

# State of Wisconsin



2011 Senate Bill 212

Date of enactment: **November 16, 2011**

Date of publication\*: **December 1, 2011**

## 2011 WISCONSIN ACT 70

AN ACT *to repeal* 50.04 (5) (a) 5m.; *to amend* 20.435 (6) (g), 50.03 (4) (a) 1. a., 50.03 (4m) (a), 50.03 (5) (a), 50.03 (5) (b), 50.03 (7) (a), 50.03 (13) (a), 50.04 (4) (a) 1., 50.04 (4) (a) 2. b., 50.04 (4) (c) 1., 50.04 (4) (d) 2., 50.04 (4) (e) 1., 50.04 (5) (c), 50.04 (5) (e), 50.04 (5) (f), 50.04 (5) (fm), 50.05 (2) (f) (intro.) and 50.05 (2) (f) 2.; *to repeal and recreate* 50.04 (4) (d) 1. a., 50.04 (4) (d) 1. b. and 50.04 (6) (a); and *to create* 50.01 (1ng), 50.04 (4) (am) and 50.04 (8) of the statutes; **relating to**: regulation of nursing homes, requiring the exercise of rule-making authority, and making an appropriation.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 20.435 (6) (g) of the statutes is amended to read:

20.435 (6) (g) *Nursing facility resident protection.* All moneys received from the penalty assessment surcharges on forfeitures that are levied by the department under s. 49.498 (16) (c) 1., 2. and 3. and the interest under s. 49.498 (16) (d) and from civil money penalties collected under 42 CFR 488.442 to finance nursing facility resident protection under s. 49.499 and any projects under s. 50.04 (8) 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.

**SECTION 2.** 50.01 (1ng) of the statutes is created to read:

50.01 (1ng) "Immediate jeopardy" means a situation in which a nursing home's noncompliance with one or more requirements under 42 CFR 483 related to the operation of a nursing home has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.

**SECTION 3.** 50.03 (4) (a) 1. a. of the statutes is amended to read:

50.03 (4) (a) 1. a. Except as provided in sub. (4m) (a), the department shall issue a license for a nursing home if it finds the applicant to be fit and qualified and if it finds that the nursing home meets the requirements established by this subchapter and, as applicable, requirements under 42 CFR 483 related to the operation of a nursing home. The department, or its designee, shall make such inspections and investigations as are necessary to determine the conditions existing in each case and shall file written reports. The department shall promulgate rules defining "fit and qualified" for the purposes of this subd. 1. a.

**SECTION 4.** 50.03 (4m) (a) of the statutes is amended to read:

50.03 (4m) (a) If the applicant for licensure as a nursing home has not been previously licensed under this subchapter or if the nursing home is not in operation at the time application is made, the department shall issue a probationary license. A probationary license shall be valid for 12 months from the date of issuance unless sooner suspended or revoked under sub. (5). Prior to the expiration of a probationary license, the department shall inspect the nursing home and, if the nursing home meets

\* Section 991.11, WISCONSIN STATUTES 2009-10 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

the applicable requirements for licensure and, if applicable, substantially complies with requirements under 42 CFR 483 related to the operation of a nursing home, shall issue a regular license under sub. (4) (a) 1. a. If the department finds that the nursing home does not meet the requirements for licensure or does not substantially comply with requirements under 42 CFR 483 related to the operation of a nursing home, the department may not issue a regular license under sub. (4) (a) 1. a.

**SECTION 5.** 50.03 (5) (a) of the statutes is amended to read:

50.03 (5) (a) *Power 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 has substantially failed to comply with the applicable requirements of this subchapter and the rules promulgated under this subchapter, with s. 49.498, or with requirements under 42 CFR 483 related to the operation of a nursing home. 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.

**SECTION 6.** 50.03 (5) (b) of the statutes is amended to read:

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

**SECTION 7.** 50.03 (7) (a) of the statutes is amended to read:

50.03 (7) (a) *Licensed facility.* Notwithstanding the existence or pursuit of any other remedy, the department may, upon the advice of the attorney general, maintain an action in the name of the state in the circuit court for injunction or other process against any licensee, owner, operator, administrator or representative of any owner of a facility to restrain and enjoin the repeated violation of any of the provisions of this subchapter ~~or~~ rules promulgated by the department under this subchapter, or requirements under 42 CFR 483 related to the operation of a nursing home where the violation affects the health, safety or welfare of the residents.

