

1977 Senate Bill 233

Date published: October 24, 1977

CHAPTER 112, Laws of 1977

AN ACT to create 20.435 (1) (dm) and (g) and 50.05 of the statutes, relating to monitoring and receivership of nursing homes and residential care facilities and making appropriations.

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

SECTION 1. 20.435 (1) (dm) and (g) of the statutes are created to read:

20.435 (1) (dm) *Nursing home receivership supplement.* A sum sufficient to supplement the appropriations made under par. (g).

(g) *Nursing home receivership operations.* All moneys received as payments from medical assistance and from all other sources to reimburse the department for the cost of receivership and operation of a nursing home or community-based residential facility held in receivership by the department under s. 50.05 (4) and (5).

SECTION 2. 50.05 of the statutes is created to read:

50.05 Placement of monitor and appointment of receiver. (1) DEFINITIONS. In this section:

(a) "Affiliate" means:

1. With respect to a partnership, each partner thereof.
2. With respect to a corporation, each officer, director, principal stockholder and controlling person thereof.
3. With respect to a natural person: any person related in the first degree of kinship to that person; each partnership and each partner thereof of which that person or any affiliate of that person is a partner; and each corporation in which that person or any affiliate of that person is an officer, director, principal stockholder or controlling person.

(b) "Controlling person" means any person who has the ability, directly or indirectly, to control the management or policies of the facility.

(c) "Emergency" means a situation, physical condition or one or more practices, methods or operations which presents imminent danger of death or serious physical or mental harm to residents of the facility.

(d) "Facility" means a nursing home or community-based residential facility.

(e) "Operator" means any person licensed or required to be licensed under this subchapter as the operator of a facility.

(f) "Principal stockholder" of a corporation means any person who, directly or indirectly, beneficially owns, holds or has the power to vote, 10% or more of any class of securities issued by the corporation.

(2) **CONDITIONS FOR PLACEMENT OF A MONITOR OR APPOINTMENT OF A RECEIVER.** The department may place a monitor in a facility and may petition for appointment of a receiver for a facility when any of the following conditions exist:

(a) The facility is operating without a license.

(b) The department has suspended, revoked or refused to renew the existing license of the facility.

(c) The department has initiated revocation or nonrenewal procedures and has determined that the lives, health, safety, or welfare of the residents cannot be adequately assured pending a full hearing on license nonrenewal or revocation.

(d) The facility is closing or intends to close and adequate arrangements for relocation of residents have not been made at least 30 days prior to closure.

(e) The department determines that an emergency exists.

(3) **MONITOR.** In any situation described in sub. (2), the department may place a person to act as monitor in the facility. The monitor shall observe operation of the facility, assist the facility by advising it on how to comply with state regulations, and shall submit a written report periodically to the department on the operation of the facility.

(4) **APPOINTMENT OF RECEIVER.** The secretary, represented by the department of justice, may apply by verified petition to the circuit court for the county in which the facility is located for an order appointing the secretary or the secretary's designee receiver of the facility. The court shall hold a hearing on the petition within 5 days of the filing of the petition. The petition and notice of the hearing shall be served on the operator, administrator or designated agent of the facility as provided under ch. 801 or shall be posted in a conspicuous place in the facility not later than 3 days before the time specified for the hearing, unless a different period is fixed by order of the court. The court shall appoint a receiver for a limited time period, not to exceed 90 days, if it finds that any ground exists which would authorize the appointment of a receiver under sub. (2) and that appointment of a receiver will contribute to the continuity of care or the orderly and safe transfer of residents in the facility.

(5) **EMERGENCY PROCEDURE.** If it appears from the petition filed under sub. (4), or from an affidavit or affidavits filed with the petition, or from testimony of witnesses under oath when the court determines that this is necessary, that there is probable cause to believe that an emergency exists in the facility, the court shall immediately issue the requested order for appointment of a receiver, ex parte and without further hearing. Notice of the petition and order shall be served on the operator, administrator, or designated agent of the facility as provided under ch. 801 or shall be posted in a conspicuous place in the facility within 24 hours after issuance of the order and a hearing on the petition shall be held within 3 days after notice is served or posted unless the operator consents to a later date. After the hearing, the court may terminate, continue or modify the temporary order.

(6) **OBJECTIVE.** The receiver shall with all reasonable speed, but in any event within 90 days after the date on which the receivership was ordered, provide for the orderly transfer of all residents in the facility to other suitable facilities or make other provisions for their continued health, safety and welfare.

(7) **POWERS AND DUTIES OF RECEIVER.** A receiver appointed under this chapter:

(a) May exercise those powers and shall perform those duties set out by the court.

(b) Shall operate the facility in such a manner as to assure safety and adequate health care for the residents.

