the plan of care, including ~~preparation~~potential for discharge, if appropriate, shall be developed and included in the plan of care required by s. HFS 132.60 (8) (a).

SECTION 36. HFS 132.69 (1) (a) and (b) and (2) are repealed.

SECTION 37. HFS 132.69 (1) is renumbered HFS 132.69 and amended to read:

HFS 132.69 Activities. Each facility shall have an activity program designed to meet the needs and interests of each resident.

SECTION 38. HFS 132.695 (3) (a) (intro.) and 1. (intro.) are consolidated, renumbered HFS 132.695 (3) and amended to read:

HFS 132.695 (3) ACTIVE TREATMENT PROGRAMMING. All residents who are developmentally disabled shall receive active treatment. Active treatment shall include~~: 1.The~~ the resident's regular participation, in accordance wit the IPP, in professionally developed and supervised activities, experiences and therapies~~. The resident's participation shall be directed toward:~~.

SECTION 39. HFS 132.695 (3) (a) 1. a. and b., 2., and (b), (4) (a), (b) 2. a. to c., and (c) 1. (title), 2. and 3. are repealed.

SECTION 40. HFS 132.695 (4) (c) 1. a. to d. are renumbered HFS 132.695 (c) 1. to 4.

SECTION 41. HFS 132.70 (2) (a) 1. b., (b), (3) (b) 2. to 9. , (4) (a) and (b), (5) and (6) are repealed.

SECTION 42. HFS 132.70 (2) (a) (intro.), 1. (intro.), 2. and 3. are renumbered HFS 132.70 (2) (intro.) (a) (intro.), (b) and (c) and HFS 132.70 (2) (a) (intro.) and (b) as renumbered are amended to read:

HFS 132.70 (2) (a) A registered nurse or physician shall complete a comprehensive resident assessment of the person prior to or on the day of admission. This comprehensive assessment shall include evaluation of the person's medical, nursing, dietary, rehabilitative, pharmaceutical, dental, social and activity needs. The consulting or staff pharmacist shall participate in the comprehensive assessment ~~as provided under sub. (4) (a)~~. As part of the comprehensive assessment, when the registered nurse or physician has identified a need for a special service, staff from the discipline that provides the service shall, on referral from the registered nurse or physician, complete a history and assessment of the person's prior health and care in that discipline. The comprehensive resident assessment shall include:

(b) The registered nurse, with verbal agreement of the attending physician, shall develop a written plan of care for the person being admitted prior to or at the time of admission. The plan of care shall be based on the comprehensive resident assessment under ~~subd. 1.~~par. (a), the physician's orders, and any special assessments under ~~subd. 1~~ par. (a).

SECTION 43. HFS 132.70 (3) (b) (intro.) and 1. are consolidated, renumbered HFS 132.70 (3) (b) and amended to read

HFS 132.70 (3) (b) No person may be admitted to a facility for respite care or recuperative care without signing or the person's guardian or designated representative signing an acknowledgement o f having received a statement before or on the day of admission ~~which contains at least the following information: 1. An indication of~~ that indicates the expected length of stay, with a note that the responsibility for care of the resident reverts to the resident or other responsible party following expiration of the designated length of stay~~;~~.

SECTION 44. HFS 132.70 (7) (a) 1. is amended to read:

HFS 132.70 (7) RECORDS (a) 1. The resident care plan prepared under ~~sub. (2) (a) 2. or (b) 5.;~~ sub. (2) (b).

SECTION 45. HFS 132.71 (1) (a), (b) 5., (c) 1. and 3., (2) (b) and (3) to (6) are repealed.

SECTION 46. HFS 132.72 (2) (a) to (d), (4) (b), (5) and (Note), and (6) (a) are repealed.

SECTION 47. HFS 132.72 (4) (a) is renumbered HFS 132.72 (4).

SECTION 48. HFS 132.82 (3) (d) and (f) to (i) are repealed.

SECTION 49. HFS 132.83 (2), (3) (a) to (c), (5), (6), (7) (b), (c), (d) 2., (e), (f), (g) 1., (h) 1. to 4. and 5. a., and (j) 1. and 2. b. are repealed.

SECTION 50. HFS 132.83 (7) (d) 1. and (g) 2. are renumbered (7) (d) and (g).

SECTION 51. HFS 132.83 (7) (h) 5. (intro.) and b. are consolidated, renumbered HFS 132.83 (7) (h) 5. and amended to read:

HFS 132.83 (h) 5. *Ventilation*. In period C facilities~~: b. All~~ all rooms in which food is stored, prepared or served, or in which utensils are washed shall be well-ventilated. Refrigerated storage rooms need not be ventilated.

SECTION 52. HFS 132.83 (7) (j) 2. (intro.) and a. are consolidated, renumbered HFS 132.83 (j) 2. and amended to read:

HFS 132.83 (7) (j) 2. In period B and C facilities~~: At~~ at least one duplex-type outlet shall be provided for every resident's bed~~; and~~.

SECTION 53. HFS 132.84 (1) (a) is amended to read:

HFS 132.84 Design. (1) RESIDENTS' ROOMS. (a) *Assignment of residents.* Sexes shall be separated by means of separate wings, floors, or rooms, except in accordance with ~~s. HFS 132.31 (1) (f) 1~~s. 50.09 (1) (f) 1, Stats.

SECTION 54. HFS 132.84 (1) (b) 2. and 3., (c), (d), (e), (f), (j), (k), (2) (b) to (d), (e) 1. a. to d. and 2., (f) 1. to 3., 5., (g), (5), (6) (b) to (d), (7) to (14) and (16) are repealed.

SECTION 55. HFS 132.84 (1) (b) (intro.) and 1. are consolidated, renumbered HFS 132.84 (1) (b) and amended to read:

HFS 132.84 (1) (b) *Location*. No bedroom housing a resident shall~~: 1. Open~~open directly to a kitchen or laundry~~;~~.

SECTION 56. HFS 132.84 (2) (e) (intro.) and 1. (intro.) are consolidated, renumbered HFS 132.84 (2) (e) and amended to read:

HFS 132.84 (2) (e) *Period A and B*. In period A and B facilities~~: 1. Separate~~ separate toilet and bath facilities shall be provided for male and female residents ~~in at least following number:~~.

SECTION 57. HFS 132.84 (2) (f) (intro.) and 4. are consolidated, renumbered HFS 132.84 (2) (f) and amended to read:

HFS 132.84 (2) (f) *Period C*. In period C facilities~~: 4. Every~~ every tub, shower, or toilet shall be separated in such a manner that it can be used independently and afford privacy.

SECTION 58. EFFECTIVE DATE: The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2), Stats.

Wisconsin Department of Health and Family Services

Dated:

_____

Helene Nelson, Department Secretary

SEAL: