

CHAPTER 50

UNIFORM LICENSURE

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SUBCHAPTER I

CARE AND SERVICE RESIDENTIAL FACILITIES

50.001 Institutions subject to chapter 150. Any community-based residential facility, nursing home, or other health care facility which meets the definition of health care institution in s. 150.001 (6) is subject to ch. 150.

History: 1977 c. 29.

50.01 Definitions. As used in this subchapter:

(1) "Community-based residential facility" means a place where 3 or more unrelated adults reside in which care, treatment or services above the level of room and board but not including nursing care are provided to persons residing in the facility as a primary function of the facility, except that the department may approve an application from a nursing home which serves fewer than 20 residents and which otherwise meets the definition of this subsection to be licensed and regulated as a community-based

residential facility. The reception and care or treatment of a person in a convent or facility owned or operated exclusively by and for members of a religious order shall not constitute the premises to be a "community-based residential facility". "Community-based residential facility" does not include a facility or private home that provides care, treatment and services only for victims of domestic abuse, as defined in s. 46.95 (1) (a), and their children.

(1m) "Facility" means a nursing home or community-based residential facility. If notice is required to be served on a facility or a facility is required to perform any act, "facility" means the person licensed or required to be licensed under s. 50.03 (1).

(3) "Nursing home" means:

(a) A place which provides 24-hour services including board and room to 3 or more unrelated residents who because of their mental or physical condition require nursing care or personal care in excess of 7 hours a week, unless the facility has been designated as a community-based residential facility under sub. (1).

(c) The reception and care or treatment of a person in a convent or facility owned or operated

exclusively by and for members of a religious order shall not constitute the premises to be a "nursing home".

(4) "Nursing home administrator" has the meaning assigned in s. 456.01 (2).

(4m) "Operator" means any person licensed or required to be licensed under s. 50.03 (1).

(4o) "Personal care" means assistance with the activities of daily living, such as eating, dressing, bathing and ambulation.

(4r) "Plan of correction" means a nursing home's response to alleged deficiencies cited by the department on forms provided by the department.

(5) "Primary function" means the basic or essential care, treatment or services provided to residents of a facility.

(6) "Resident" means a person cared for or treated in any nursing home or community-based residential facility, irrespective of how admitted.

(7) "Violation" means a failure to comply with any provision of this subchapter or administrative rule adopted thereunder. An alleged deficiency in a nursing home reported in writing to the department by any of its authorized representatives shall not be deemed to be a violation until the department determines it is a violation by serving notice under s. 50.04 (4). If the facility contests the department determination, the facility shall be afforded the due process procedures in this subchapter.

History: 1975 c. 413; 1977 c. 170, 418; 1979 c. 111.

See note to art. I, sec. 18, citing OAG 32-82.

50.02 Departmental authority; development of standards; reports. (1) DEPARTMENTAL AUTHORITY.

The department shall have authority to provide uniform, statewide licensing, inspection and regulation of community-based residential facilities and nursing homes as provided in this subchapter. Nothing in this subchapter may be construed to limit the authority of the department of industry, labor and human relations or of municipalities to set standards of building safety and hygiene, but any local orders of municipalities shall be consistent with uniform, statewide regulation of community-based residential facilities. The department may not prohibit any nursing home from distributing over-the-counter drugs from bulk supply. The department may consult with nursing homes as needed and may provide specialized consultations when requested by any nursing home, separate from its inspection process, to scrutinize any particular questions the nursing home raises. The department shall, by rule, define "specialized consultation".

(2) STANDARDS. (a) The department, by rule, shall develop, establish and enforce regula-

tions and standards for the care, treatment, health, safety, rights, welfare and comfort of residents in community-based residential facilities and nursing homes and for the construction, general hygiene, maintenance and operation of those facilities which, in the light of advancing knowledge, will promote safe and adequate accommodation, care and treatment of residents in those facilities; and promulgate and enforce rules consistent with this section. Such standards and rules shall provide that intermediate care facilities, which have 16 or fewer beds may, if exempted from meeting certain physical plant, staffing and other requirements of the federal regulations, be exempted from meeting the corresponding provisions of the department's standards and rules. The department shall consult with the department of industry, labor and human relations when developing exemptions relating to physical plant requirements.

(b) The department may conduct plan reviews of all capital construction and remodeling of nursing homes. The fees for each review shall be the same as those for hospitals under s. 50.36 (2).

(3) CONSIDERATIONS IN ESTABLISHING STANDARDS AND REGULATIONS. (a) The department shall establish several levels and types of community-based residential facilities and nursing homes as provided in par. (b), including a category or categories designed to enable facilities to qualify for federal funds.

(b) In setting standards and regulations, the department shall consider the residents' needs and abilities, the increased cost in relation to proposed benefits to be received, the services to be provided by the facility, the relationship between the physical structure and the objectives of the program conducted in the facility and the primary functions of the facility. Recognizing that size and structure will influence the ability of community-based residential facilities to provide a home-like environment, the legislature encourages the department to develop rules which facilitate in particular the development of: small facilities, small living units in larger facilities, individual residential units, independent living to the extent possible, and integration of residents into the community.

(c) The department shall promulgate rules to establish a procedure for waiver of and variance from standards developed under this section. The department may limit the duration of the waiver or variance.

(4) REPORTS TO THE BOARD ON AGING AND LONG-TERM CARE. The department shall submit at least one report quarterly to the board on aging and long-term care regarding enforcement actions, consultation, staff training pro-

grams, new procedures and policies, complaint investigation and consumer participation in enforcement under this subchapter and changes that may be needed under this subchapter.

History: 1971 c. 125, 161; 1973 c. 122, 323, 327, 333; 1975 c. 119, 260; 1975 c. 413 ss. 5 to 8; 1977 c. 29, 170, 418; 1981 c. 20, 121, 391.

Municipal ordinance which required registration of nursing homes was in direct conflict with (1) and, therefore, invalid. *Volunteers of America v. Village of Brown Deer*, 97 W (2d) 619, 294 NW (2d) 44 (Ct. App. 1980).

The state has given the department preemptive authority over community-based residential facilities and nursing homes. 68 Atty. Gen. 45.

50.025 Plan reviews. The department may conduct plan reviews of all capital construction and remodeling of community-based residential facilities. The fees for each review shall be the same as those for hospitals under s. 50.36 (2).

History: 1977 c. 29; 1977 c. 170 ss. 7, 9.

50.03 Licensing, powers and duties. (1)

PENALTY FOR UNLICENSED OPERATION. No person may conduct, maintain, operate or permit to be maintained or operated a community-based residential facility or nursing home unless it is licensed by the department. Any person who violates this subsection may, upon a first conviction, be fined not more than \$500 for each day of unlicensed operation or imprisoned not more than 6 months or both. Any person convicted of a subsequent offense under this subsection may be fined not more than \$5,000 for each day of unlicensed operation or imprisoned not more than one year in the county jail or both.

(2) ADMINISTRATION. (a) The department shall make or cause to be made such inspections and investigations as it deems necessary.

(b) With approval of the department, the county board of any county having a population of 500,000 or more may, in an effort to assure compliance with this section, establish a program for the inspection of facilities licensed under this section within its jurisdiction. If a county agency deems such action necessary after inspection, the county agency may, after notifying the department, withdraw from the facility any persons receiving county support for care in a facility which fails to comply with the standards established by this section or rules established under this section.

(c) The department may conduct both announced and unannounced inspections. Inspections of records not directly related to resident health, welfare or safety shall be made between the hours of 8 a.m. and 5 p.m. unless specifically authorized by the secretary. Any employe of the department who intentionally gives or causes to be given advance notice of an unannounced inspection to any unauthorized person is subject to disciplinary action ranging from a 5-day suspension without pay to termination of employment.

(d) Any holder of a license or applicant for a license shall be deemed to have given consent to any authorized officer, employe or agent of the department to enter and inspect the facility in accordance with this subsection. Refusal to permit such entry or inspection shall constitute grounds for denial, nonrenewal or revocation of license as provided in sub. (5).

(e) The applicant or licensee may review inspection reports and may submit additional information to the department. Portions of the record may be withheld to protect the confidentiality of residents or the identity of any person who has given information subject to the condition that his or her identity remain confidential.

(f) 1. If a complaint is received by a community-based residential facility, the licensee shall attempt to resolve the complaint informally. Failing such resolution, the licensee shall inform the complaining party of the procedure for filing a formal complaint under this section.

2. Any individual may file a formal complaint under this section regarding the general operation of a community-based residential facility and shall not be subject to reprisals for doing so. All formal complaints regarding community-based residential facilities shall be filed with the county public welfare department on forms supplied by the county department, unless the county department designates the department to receive a formal complaint. The county department shall investigate or cause to be investigated each formal complaint. Records of the results of each investigation and the disposition of each formal complaint shall be kept by the county department and filed with the unit within the department which licenses community-based residential facilities.

3. Upon receipt of a formal complaint, the county department may investigate the premises and records, and question the licensee, staff and residents of the community-based residential facility involved. The county department shall attempt to resolve the situation through negotiation or other appropriate means.

4. If no resolution is reached, the county department shall forward the formal complaint, the results of the investigation, and any other pertinent information to the unit within the department which may take further action under this chapter against the community-based residential facility. The unit shall review the complaint and may conduct further investigations, take enforcement action under this chapter or dismiss the complaint. The department shall notify the complainant in writing of the formal disposition of the complaint and the reasons therefor. If the complaint is dismissed,

the complainant is entitled to an administrative hearing conducted by the department to determine the reasonableness of the dismissal.

5. If the county department designates the department to receive formal complaints, the subunit under s. 46.03 (22) (c) shall receive the complaints and the department shall have all the powers and duties granted to the county department in this section.

(2m) SERVICE OF NOTICES. (a) Each licensee or applicant for license shall file with the department the name and address of a person authorized to accept service of any notices or other papers which the department may send by registered or certified mail, with a return receipt requested.

(b) Notwithstanding s. 879.05, wherever in this subchapter the department is required to serve any notice or other paper on a licensee or applicant for license, personal service or the sending of the notice or paper by registered or certified mail, with a return receipt requested, to the most recent address on file with the department under par. (a) shall constitute proper service.

(3) APPLICATION FOR REGISTRATION AND LICENSE. (b) The application for a license or a license renewal shall be in writing upon forms provided by the department and shall contain such information as the department requires, including the name, address and type and extent of interest of each of the following persons:

1. The operator or operators of the facility, including any person who has the authority, directly or indirectly, to direct or cause the direction of the management or policies of the facility.

2. Any person who, directly or indirectly, owns any interest in any of the following:

a. The partnership, corporation or other entity which operates the facility;

b. The profits, if any, of the facility;

c. The building in which the facility is located;

d. The land on which the facility is located;

e. Any mortgage, note, deed of trust or other obligation secured in whole or in part by the land on which or building in which the facility is located, except that disclosure of the disbursements of a secured mortgage, note, deed of trust or other obligation is not required; and

f. Any lease or sublease of the land on which or the building in which the facility is located.

3. If any person named in response to subd. 1 or 2 is a partnership, then each partner.

4. If any person named in response to subd. 1 or 2 is a corporation, then each officer and director of the corporation. In the case of a corporation required to report under section 12 of the securities exchange act, a copy of that report shall meet the requirements of this subdivi-

vision with respect to stockholders of the corporation. A report filed under this subdivision shall be the most recent report required to be filed under section 12 of the federal securities exchange act.

(c) If any person named in response to par. (b) 2 is a bank, credit union, savings and loan association, investment association or insurance corporation, it is sufficient to name the entity involved without providing the information required under par. (b) 4.

(d) The licensee shall promptly report any changes which affect the continuing accuracy and completeness of the report under par. (b).

(e) Failure by a nursing home to provide the information required under this subsection shall constitute a class "C" violation under s. 50.04 (4).

(f) Community-based residential facilities applying for renewal of license shall report all formal complaints regarding their operation filed under sub. (2) (f) and the disposition of each.

(4) ISSUANCE OF LICENSE. (a) 1. Except as provided in sub. (4m), the department shall issue a license if it finds the applicant to be fit and qualified, and if it finds that the facility meets the requirements established by this subchapter. 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 may designate and use full-time city or county agencies as its agents in making the inspections and investigations, including such subsequent inspections and investigations as are deemed necessary or advisable. The department shall reimburse the city or county furnishing such service at the rate of \$25 per year per license issued in the municipality. Before renewing the license of any community-based residential facility, the department shall consider all formal complaints filed under sub. (2) (f) during the current license period and the disposition of each.

2. The past record of violations of applicable laws and regulations of the United States or of this or any other state, in the operation of a residential or health care facility, or in any other health-related activity by any of the persons listed in sub. (3) (b) shall be relevant to the issue of the fitness of an applicant for issuance or renewal of a license.

3. Within 10 working days after receipt of an application for initial licensure of a community-based residential facility, the department shall notify the city, town or village planning commission, or other appropriate city, town or village agency if there is no planning commission, of receipt of the application. The department shall

request that the planning commission or agency send to the department, within 30 days, a description of any specific hazards which may affect the health and safety of the residents of the community-based residential facility. No license may be granted to a community-based residential facility until the 30-day period has expired or until the department receives the response of the planning commission or agency, whichever is sooner. In granting a license the department shall give full consideration to such hazards determined by the planning commission or agency.

(c) Unless sooner revoked or suspended, a community-based residential facility license shall be valid for one year. Unless sooner revoked or suspended, a nursing home license is valid for one year, but may be issued to a new licensee for less than one year to coincide with the date of federal medical assistance certification as a skilled nursing facility or intermediate care facility. At least 120 days but not more than 150 days prior to license expiration, the applicant shall submit an annual report and application for renewal of the license in such form and containing such information as the department requires. If the report and application are approved, the license shall be renewed for an additional one-year period. If application for renewal and a complete annual report are not timely filed, the department shall issue a warning to the licensee. Failure to make application for renewal within 30 days thereafter may be grounds for nonrenewal of the license.

(d) Immediately upon the denial of any application for a license under this section, the department shall notify the applicant in writing. Notice of denial shall include a clear and concise statement of the violations on which denial is based and notice of the opportunity for a hearing under s. 227.07. If the applicant desires to contest the denial of a license it shall provide written notice to the department of a request for a hearing within 10 days after receipt of the notice of denial.

(e) Each license shall be issued only for the premises and persons named in the application and shall not be transferable or assignable. The license shall be posted in a place readily visible to residents and visitors, such as the lobby or reception area of the facility. Any license granted shall state the maximum bed capacity allowed, the person to whom the license is granted, the date, the expiration date, the maximum level of care for which the facility is licensed as a condition of its licensure and such additional information and special limitations as the department, by rule, may prescribe.