(c) Shall have the same rights to possession of the building in which the facility is located and of all goods and fixtures in the building at the time the petition for receivership is filed as the operator would have had if the receiver had not been appointed. The receiver shall take such action as is reasonably necessary to protect or conserve the assets or property of which the receiver takes possession, or the proceeds of any transfer thereof, and may use them only in the performance of the powers and duties set forth in this section and by order of the court.

(d) May use the building, fixtures, furnishings, and any accompanying consumable goods in the provision of care and services to residents and to any other persons receiving services from the facility at the time the petition for receivership was filed. The receiver shall collect payments for all goods and services provided to residents or others during the period of the receivership, at the same rate of payment as was charged by the operators at the time the petition for receivership was filed, unless a different rate is set by the court.

(e) May correct or eliminate any deficiency in the structure or furnishings of the facility which endangers the safety or health of residents while they remain in the facility, provided the total cost of correction does not exceed \$3,000. The court may order expenditures for this purpose in excess of \$3,000 on application from the receiver.

(f) May let contracts and hire agents and employees to carry out the powers and duties created under this section.

(g) Except as specified in sub. (9), shall honor all leases, mortgages and secured transactions governing the building in which the facility is located and all goods and fixtures in the building of which the receiver has taken possession, but only to the extent of payments which, in the case of a rental agreement, are for the use of the property during the period of the receivership, or which, in the case of a purchase agreement, come due during the period of the receivership.

(h) Shall have full power to direct and manage and to discharge employees of the facility, subject to any contract rights they may have. The receiver shall pay employees at the same rate of compensation, including benefits, that the employees would have received from the operator, except that the receiver shall compensate employees only for time actually worked during the period of receivership and shall not be responsible for reimbursement for vacations or periods of sick leave. Receivership does not relieve the operator of any obligation to employees not carried out by the receiver.

(i) Shall, if any resident is transferred or discharged, provide for:

1. Transportation of the resident and the resident's belongings and medical records to the place to which the resident is being transferred or discharged.

2. Aid in location of an alternative placement and in discharge planning.

3. If the patient is being transferred, preparation for transfer to mitigate transfer trauma.

(j) Shall, if any resident is to be transferred, permit participation by the resident or the resident's guardian in the selection of the resident's alternative placement.

(k) Shall, unless emergency transfer is necessary, prepare a resident under pars. (i) 3 and (j) by explaining alternative placements, and by providing orientation to the placement chosen by the resident or the resident's guardian.

(L) Shall be entitled to and shall take possession of all property or assets of residents which are in the possession of an owner, operator or controlling person of the facility. The receiver shall preserve all property, assets and records of residents of which the receiver takes possession and shall provide for the prompt transfer of the property, assets and records to the alternative placement of any transferred resident.

(8) PAYMENT TO RECEIVER. (a) A person who is served with notice of an order of the court appointing a receiver and of the receiver's name and address shall be liable to pay the receiver for any goods or services provided by the receiver after the date of the order if the person would have been liable for the goods or services as supplied by the operator. The receiver shall give a receipt for each payment and shall keep a copy of each receipt on file. The receiver shall deposit amounts received in a special account and shall use this account for all disbursements.

(b) The receiver may bring an action to enforce the liability created by par. (a). Proof of payment to the receiver is as effective in favor of the person making the payment as payment of the amount to the person who would, but for this subsection, have been entitled to receive the sum so paid.

(c) A resident may not be discharged, nor may any contract or rights be forfeited or impaired, nor may forfeiture or liability be increased, by reason of an omission to pay an owner, operator or other person a sum paid to the receiver.

(9) AVOIDANCE OF PREEXISTING LEASES, MORTGAGES AND CONTRACTS. (a) A receiver may not be required to honor any lease, mortgage, secured transaction or other wholly or partially executory contract entered into by the owners or operators of the facility if:

1. The person seeking payment under the agreement was an operator or controlling person of the facility or was an affiliate of an operator or controlling person at the time the agreement was made; or

2. The rental, price or rate of interest required to be paid under the agreement was substantially in excess of a reasonable rental, price or rate of interest at the time the contract was entered into.

(b) If the receiver is in possession of real estate or goods subject to a lease, mortgage or security interest which the receiver is permitted to avoid under par. (a), and if the real estate or goods are necessary for the continued operation of the facility under this section, the receiver may apply to the court to set a reasonable rental, price or rate of interest to be paid by the receiver during the duration of the receivership. The court shall hold a hearing on the application within 15 days. The receiver shall send notice of the application to any known owners of the property involved at least 10 days prior to the hearing. Payment by the receiver of the amount determined by the court to be reasonable is a defense to any action against the receiver for payment or for possession of the goods or real estate subject to the lease or mortgage involved by any person who received such notice, but the payment does not relieve the owner or operator of the facility of any liability for the difference between the amount paid by the receiver and the amount due under the original lease or mortgage involved.