**SECTION 8.** 50.03 (13) (a) of the statutes is amended to read:

50.03 (13) (a) *New license.* Whenever ownership of a facility is transferred from the person or persons named in the license to any other person or persons, the transferee must obtain a new license. The license may be a probationary license. Penalties under sub. (1) shall apply to violations of this subsection. The transferee shall notify the department of the transfer, file an application under sub. (3) (b), and apply for a new license at least 30 days prior to final transfer. Retention of any interest required to be disclosed under sub. (3) (b) after transfer by any person who held such an interest prior to transfer

may constitute grounds for denial of a license where violations of this subchapter, or of requirements of 42 CFR 483 related to the operation of a nursing home, for which notice had been given to the transferor are outstanding and uncorrected, if the department determines that effective control over operation of the facility has not been transferred. If the transferor was a provider under s. 49.43 (10), the transferee and transferor shall comply with s. 49.45 (21).

**SECTION 9.** 50.04 (4) (a) 1. of the statutes is amended to read:

50.04 (4) (a) 1. ~~If Except as provided in par. (am) 2.,~~ if upon inspection or investigation the department determines that a nursing home is in violation of this subchapter or the rules promulgated under it and the violation is a class "A" or "B" violation, it shall promptly serve a notice of violation upon the licensee. Each notice of violation shall be prepared in writing and shall specify the nature of the violation, and the statutory provision or rule alleged to have been violated. The notice shall inform the licensee of the right to a hearing under par. (e). The written notice of a class "A" violation may be written and served by an agent of the department at the time of the inspection.

**SECTION 10.** 50.04 (4) (a) 2. b. of the statutes is amended to read:

50.04 (4) (a) 2. b. The nursing home has made every reasonable effort to prevent and correct the violation, but the violation occurred and remains uncorrected due to circumstances beyond the nursing home's control, or the nursing home has corrected the violation.

**SECTION 11.** 50.04 (4) (am) of the statutes is created to read:

50.04 (4) (am) *Dual federal and state violations.* 1. Notwithstanding s. 50.01 (3), in this paragraph, "nursing home" does not include a facility serving people with developmental disabilities.

2. If an act or omission constitutes a violation of this subchapter or the rules promulgated under this subchapter, s. 49.498, or requirements under 42 CFR 483 related to the operation of a nursing home, the department may not issue under s. 50.04 (4) (a) a notice of violation of this subchapter, the rules promulgated under this subchapter, or s. 49.498 if the department has, in a statement of deficiency, cited the nursing home for the violation under requirements under 42 CFR 483 related to the operation of a nursing home.

**SECTION 12.** 50.04 (4) (c) 1. of the statutes is amended to read:

50.04 (4) (c) 1. The situation, condition or practice constituting a class "A" violation or immediate jeopardy shall be abated or eliminated immediately unless a fixed period of time, as determined by the department and specified in the notice of violation, is required for correction. If the class "A" violation or immediate jeopardy is not abated or eliminated within the specified time period, the

department shall maintain an action in circuit court for injunction or other process against the licensee, owner, operator, administrator or representative of the facility to restrain and enjoin violation of applicable rules, regulations and statutes.

**SECTION 13.** 50.04 (4) (d) 1. a. of the statutes is repealed and recreated to read:

50.04 (4) (d) 1. a. In the previous 15 months, the nursing home received written notice of a violation of a state statute or rule or a federal statute or regulation that involved immediate jeopardy to a resident; a class "A" violation; or 3 or more class "B" violations or violations that constituted actual harm not involving immediate jeopardy to a resident.

**SECTION 14.** 50.04 (4) (d) 1. b. of the statutes is repealed and recreated to read:

50.04 (4) (d) 1. b. In any 15-month period during the 36 months immediately preceding the period specified in subd. 1. a., the nursing home received written notice of a violation of a state statute or rule or a federal statute or regulation that involved immediate jeopardy to a resident; a class "A" violation; or 3 or more class "B" violations or violations that constituted actual harm not involving immediate jeopardy to a resident.