(f) The issuance or renewal of a license after notice of a violation has been sent shall not

constitute a waiver by the department of its power to rely on the violation as the basis for subsequent license revocation or other enforcement action under this subchapter arising out of the notice of violation.

(g) Prior to initial licensure of a community-based residential facility, the applicant for licensure shall make a good faith effort to establish a community advisory committee consisting of representatives from the proposed community-based residential facility, the neighborhood in which the proposed community-based residential facility will be located and a local unit of government. The community advisory committee shall provide a forum for communication for those persons interested in the proposed community-based residential facility. Any committee established under this paragraph shall continue in existence after licensure to make recommendations to the licensee regarding the impact of the community-based residential facility on the neighborhood. The department shall determine compliance with this paragraph both prior to and after initial licensure.

(4m) PROBATIONARY LICENSE. If the applicant has not been previously licensed or if the facility is not in operation at the time application is made, the department may issue a probationary license. A probationary license shall be valid for 120 days unless sooner suspended or revoked under sub. (5). Within 30 days prior to the termination of a probationary license, the department shall fully and completely inspect the facility and, if the facility meets the applicable requirements for licensure, shall issue a regular license under sub. (4). If the department has conducted a full inspection prior to issuing a probationary license to any nursing home, the department is not required to conduct a 2nd full inspection within 30 days prior to termination of the nursing home's probationary license but shall inspect any condition found out of compliance during the initial inspection. The department may expand its 2nd inspection as it deems necessary. If the department finds that the facility does not meet the requirements for licensure but has made substantial progress toward meeting those requirements, the license may be renewed for a period not to exceed 120 days from the expiration date of the initial probationary license.

(5) NONRENEWAL AND REVOCATION. (a) *Power of department.* The department, after notice to the applicant or licensee, may suspend, revoke or refuse to renew a license in any case in which the department finds that there has been a substantial failure to comply with the requirements of this subchapter and the rules established under this subchapter. No state or federal funds passing through the state treasury may be

paid to a facility not having a valid license issued under this section.

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

(c) *Contest of nonrenewal or revocation.* If a facility desires to contest the nonrenewal or revocation of a license, the facility shall, within 10 days after receipt of notice under par. (b), notify the department in writing of its request for a hearing under s. 227.07. The department shall hold the hearing within 30 days of receipt of such notice and shall send notice to the facility of the hearing as provided under s. 227.07 (2).

(d) *Effective date of nonrenewal or revocation.* 1. Subject to s. 227.14 (3), revocation shall become effective on the date set by the department in the notice of revocation, or upon final action after hearing under ch. 227, or after court action if a stay is granted under sub. (11), whichever is later.

2. Subject to s. 227.14 (2), nonrenewal shall become effective on the date of expiration of any existing license, or upon final action after hearing under ch. 227, or after court action if a stay is granted under sub. (11), whichever is later.

3. The department may extend the effective date of license revocation or expiration in any case in order to permit orderly removal and relocation of residents.

(5m) RESIDENT REMOVAL. (a) *Departmental authority.* The department may remove any resident from any facility required to be licensed under this chapter when any of the following conditions exist:

1. Such facility is operating without a license.

2. The department has suspended, revoked or refused to renew the existing license of the facility as provided under sub. (5).

3. The department has initiated revocation or nonrenewal procedures under sub. (5) and has determined that the lives, health, safety, or welfare of the resident cannot be adequately assured pending a full hearing on license nonrenewal or revocation under sub. (5).

4. The facility has requested the aid of the department in the removal of the resident and the department finds that the resident consents to removal or that the removal is made for valid medical reasons or for the welfare of the resident or of other residents.

5. The facility is closing, intends to close or is changing its type or level of services or means of reimbursement accepted and will relocate at least 5 residents or 5% of the residents, whichever is greater.

6. The department determines that an emergency exists which requires immediate removal of the resident. An emergency is 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 a resident of a facility.

(b) *Removal decision.* In deciding to remove a resident from a facility under this subsection, the department shall balance the likelihood of serious harm to the resident which may result from the removal against the likelihood of serious harm which may result if the resident remains in the facility.

(c) *Relocation.* The department shall offer removal and relocation assistance to residents removed under this section, including information on available alternative placements. Residents shall be involved in planning the removal and shall choose among the available alternative placements, except that where an emergency situation makes prior resident involvement impossible the department may make a temporary placement until a final placement can be arranged. Residents may choose their final alternative placement and shall be given assistance in transferring to such place. No resident may be forced to remain in a temporary or permanent placement except pursuant to the procedures provided under s. 55.06 for protective placement. Where the department makes or participates in making the relocation decision, consideration shall be given to proximity to residents' relatives and friends.

(d) *Transfer trauma mitigation.* The department shall prepare resident removal plans and transfer trauma mitigation care plans to assure safe and orderly removals and protect residents' health, safety, welfare and rights. In nonemergency situations, and where possible in emergency situations, the department shall design transfer trauma mitigation care plans for the individual resident and implement such care in advance of removal. The resident shall be provided with opportunity for 3 visits to potential alternative placements prior to removal, except where medically contraindicated or where the need for immediate removal requires reduction in the number of visits.

(e) *Relocation teams.* The department may place relocation teams in any facility from which residents are being removed, discharged or transferred for any reason, for the purpose of implementing removal plans and training the staffs of transferring and receiving facilities in transfer trauma mitigation.

(f) *Nonemergency removal procedures.* In any removal conducted under par. (a) 1 to 5, the department shall provide written notice to the facility and to any resident sought to be re-

moved, to the resident's guardian, if any, and to a member of the resident's family, where practicable, prior to the removal. The notice shall state the basis for the order of removal and shall inform the facility and the resident or the resident's guardian, if any, of their right to a hearing prior to removal. The facility and the resident or the resident's guardian, if any, shall advise the department within 10 working days following receipt of notice if a hearing is requested.

(g) *Emergency removal procedures.* In any removal conducted under par. (a) 6 the department shall notify the facility and any resident to be removed that an emergency situation has been found to exist and removal has been ordered, and shall involve the residents in removal planning if possible. Following emergency removal, the department shall provide written notice to the facility, to the resident, to the resident's guardian, if any, and to a member of the resident's family, where practicable, of the basis for the finding that an emergency existed and of the right to challenge removal under par. (h).

(h) *Hearing.* Within 10 days following removal under par. (g), the facility may send a written request for a hearing to challenge the removal to the department. The department shall hold the hearing within 30 days of receipt of the request. Where the challenge is by a resident, the hearing shall be held prior to removal at a location convenient to the resident. At the hearing, the burden of proving that a factual basis existed for removal under par. (a) shall rest on the department. If the facility prevails, it shall be reimbursed by the department for payments lost less expenses saved as a result of the removal and the department shall assist the resident in returning to the facility, if assistance is requested. No resident removed may be held liable for the charge for care which would have been made had the resident remained in the facility. The department shall assume this liability, if any. If a resident prevails after hearing, the department shall reimburse the resident for any excess expenses directly caused by the order to remove.

(i) *County as agent.* The department may authorize the county in which the facility is located to carry out, under the department's supervision, any powers and duties conferred upon the department in this subsection.

(7) **RIGHT OF INJUNCTION.** (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 adopted by the department under this subchapter where the violation affects the health, safety or welfare of the residents.

(b) *Unlicensed 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 for injunction or other process against any person or agency to restrain or prevent the establishment, management or operation of any facility required to be licensed under this section without a license.