(10) CONTINGENCY FUND. If funds collected under subs. (7) and (8) are insufficient to meet the expenses of performing the powers and duties conferred on the receiver by this section, or if there are insufficient funds on hand to meet those expenses, the department may draw from the supplemental fund created under s. 20.435 (1) (dm) to pay those expenses. Operating funds collected under this section and not applied to the expenses of the receivership shall be used to reimburse the fund for advances made under this section.

(11) COMPENSATION OF RECEIVER. The court shall set the compensation of the receiver, which will be considered a necessary expense of a receivership.

(12) LIABILITY OF RECEIVER; STATUS AS PUBLIC EMPLOYEE. (a) In any action or special proceeding brought against a receiver in the receiver's official capacity for acts committed while carrying out the powers and duties created under this section, the receiver shall be considered a public employee for purposes of s. 895.46.

(b) A receiver may be held liable in a personal capacity only for the receiver's own gross negligence, intentional acts or breach of fiduciary duty.

(c) A receiver may not be required to post any bond.

(13) LICENSING OF FACILITY UNDER RECEIVERSHIP. Other provisions of this chapter notwithstanding, the department may issue a license to a facility placed in receivership under this section. The duration of a license issued under this section is limited to the duration of the receivership.

(14) TERMINATION OF RECEIVERSHIP. The court may terminate a receivership:

- (a) If the time period specified in the order appointing the receiver elapses;
- (b) If the department grants the facility a new license, whether the structure of the facility, the right to operate the facility, or the land on which it is located is under the same or different ownership; or
- (c) If all of the residents in the facility have been provided alternative modes of health care, either in another facility or otherwise.

(15) ACCOUNTING; LIEN FOR EXPENSES. (a) Within 30 days after termination, the receiver shall give the court a complete accounting of all property of which the receiver has taken possession, of all funds collected under this section and of the expenses of the receivership.

(b) If the operating funds collected by the receiver under subs. (7) and (8) exceed the reasonable expenses of the receivership, the court shall order payment of the surplus to the operator, after reimbursement of funds drawn from the contingency fund under sub. (10). If the operating funds are insufficient to cover the reasonable expenses of the receivership, the operator shall be liable for the deficiency. The operator may apply to the court to determine the reasonableness of any expense of the receivership. The operator shall not be responsible for expenses in excess of what the court finds to be reasonable. Payment recovered from the operator shall be used to reimburse the contingency fund for amounts drawn by the receiver under sub. (10).

(c) The department shall have a lien for any deficiency under par. (b) upon any beneficial interest, direct or indirect, of any operator or controlling person in the following property:

1. The building in which the facility is located.
2. The land on which the facility is located.
3. Any fixtures, equipment or goods used in the operation of the facility.
4. The proceeds from any conveyance of property described in subd. 1, 2 or 3, made by the operator or controlling person within one year prior to the filing of the petition for receivership.

(d) The lien provided by this subsection is prior to any lien or other interest which originates subsequent to the filing of a petition for receivership under this section, except for a construction or mechanic's lien arising out of work performed with the express consent of the receiver.

(e) The clerk of the circuit court for the county in which the facility is located shall record the filing of the petition for receivership in the lien docket kept under s. 289.07 opposite the names of the operators and controlling persons named in the petition.

(f) The receiver shall, within 60 days after termination of the receivership, file a notice of any lien created under this subsection. If the lien is on real property, the notice shall be filed with the clerk of circuit court of the county in which the facility is located and entered on the lien docket kept under s. 289.07. If the lien is on personal property, the lien shall be filed with the secretary of state. The notice shall specify the name of the person against whom the lien is claimed, the name of the receiver, the dates of the petition for receivership and the termination of receivership, a description of the property involved and the amount claimed. No lien shall exist under this section against any person, on any property, or for any amount not specified in the notice filed under this paragraph.

(16) OBLIGATIONS OF OWNERS. Nothing in this section shall be deemed to relieve any owner, operator or controlling person of a facility placed in receivership of any

civil or criminal liability incurred, or any duty imposed by law, by reason of acts or omissions of the owner, operator or controlling person prior to the appointment of a receiver under this section, nor shall anything contained in this section be construed to suspend during the receivership any obligation of the owner, operator or controlling person for payment of taxes or other operating and maintenance expenses of the facility nor of the owner, operator or controlling person or any other person for the payment of mortgages or liens. No owner may be held professionally liable for acts or omissions of the receiver or the receiver's employes during the term of the receivership.