**SECTION 15.** 50.04 (4) (d) 2. of the statutes is amended to read:

50.04 (4) (d) 2. A suspension of admissions under subd. 1. shall begin 90 days after a nursing home received its last notice of violation for a class "A" or class "B" violation specified in subd. 1. a. if the department determines that the violation remains uncorrected 90 days after the nursing home received the last notice of the violation. If the nursing home indicates to the department that the violation has been corrected, but the department is unable to verify that the violation has been corrected, a suspension of admissions under subd. 1. shall begin on the day that the department makes a return visit to the nursing home and determines that the violation has not been corrected. A suspension of admissions under subd. 1. shall remain in effect until the department determines that all class "A" and class "B" violations by the nursing home have been has corrected the violation. Admission of a new resident during the period for which admissions have been suspended constitutes a class "B" violation.

**SECTION 16.** 50.04 (4) (e) 1. of the statutes is amended to read:

50.04 (4) (e) 1. If a nursing home desires to contest any department action under this subsection, it shall send a written request for a hearing under s. 227.44 to the division of hearings and appeals created under s. 15.103 (1) within ~~40~~ 60 days of receipt of notice of the contested action. Department action that is subject to a hearing under this subsection includes service of a notice of a violation of this subchapter or rules promulgated under this subchapter, a notation in the report under sub. (3) (b), imposition of a plan of correction, and rejection of a nurs-

ing home's plan of correction, but does not include a correction order. Upon the request of the nursing home, the division shall grant a stay of the hearing under this paragraph until the department assesses a forfeiture, so that its hearing under this paragraph is consolidated with the forfeiture appeal hearing held under sub. (5) (e). All agency action under this subsection arising out of a violation, deficiency, or rejection and imposition of a plan of correction shall be the subject of a single hearing. Unless a stay is granted under this paragraph, the division shall commence the hearing within 30 days of the request for hearing, within 30 days of the department's acceptance of a nursing home's plan of correction, or within 30 days of the department's imposition of a plan of correction, whichever is later. The division shall send notice to the nursing home in conformance with s. 227.44. Issues litigated at the hearing may not be relitigated at subsequent hearings under this paragraph arising out of the same violation or deficiency.

**SECTION 17.** 50.04 (5) (a) 5m. of the statutes is repealed.

**SECTION 18.** 50.04 (5) (c) of the statutes is amended to read:

50.04 (5) (c) *Assessment of forfeitures; powers and duties of department.* The department may directly assess forfeitures provided for under par. (a). If the department determines that a forfeiture should be assessed for a particular violation or for failure to correct it, it the department shall send a notice of assessment of forfeiture to the nursing home. The notice shall specify the amount of the forfeiture assessed, the violation, and the statute or rule alleged to have been violated; and shall inform the licensee of the right to hearing under par. (e). If the department does not issue a notice of forfeiture within 120 days after the date on which a nursing home receives the notice of a violation, the department may not assess a forfeiture for the violation.

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

50.04 (5) (e) *Forfeiture appeal hearing.* A nursing home may contest an assessment of a forfeiture by sending, within ~~40~~ 60 days after receipt of notice of ~~a contested action~~ the assessment of the forfeiture, a written request for hearing under s. 227.44 to the division of hearings and appeals created under s. 15.103 (1). The administrator of the division may designate a hearing examiner to preside over the case and recommend a decision to the administrator under s. 227.46. The decision of the administrator of the division shall be the final administrative decision. The division shall commence the hearing within 30 days of receipt of the request for hearing and shall issue a final decision within 15 days after the close of the hearing. Proceedings before the division are governed by ch. 227. In any petition for judicial review of a decision by the division, the party, other than the petitioner, who was in the proceeding before the division

shall be the named respondent. If, after receipt of notice of assessment of a forfeiture, a nursing home that has timely requested a hearing under sub. (4) (e) on the notice of violation under sub. (4) for which the forfeiture was assessed requests a hearing under this paragraph on the assessment of the forfeiture, the hearing on the notice of violation under sub. (4) and the hearing on the assessment of the forfeiture shall be consolidated.

**SECTION 20.** 50.04 (5) (f) of the statutes is amended to read:

50.04 (5) (f) *Forfeitures paid within ~~10~~ 60 days.* All forfeitures shall be paid to the department within ~~10~~ 60 days of receipt of notice of assessment of the forfeiture or, if the forfeiture is contested under par. (e), within ~~10~~ 60 days of receipt of the final decision after exhaustion of administrative review, unless the final decision is appealed and the order is stayed by court order under s. 50.03 (11). The department shall remit all forfeitures paid to the secretary of administration for deposit in the school fund.