(c) *Enforcement by counties maintaining inspection programs.* The county board of any county conducting inspections under sub. (2) (b) may, upon notifying the department that a facility is in violation of this subchapter or the rules established under this subchapter, authorize the district attorney to maintain an action in the name of the state in circuit court for injunction or other process against the facility, its owner, operator, administrator or representative, to restrain and enjoin repeated violations where the violations affect the health, safety or welfare of the residents.

(8) **FORFEITURE.** Any operator or owner of a community-based residential facility which is in violation of this subchapter or any rule adopted by the department under this subchapter shall forfeit not less than \$10 nor more than \$1,000 for each such offense, with each day of violation constituting a separate offense.

(9) **EXCEPTION FOR CHURCHES OPPOSED TO MEDICAL TREATMENT.** Nothing in this section shall be so construed as to give authority to supervise or regulate or control the remedial care or treatment of individual patients who are adherents of a church or religious denomination which subscribes to the act of healing by prayer and the principles of which are opposed to medical treatment and who are residents in any facility operated by a member or members, or by an association or corporation composed of members of such church or religious denomination, if the facility admits only adherents of such church or denomination and is so designated; nor shall the existence of any of the above conditions alone militate against the licensing of such a home or institution. Such facility shall comply with all rules and regulations relating to sanitation and safety of the premises and be subject to inspection thereof. Nothing in this subsection shall modify or repeal any laws, rules and regulations governing the control of communicable diseases.

(10) **UNIFORM ACCOUNTING SYSTEM.** The department shall establish a uniform classifica-

tion of accounts and accounting procedures for each level of licensure which shall be based on generally accepted accounting principles and which reflect the allocation of revenues and expenses by primary functions, to be used by the department in carrying out this subsection and s. 49.45. Each facility subject to this subsection or s. 49.45 shall satisfactorily establish with the department by a date set by the department that it has instituted the uniform accounting system as required in this subsection or is making suitable progress in the establishment of each system.

(11) JUDICIAL REVIEW. (a) All administrative remedies shall be exhausted before an agency determination under this subchapter shall be subject to judicial review. Final decisions after hearing shall be subject to judicial review exclusively as provided in s. 227.15, except that any petition for review of department action under this chapter shall be filed within 15 days after receipt of notice of the final agency determination.

(b) The court may stay enforcement under s. 227.17 of the department's final decision if a showing is made that there is a substantial probability that the party seeking review will prevail on the merits and will suffer irreparable harm if a stay is not granted, and that the facility will meet the requirements of this subchapter and the rules established under this subchapter during such stay. Where a stay is granted the court may impose such conditions on the granting of the stay as may be necessary to safeguard the lives, health, rights, safety and welfare of residents, and to assure compliance by the facility with the requirements of this subchapter.

(d) The attorney general may delegate to the department the authority to represent the state in any action brought to challenge department decisions prior to exhaustion of administrative remedies and final disposition by the department.

(13) TRANSFER OF OWNERSHIP. (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 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.

(b) *Duty of transferor.* The transferor shall notify the department at least 30 days prior to final transfer. The transferor shall remain responsible for the operation of the home until such time as a license is issued to the transferee, unless the facility is voluntarily closed as provided under sub. (14). The transferor shall also disclose to the transferee the existence of any outstanding waiver or variance and the conditions attached to such waiver or variance.

(c) *Outstanding violations.* Violations reported in departmental inspection reports prior to the transfer of ownership shall be corrected, with corrections verified by departmental survey, prior to the issuance of a full license to the transferee. The license granted to the transferee shall be subject to the plan of correction submitted by the previous owner and approved by the department and any conditions contained in a conditional license issued to the previous owner. In the case of a nursing home, if there are outstanding violations and no approved plan of correction has been implemented, the department may issue a conditional license and plan of correction as provided in s. 50.04 (6).

(d) *Forfeitures.* The transferor shall remain liable for all forfeitures assessed against the facility which are imposed for violations occurring prior to transfer of ownership.

(14) CLOSING OF A FACILITY. If any facility acts as specified under sub. (5m) (a) 5:

(a) The department may provide, direct or arrange for relocation planning, placement and implementation services in order to minimize the trauma associated with the relocation of residents and to ensure the orderly relocation of residents.

(b) The agencies of the county in which the facility is located that are responsible for providing services under s. 46.22 (4) (g) 1, 49.51 (2) (a) 12. a, 51.42 (5) or 51.437 (4) shall participate in the development and implementation of individual relocation plans. Any agency of another county shall participate in the development and implementation of individual relocation plans in place of the agencies of the county in which the facility is located, if the agency accepts responsibility for the resident or is delegated responsibility for the resident by the department or by a court.

(c) The facility shall:

1. Provide at least 30 days' written notice prior to relocation to each resident who is to be relocated, to the resident's guardian, if any, and to a member of the resident's family, if practica-

ble, unless the resident requests that notice to the family be withheld.

2. Attempt to resolve complaints from residents under this section.

3. Identify and, to the greatest extent practicable, attempt to secure an appropriate alternate placement for each resident to be relocated.

4. Consult the resident's physician on the proposed relocation's effect on the resident's health.

5. Hold a planning conference at which an individual relocation plan will be developed with the resident, with the resident's guardian, if any, and with a member of the resident's family, if practicable, unless the resident requests that a family member not be present.

6. Implement the individual relocation plan developed under subd. 5.

7. Notify the department of its intention to relocate residents. The notice shall state the facts requiring the proposed relocation of residents and the proposed date of closing or changing of the type or level of services or means of reimbursement.

8. At the time the facility notifies the department under subd. 7, submit to the department a preliminary plan that includes:

a. The proposed timetable for planning and implementation of relocations and the resources, policies and procedures that the facility will provide or arrange in order to plan and implement the relocations.

b. A list of the residents to be relocated and their current levels of care and a brief description of any special needs or conditions.

c. An indication of which residents have guardians and the names and addresses of the guardians.

d. A list of which residents have been protectively placed under ch. 55.

e. A list of the residents whom the facility believes to be incompetent.

(d) The department shall notify the facility within 10 days after receiving the preliminary plan under par. (c) 8, if it disapproves the plan. If the department does not notify the facility of disapproval, the plan is deemed approved. If the department disapproves the preliminary plan it shall, within 10 days of notifying the facility, begin working with the facility to modify the disapproved plan. No residents may be relocated until the department approves the preliminary plan or until a modified plan is agreed upon. If a plan is not approved or agreed upon within 30 days of receipt of the notice of relocation, the department may impose a plan that the facility shall carry out. Failure to submit, gain approval for or implement a plan in a timely fashion is not a basis for a facility to declare an

emergency under sub. (5m) (a) 6 or to relocate any resident under sub. (5m) (g).

(e) Upon approval of, agreement to or imposition of a plan for relocation, the facility shall establish a date of closing or changing of the type or level of services or means of reimbursement and shall notify the department of the date. The date may not be earlier than 90 days from the date of approval, agreement or imposition if 5 to 50 residents will be relocated, or 120 days from the date of approval, agreement or imposition if more than 50 residents will be relocated.

History: 1975 c. 413; 1977 c. 29, 170, 205, 272, 418, 447; 1979 c. 221; 1981 c. 20, 72, 121; 1981 c. 314 s. 146.

50.04 Special provisions applying to licensing and regulation of nursing homes.

(1) APPLICABILITY. This section applies to nursing homes as defined in s. 50.01 (3).