**SECTION 21.** 50.04 (5) (fm) of the statutes is amended to read:

50.04 (5) (fm) *Forfeiture reduction for timely payment.* If a nursing home does not contest a notice of violation under sub. (4) (e) and does not contest an assessment of a forfeiture under par. (e) for a class "A" or class "B" violation and pays the forfeiture to the department within ~~10~~ 60 days after receipt of the notice of assessment of the forfeiture, the department shall reduce the amount of the assessment forfeiture by ~~35%~~ 35 percent.

**SECTION 22.** 50.04 (6) (a) of the statutes is repealed and recreated to read:

50.04 (6) (a) *Power of department.* 1. In addition to the right to impose forfeitures under sub. (5), the department may issue a conditional license to any nursing home if the department finds that any of the following is true:

a. A class "A" or class "B" violation, as defined in sub. (4), continues to exist in the nursing home.

b. A federal violation continues to exist that constitutes immediate jeopardy or actual harm not involving immediate jeopardy to a resident.

2. The issuance of a conditional license shall revoke any outstanding license held by the nursing home.

3. The nursing home may seek review of a decision to issue a conditional license as provided in s. 50.03 (5).

**SECTION 23.** 50.04 (8) of the statutes is created to read:

50.04 (8) **PROTECTION AND COST EFFECTIVENESS PROGRAMS; QUALITY ASSURANCE.** (a) The department may distribute moneys from the appropriation account under s. 20.435 (6) (g) for innovative projects designed to protect the property and the health, safety, and welfare of residents in nursing homes and to improve the efficiency and cost effectiveness of the operation of facilities so as to

improve the quality of life, care, and treatment of residents.

(b) The department shall establish and maintain a quality assurance and improvement committee to review proposals and award moneys for innovative projects, as described in par. (a), that are approved by the committee. The department shall promulgate rules to guide the actions of the quality assurance and improvement committee.

**SECTION 24.** 50.05 (2) (f) (intro.) of the statutes is amended to read:

50.05 (2) (f) (intro.) The facility is a nursing facility that is in violation of s. 49.498 ~~or~~ a rule promulgated under s. 49.498, or a requirement under 42 CFR 483 related to the operation of a nursing facility, meets the criteria established by rule under s. 49.498 (14) (c) for placement of a monitor or appointment of a receiver, and there is a need for placement of a monitor or appointment of a receiver during the period that any of the following applies:

**SECTION 25.** 50.05 (2) (f) 2. of the statutes is amended to read:

50.05 (2) (f) 2. The nursing facility institutes improvements in order to bring the nursing facility into compliance with the requirements of s. 49.498 ~~or~~ a rule promulgated under s. 49.498, or a requirement under 42 CFR 483 related to the operation of a nursing facility.

**SECTION 26. Initial applicability.**

(1) **HEARING REQUESTS.** The treatment of section 50.04 (4) (e) 1. and (5) (e) of the statutes first applies to requests for hearings related to a notice of violation, a report notation, a of plan correction, or a rejection of a plan of correction that is issued on the effective date of this subsection.

(2) **CONDITIONAL LICENSURE.** The treatment of sections 50.01 (1ng) and 50.04 (6) (a) of the statutes first applies to violations that continue to exist on the effective date of this subsection.

(3) **SUSPENSION OF ADMISSIONS.** The treatment of sections 50.01 (1ng) and 50.04 (4) (d) 1. a. and b. and (d) 2. of the statutes first applies to written notice of violations received on the effective date of this subsection.

(4) **SUSPENSION OR REVOCATION OF LICENSURE.** The treatment of section 50.03 (5) (a) and (b) of the statutes first applies to findings made by the department of health services on the effective date of this subsection.

(5) **PROVISIONAL LICENSE.** The treatment of section 50.03 (4m) (a) of the statutes first applies to inspections made by the department of health services on the effective date of this subsection.

(6) **INJUNCTIONS.** The treatment of section 50.03 (7) (a) of the statutes first applies to an action for injunction filed by the department of health services on the effective date of this subsection.