(2) REQUIRED PERSONNEL. (a) No nursing home within the state may operate except under the supervision of an administrator licensed under ch. 456 by the nursing home administrators examining board. If the holder of a nursing home license is unable to secure a new administrator because of the departure of an administrator, such license holder may, upon written notice to the department and upon the showing of a good faith effort to secure a licensed administrator, place the nursing home in the charge of an unlicensed individual subject to conditions and time limitations established by the department, with advice from the nursing home administrator examining board. An unlicensed individual who administers a nursing home as authorized under this subsection is not subject to the penalty provided under s. 456.09.

(b) Each nursing home shall employ a charge nurse. The charge nurse shall either be a licensed practical nurse acting under the supervision of a professional nurse or a physician, or shall be a professional nurse. The department shall, by rule, define the duties of a charge nurse.

(2m) PLAN OF CARE AND ASSESSMENT REQUIRED. No nursing home may admit any patient until a physician has completed a plan of care for the patient and the patient is assessed or the patient waives assessment under s. 46.27 (6) (a). Failure to comply with this subsection is a class "B" violation under sub. (4) (b) 2.

(3) INSPECTION REPORTS. (a) *Inspection.* The department shall make or cause to be made at least one inspection biennially of each nursing home. The department may determine if conditions and practices comply with applicable standards by examining only a portion of the residents, records or physical plant when it conducts an inspection.

(b) *Biennial report.* The department shall make at least one report on each nursing home in the state biennially. All conditions and practices not in compliance with applicable standards within the last 2 years shall be specifically stated. If a violation is corrected, is contested or is subject to an approved plan of correction, the same shall be specified in the biennial report. The department shall send a copy of the report to the nursing home and shall provide a copy to any person on request. The department may charge a reasonable fee to cover copying costs.

(c) *Posting of notice.* The nursing home administrator shall retain a copy of the most recent biennial report prepared by the department under par. (b) and shall post in a place readily visible to residents and visitors, such as the lobby or reception area of the facility, a notice stating that a copy of the report is available for public inspection on request to the administrator and that a copy will be provided by the department upon request for a minimal fee.

(4) NOTICE OF VIOLATION; CORRECTION.

(a) *Notice of violation; exceptions.* 1. If upon inspection or investigation the department determines that a nursing home is in violation of this subchapter or the rules promulgated thereunder, 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.

2. The department is not required to serve a notice of violation if each of the following conditions exists:

a. The nursing home brings the violation to the department's attention.

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.

3. The department is not required to serve a notice of a class "C" violation if it finds that the nursing home is in substantial compliance with the specific rule violated.

(b) *Classification of violations.* 1. A class "A" violation is a violation of this subchapter or of the rules promulgated thereunder which creates a condition or occurrence relating to the operation and maintenance of a nursing home presenting a substantial probability that death or serious mental or physical harm to a resident will result therefrom.

2. A class "B" violation is a violation of this subchapter or of the rules promulgated thereunder which creates a condition or occurrence relating to the operation and maintenance of a nursing home directly threatening to the health, safety or welfare of a resident.

3. A class "C" violation is a violation of this subchapter or of the rules promulgated thereunder which creates a condition or occurrence relating to the operation and maintenance of a nursing home which does not directly threaten the health, safety or welfare of a resident.

4. Each day of violation constitutes a separate violation. Except as provided in sub. (5) (a) 4, the department shall have the burden of showing that a violation existed on each day for which a forfeiture is assessed. No forfeiture may be assessed for a condition for which the nursing home has received a variance or waiver of a standard.

(c) *Correction.* 1. The situation, condition or practice constituting a class "A" violation 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 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.

2. At the time of issuance of a notice of a class "B" or "C" violation, the department shall request a plan of correction which is subject to the department's approval. The nursing home shall have 15 days after receipt of notice of violation in which to prepare and submit a plan of correction but the department may extend this period up to 30 days where correction involves substantial capital improvement. The plan shall include a fixed time period within which violations are to be corrected. If the nursing home plan of correction is substantially in compliance, it may be modified upon agreement between the department and the nursing home to achieve full compliance. If it rejects a plan of correction, the department shall send notice of the rejection and the reason for the rejection to the nursing home and impose a plan of correction. The imposed plan of correction may be modified upon agreement between the department and the nursing home.

3. If the violation has been corrected prior to submission and approval of a plan of correction, the nursing home may submit a report of correction in place of a plan of correction. Such report shall be signed by the administrator under oath.

4. Upon a licensee's petition, the department shall determine whether to grant a licensee's request for an extended correction time. Such petition must be served on the department prior to expiration of the correction time originally approved. The burden of proof is on the petitioner to show good cause for not being able to comply with the original correction time approved.

(e) *Hearings.* 1. If a nursing home desires to contest any department action under this subsection, including rejection and imposition of a plan of correction, it shall send a written request for a hearing under s. 227.07 to the division of nursing home appeals created under s. 15.103 (1) within 10 days of receipt of notice of the contested action. 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 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. 227.07. Issues litigated at the hearing may not be relitigated at subsequent hearings under this paragraph arising out of the same violation.

2. The division shall notify the nursing home of its decision to reverse, modify or uphold the contested action within 15 days after the close of the hearing.

(5) **FORFEITURES.** (a) *Amounts.* Any operator or owner of a nursing home which is in violation of this subchapter or any rule adopted thereunder may be subject to the forfeitures specified in this section.

1. A class "A" violation may be subject to a forfeiture of not less than \$1,000 and not more than \$5,000 for each violation.

2. A class "B" violation may be subject to a forfeiture of not less than \$100 and not more than \$1,000 for each violation.

3. A class "C" violation may be subject to a forfeiture of not less than \$10 and not more than \$100. No forfeiture may be assessed for a class "C" violation unless the nursing home fails to submit a plan of correction under sub. (4) (c) 2, or the nursing home fails to correct the violation within the time specified in the plan of correction.

4. Notwithstanding subd. 1, 2 and 3, if the violation or group of violations results from inadequate staffing, the amount of the forfeiture shall be no less than the difference between the cost of the staff actually employed and the estimated cost of the staff required. The number of staff required shall be determined by the provider contract, court order or the department, by rule, whichever is greatest. The inadequate staff shall be presumed to exist from the date of the notice of violation.

5. A nursing home which violates a statute or rule and which has received a notice of violation of the same statute or rule on one or more separate prior occasions within the prior 2-year period may be subject to a forfeiture 3 times the amount authorized for the class of violation involved. This provision only applies if a violation directly threatens a resident's health, safety or welfare or violates a resident's rights, or if there is a reasonable probability that repeated violation will directly threaten a resident's health, safety or welfare or violate a resident's rights. A notice of violation found to be unjustified after hearing may not be considered in determining whether to apply this subdivision.

6. If a licensee fails to correct a violation within the time specified in the notice of violation or approved plan of correction, or within the extended correction time granted under sub. (4) (c) 4, or if violation continues after a report of correction, a separate forfeiture may be assessed upon the licensee in an amount not to exceed, for each day of continuing violation, \$5,000 for class "A" violations; \$1,000 for class "B" violations; and \$100 for class "C" violations.

(b) *Factors in assessment of forfeitures.* In determining whether a forfeiture is to be imposed and in fixing the amount of the forfeiture to be imposed, if any, for a violation, the following factors shall be considered:

1. The gravity of the violation, including the probability that death or serious physical or psychological harm to a resident will result or has resulted; the severity of the actual or potential harm; and the extent to which the provisions of the applicable statutes or regulations were violated.

2. "Good faith" exercised by the licensee. Indications of good faith include, but are not limited to, awareness of the applicable statutes and regulation and reasonable diligence in complying with such requirements, prior accomplishments manifesting the licensee's desire to comply with the requirements, efforts to correct and any other mitigating factors in favor of the licensee.

3. Any previous violations committed by the licensee.

4. The financial benefit to the nursing home of committing or continuing the violation.

(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 shall send a notice of assessment to the nursing home. The notice shall specify the amount of the forfeiture assessed, the violation, the statute or rule alleged to have been violated, and shall inform the licensee of the right to hearing under par. (e).

(d) *Forfeiture period.* In the case of a class "B" or "C" violation, no forfeiture may be assessed for the violation from the day following the date of discovery until the date of notification. If the department fails to approve or reject a plan of correction within 15 days after its receipt of a complete plan, no forfeiture may be imposed for the period beginning with the 15th day after receipt and ending when notice of approval or rejection is received by the home. If a plan of correction is approved and carried out, no forfeiture may be assessed during the time period specified in the approved plan of correction, commencing on the day the plan of correction is received by the department.

(dm) *Forfeiture assessment date.* In the case of a class "B" or "C" violation, the department may not assess a forfeiture upon a nursing home until:

1. The home fails to submit a plan of correction under sub. (4) (c) 2;
2. The department has issued an order imposing an approved plan under sub. (4) (c) 2; or
3. The time set for the correction of the violation by the home under sub. (4) (c) 2 has expired.

(e) *Forfeiture appeal hearing.* A nursing home may contest an assessment of forfeiture, by sending a written request for hearing under s. 227.07 to the division of nursing home appeals created under s. 15.103 (1). The administrator may designate a hearing examiner to preside over the case and recommend a decision to the administrator under s. 227.09. The decision of the administrator 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 division shall be the named respondent.

(f) *Forfeitures paid within 10 days.* All forfeitures shall be paid to the department within 10 days of receipt of notice of assessment or, if the forfeiture is contested under par. (e), within

10 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 state treasurer for deposit in the school fund.

(g) *Enforcement by attorney general.* The attorney general may bring an action in the name of the state to collect any forfeiture imposed under this section if the forfeiture has not been paid following the exhaustion of all administrative and judicial reviews. The only issue to be contested in any such action shall be whether the forfeiture has been paid.

(6) **CONDITIONAL LICENSE.** (a) *Power of department.* In addition to the right to assess forfeitures under sub. (5), the department may issue a conditional license to any nursing home if the department finds that either a class "A" or class "B" violation, as defined in sub. (4), continues to exist in such home. The issuance of a conditional license shall revoke any outstanding license held by the nursing home. The nursing home may seek review of a decision to issue a conditional license as provided under s. 50.03 (5).

(b) *Violation correction plan.* Prior to the issuance of a conditional license, the department shall establish a written plan of correction. The plan shall specify the violations which prevent full licensure and shall establish a time schedule for correction of the deficiencies. Retention of the license shall be conditional on meeting the requirements of the plan of correction.

(c) *Notice.* Written notice of the decision to issue a conditional license shall be sent to the facility together with the proposed plan of correction. The notice shall inform the facility of its right to an informal conference prior to issuance of the conditional license under par. (d) and of its right to a full hearing under par. (e).

(d) *Informal conference.* If the facility desires to have an informal conference it shall, within 4 working days of receipt of the notice under par. (c), send a written request for an informal conference to the department. The department shall, within 4 working days from the receipt of the request, hold an informal conference in the county in which the facility is located. Following this conference the department may affirm or overrule its previous decision, or modify the terms of the conditional license and plan of correction. The conditional license may be issued after the informal conference, or after the time for requesting an informal conference has expired, prior to any further hearing.

(e) *Hearing.* If after the informal conference the licensee desires to contest the basis for issuance of a conditional license, or the terms of

the license or plan of correction, the licensee shall send a written request for hearing to the department within 4 working days after issuance of the conditional license. The department shall hold the hearing within 30 days of receipt of such notice and shall immediately notify the licensee of the date and location of the hearing.

(f) *Term; inspection.* A conditional license shall be issued for a period specified by the department, but in no event for more than one year. The department shall periodically inspect any nursing home operating under a conditional license. If the department finds substantial failure by the nursing home to follow the plan of correction, the conditional license may be revoked as provided under s. 50.03 (5). The licensee is entitled to a hearing on the revocation under s. 50.03 (5), but the department may rely on facts found in a hearing under par. (e) as grounds for revocation.

(g) *Expiration.* If the department determines that a conditional license shall expire without renewal or replacement of the conditional license by a regular license, the department shall so notify the licensee at least 30 days prior to expiration of the license. The notice shall comply with notice requirements under s. 50.03 (5). The licensee is entitled to a hearing under s. 50.03 (5) prior to expiration of the license.

History: 1977 c. 170 ss. 6, 29; 1977 c. 272; 1979 c. 34; 1981 c. 20, 121, 317, 391.

State nursing home is not subject to forfeiture provisions of ch. 50. Wis. Vet. Home v. Div. Nurs. Forfeit. Appeals, 104 W (2d) 106, 310 NW (2d) 646 (Ct. App. 1981).

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 specified time period up to 180 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. The court may extend the period of receivership in 90-day increments on request.

(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 by the date receivership ends under sub. (4), 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 employes to carry out the powers and duties created under this section. Competitive bidding requirements under s. 16.75 do not apply to contracts for services or materials let by the receiver.

(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 employes of the facility, subject to any contract rights they may have. The receiver shall pay employes at the same rate of compensation, including benefits, that the employes would have received from the operator, except that the receiver shall compensate employes only for time actually worked during the period of receivership and shall not be responsible for reimbursement for vacations or periods of sick leave. The receiver may grant salary increases and fringe benefits to employes of a nursing home, in accord with the nursing home reimbursement formula under s. 49.45 (6m). Receivership does not relieve the operator of any obligation to employes 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.

(1) 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 funds created under s. 20.435 (1) (dm) and (2) (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 employe 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. 779.07 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. No action on a lien created under this subsection

may be brought more than 2 years after the date of filing. 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. 779.07. If the lien is on personal property, the lien shall be filed with the secretary of state. The secretary of state shall place the lien on personal property in the same file as financing statements are filed under ss. 409.401 and 409.402. 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. To the extent applicable, ch. 846 controls the foreclosure of liens under this subsection that attach to real property.

(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.

History: 1977 c. 112; 1979 c. 32 s. 92 (9); 1979 c. 34; 1981 c. 121.

50.053 Informal conference. The department may hold an informal conference with the parties to any contested action under this subchapter to resolve any or all issues prior to formal hearing. Unless any party to the contested case objects, the department may delay the commencement of the formal hearing in order to hold the informal conference.

History: 1977 c. 170.

50.07 Prohibited acts. (1) No person may:

(a) Intentionally fail to correct or interfere with the correction of a class "A" or class "B" violation within the time specified on the notice of violation or approved plan of correction under s. 50.04 as the maximum period given for correction, unless an extension is granted and the

corrections are made before expiration of extension.

(b) Intentionally prevent, interfere with, or attempt to impede in any way the work of any duly authorized representative of the department in the investigation and enforcement of any provision of this subchapter.

(c) Intentionally prevent or attempt to prevent any such representative from examining any relevant books or records in the conduct of official duties under this subchapter.

(d) Intentionally prevent or interfere with any such representative in the preserving of evidence of any violation of any of the provisions of this subchapter or the rules promulgated under this subchapter.

(e) Intentionally retaliate or discriminate against any resident or employe for contacting or providing information to any state official, or for initiating, participating in, or testifying in an action for any remedy authorized under this subchapter.

(f) Intentionally destroy, change or otherwise modify an inspector's original report.

(2) Violators of this section may be imprisoned up to 6 months or fined not more than \$1,000 or both for each violation.

History: 1977 c. 170.

50.09 Rights of residents in certain facilities.

(1) RESIDENTS' RIGHTS. Every resident in a nursing home or community-based residential facility shall, except as provided in sub. (5), have the right to:

(a) Private and unrestricted communications with the resident's family, physician, attorney and any other person, unless medically contraindicated as documented by the resident's physician in the resident's medical record, except that communications with public officials or with the resident's attorney shall not be restricted in any event. The right to private and unrestricted communications shall include, but is not limited to, the right to:

1. Receive, send and mail sealed, unopened correspondence, and no resident's incoming or outgoing correspondence shall be opened, delayed, held or censored.

2. Reasonable access to a telephone for private communications.

3. Opportunity for private visits.

(b) Present grievances on the resident's own behalf or others to the facility's staff or administrator, to public officials or to any other person without justifiable fear of reprisal, and to join with other residents or individuals within or outside of the facility to work for improvements in resident care.

(c) Manage the resident's own financial affairs, including any personal allowances under

federal or state programs, unless the resident delegates, in writing, such responsibility to the facility and the facility accepts the responsibility or unless the resident delegates to someone else of the resident's choosing and that person accepts the responsibility. The resident shall receive, upon written request by the resident or guardian, a written monthly account of any financial transactions made by the facility under such a delegation of responsibility.

(d) Be fully informed, in writing, prior to or at the time of admission of all services included in the per diem rate, other services available, the charges for such services, and be informed, in writing, during the resident's stay of any changes in services available or in charges for services.

(e) Be treated with courtesy, respect and full recognition of the resident's dignity and individuality, by all employes of the facility and licensed, certified or registered providers of health care and pharmacists with whom the resident comes in contact.

(f) Physical and emotional privacy in treatment, living arrangements and in caring for personal needs, including, but not limited to:

1. Privacy for visits by spouse. If both spouses are residents of the same facility, they shall be permitted to share a room unless medically contraindicated as documented by the resident's physician in the resident's medical record.

2. Privacy concerning health care. Case discussion, consultation, examination and treatment are confidential and shall be conducted discreetly. Persons not directly involved in the resident's care shall require the resident's permission to authorize their presence.

3. Confidentiality of health and personal records, and the right to approve or refuse their release to any individual outside the facility, except in the case of the resident's transfer to another facility or as required by law or 3rd-party payment contracts and except as provided in ss. 146.81 to 146.83.

(g) Not to be required to perform services for the facility that are not included for therapeutic purposes in the resident's plan of care.

(h) Meet with, and participate in activities of social, religious and community groups at the resident's discretion, unless medically contraindicated as documented by the resident's physician in the resident's medical record.

(i) Retain and use personal clothing and effects and to retain, as space permits, other personal possessions in a reasonably secure manner.

(j) Be transferred or discharged, and be given reasonable advance notice of any planned transfer or discharge, and an explanation of the need for and alternatives to such transfer or dis-

charge. The facility to which the resident is to be transferred must have accepted the resident for transfer, except in a medical emergency.

(k) Be free from mental and physical abuse, and be free from chemical and physical restraints except as authorized in writing by a physician for a specified and limited period of time and documented in the resident's medical record. Physical restraints may be used in an emergency when necessary to protect the resident from injury to himself or herself or others or to property. However, authorization for continuing use of the physical restraints shall be secured from a physician within 12 hours. Any use of physical restraints shall be noted in the resident's medical records. "Physical restraints" includes, but is not limited to, any article, device or garment which interferes with the free movement of the resident and which the resident is unable to remove easily, and confinement in a locked room.

(l) Receive adequate and appropriate care within the capacity of the facility.

(m) Use the licensed, certified or registered provider of health care and pharmacist of the resident's choice.

(n) Be fully informed of the resident's treatment and care and participate in the planning of the resident's treatment and care.

(2) The department, in establishing standards for nursing homes and community-based residential facilities may establish, by rule, rights in addition to those specified in sub. (1) for residents in such facilities.

(3) If the resident is adjudged to be incompetent under ch. 51 or 880 and not restored to legal capacity, the rights and responsibilities established under this section which the resident is not competent to exercise shall devolve upon the resident's guardian.

(4) Each facility shall make available a copy of the rights and responsibilities established under this section and the facility's rules to each resident and to each resident's guardian at or prior to the time of admission to the facility, to each person who is a resident of the facility on December 12, 1975 and to each member of the facility's staff. The rights, responsibilities and rules shall be posted in a prominent place in each facility. Each facility shall prepare a written plan and provide appropriate staff training to implement each resident's rights established under this section.

(5) Rights established under this section shall not, except as determined by the department, be applicable to residents in such facilities, if the resident is in the legal custody of the department and is a correctional client in such facility.

(6) (a) Each facility shall establish a system of reviewing complaints and allegations of violations of residents' rights established under this section. The facility shall designate a specific individual who, for the purposes of effectuating this section, shall report to the administrator.

(b) Allegations of violations of such rights by persons licensed, certified or registered under chs. 441, 446 to 450, 455 and 456 shall be promptly reported by the facility to the appropriate licensing or examining board and to the person against whom the allegation has been made. Any employe of the facility and any person licensed, certified or registered under chs. 441, 446 to 450, 455 and 456 may also report such allegations to the board. Such board may make further investigation and take such disciplinary action, within the board's statutory authority, as the case requires.

(c) No person who files a report as required in par. (b) or who participates, in good faith, in the review system established under par. (a) shall be liable for civil damages for such acts.

(d) The facility shall attach a statement, which summarizes complaints or allegations of violations of rights established under this section, to an application for a new license or a renewal of its license. Such statement shall contain the date of the complaint or allegation, the name of the persons involved, the disposition of the matter and the date of disposition. The department shall consider such statement in reviewing the application.

History: 1975 c. 119, 199; 1977 c. 170 s. 33; 1979 c. 175, 221.

50.10 Private cause of action. (1) Any person residing in a nursing home has an independent cause of action to correct conditions in the nursing home or acts or omissions by the nursing home or by the department, that:

(a) The person alleges violate this subchapter or rules promulgated under this subchapter; and

(b) The person alleges are foreseeably related to impairing the person's health, safety, personal care, rights or welfare.

(2) Actions under this section are for mandamus against the department or for injunctive relief against either the nursing home or the department.

History: 1981 c. 121, 391.

50.11 Cumulative remedies. The remedies provided by this subchapter are cumulative and shall not be construed as restricting any remedy, provisional or otherwise, provided by law for the benefit of any party, and no judgment under this subchapter shall preclude any party from ob-

taining additional relief based upon the same facts.

History: 1977 c. 170.

50.12 Waiver of federal requirements. The department shall petition the secretary of the U.S. department of health and human services for a waiver of the requirement that it conduct annual medical assistance surveys of nursing homes, and for a waiver of the requirement that it conduct annual independent medical reviews and independent professional reviews, to allow the department under 42 USC 1396a (a) (26) and (31) to conduct biennial surveys and reviews.

History: 1981 c. 121.

SUBCHAPTER II

HOSPITALS

50.20 Name of act. Sections 50.20 to 50.31 may be cited as the "Wisconsin Hospital Survey and Construction Act".

History: 1975 c. 413 ss. 4, 18.

50.205 Hospital construction and regulation to conform to certificate of need requirements. Rules and standards adopted under ss. 50.20 to 50.31 shall conform to the certificate of need requirements established under ch. 150.

History: 1977 c. 29.

50.21 Definitions. As used in ss. 50.20 to 50.31:

(1) "The federal act" means Title VI of the public health service act as now and hereafter amended.

(2) "The surgeon general" means the surgeon general of the public health service of the United States.

(3) "Hospital" includes public health centers, medical facilities and general, tuberculosis, mental, chronic disease and other types of hospitals and related facilities, such as laboratories, outpatient departments, nurses' home and training facilities, but not in limitation thereof by enumeration, and central service facilities operated in connection with hospitals, but does not include any hospital furnishing primarily domiciliary care.

(4) "Public health center" means a publicly owned facility for the provision of public health services, including related facilities such as laboratories, clinics, and administrative offices operated in connection with public health centers.

(5) "Nonprofit hospital" means any hospital owned and operated by a corporation or association, no part of the net earnings of which inures,

or may lawfully inure, to the benefit of any private shareholder or individual.

(6) "Medical facilities" means diagnostic or diagnostic and treatment centers, rehabilitation facilities and nursing homes as defined in the federal act, and such other facilities for which federal aid may be authorized under the federal act.

History: 1975 c. 413 ss. 4, 18.

50.22 General powers and duties. In carrying out the purposes of ss. 50.20 to 50.31, the department is authorized and directed:

(1) To require such reports, make such inspections and investigations and prescribe and enforce such rules as it deems necessary;

(2) To provide such methods of administration and take such other action as may be necessary to comply with the requirements of the federal act and the regulations thereunder;

(3) To procure in its discretion the temporary or intermittent services of experts or consultants or organizations thereof, by contract, when such services are to be performed on a part-time or fee-for-service basis and do not involve the performance of administrative duties;

(4) To the extent that it considers desirable to effectuate the purpose of ss. 50.20 to 50.31, to enter into agreements for the utilization of facilities and services of agencies and institutions, public or private;

(5) To accept on behalf of the state and to deposit with the state treasurer any grant, gift or contribution made to assist in meeting the cost of carrying out the purposes of ss. 50.20 to 50.31, and to expend the same for such purposes;

(6) To make an annual report to the governor on activities and expenditures pursuant to ss. 50.20 to 50.31, including recommendations for such additional legislation as the department considers appropriate to furnish adequate hospital, clinic and similar facilities to the people of this state.

History: 1975 c. 39 ss. 626, 732 (3) and (3m); 1975 Ex. Order No. 24; 1975 c. 413 ss. 4, 18.

50.23 Health policy. The department shall constitute the sole agency of the state for the purpose of:

(1) Making an inventory of existing hospitals, surveying the need for construction specified in ss. 50.24 and 50.25; and

(2) Developing and administering a state plan for the construction of public and other nonprofit hospitals specified in ss. 50.26 to 50.31.

History: 1975 c. 39; 1975 c. 413 ss. 4, 18; 1975 c. 422 s. 163; 1977 c. 29.

50.24 Survey and planning activities. The department is authorized and directed to make an inventory of existing hospitals, including public, nonprofit and proprietary hospitals, to survey the need for construction of hospitals, and on the basis of such inventory and survey, to develop a program for the construction of such public and other nonprofit hospitals as will, in conjunction with the existing facilities, afford the necessary physical facilities for furnishing adequate hospital, clinic and similar services to all the people of the state. The department is authorized to make application to the surgeon general for federal funds to assist in carrying out the survey and planning activities.

History: 1975 c. 39 s. 732 (3) and (3m); 1975 Ex. Order No. 24; 1975 c. 413 s. 4.

50.25 State hospital construction plan.

The department shall prepare and submit to the surgeon general a state plan which shall include the hospital construction program developed under s. 50.24 and which shall provide for the establishment, administration and operation of hospital construction activities in accordance with the requirements of the federal act and regulations thereunder, and shall make the plan or a copy thereof available upon request to all interested persons or organizations. The department shall review the hospital construction program and submit to the surgeon general any modifications thereof which it finds necessary and not inconsistent with the requirements of the federal act.

History: 1975 c. 39 s. 732 (3) and (3m); 1975 Ex. Order No. 24; 1975 c. 413 ss. 4, 18.

50.26 Construction program. The construction program shall provide, in accordance with regulations prescribed under the federal act, for adequate hospital facilities for the people residing in this state and in so far as possible for their distribution throughout the state in such manner as to make all types of hospital service reasonably accessible to all persons in the state.

History: 1975 c. 413 s. 4.

50.27 Minimum standards for hospital maintenance and operation. The department shall by regulation prescribe minimum standards for the maintenance and operation of hospitals which receive federal aid for construction under the state plan.

History: 1975 c. 39 s. 732 (3) and (3m); 1975 Ex. Order No. 24; 1975 c. 413 s. 4.

50.28 Priority of projects. The plan shall set forth the relative need for the several projects included in the construction program determined in accordance with regulations prescribed

pursuant to the federal act, and provide for the construction, insofar as financial resources available therefor and for maintenance and operations make possible, in the order of such relative need.

History: 1975 c. 413 s. 4.

50.29 Construction projects; applications. Applications for hospital construction projects for which federal funds are requested may be submitted to the department by the state or any political subdivision thereof, or by any public or nonprofit agency authorized to construct and operate a hospital. Each application for a construction project shall conform to federal and state requirements.

History: 1975 c. 39 s. 732 (3) and (3m); 1975 Ex. Order No. 24; 1975 c. 413 s. 4.

50.30 Consideration and forwarding of applications. The department shall afford to every applicant for a construction project an opportunity for a fair hearing. If the department, after affording reasonable opportunity for development and presentation of applications in the order of relative need, finds that a project application complies with s. 50.29 and is otherwise in conformity with the state plan, it shall approve such application and shall recommend and forward it to the surgeon general.

History: 1975 c. 39 s. 732 (3) and (3m); 1975 Ex. Order No. 24; 1975 c. 413 ss. 4, 18.

50.31 Inspection of projects. From time to time the department shall inspect each construction project approved by the surgeon general and, if the inspection so warrants, it shall certify to the surgeon general that work has been performed upon the project, or purchases have been made, in accordance with the approved plans and specifications, and that payment of an installment of federal funds is due to the applicant.

History: 1975 c. 39 s. 732 (3) and (3m); 1975 Ex. Order No. 24; 1975 c. 413 s. 4.

50.32 Hospital regulation and approval act. Sections 50.32 to 50.39 shall constitute the "Hospital Regulation and Approval Act".

History: 1975 c. 413 ss. 4, 18.

50.33 Definitions. Whenever used in ss. 50.32 to 50.39:

(1) (a) "Hospital" means any building, structure, institution or place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment of and medical or surgical care for 3 or more nonrelated individuals hereinafter designated patients, suffering from illness, disease, injury or disability, whether physical or mental, and including pregnancy and regularly making available at least

clinical laboratory services, and diagnostic X-ray services and treatment facilities for surgery, or obstetrical care, or other definitive medical treatment.

(b) "Hospital" may include, but not in limitation thereof by enumeration, related facilities such as outpatient facilities, nurses', interns' and residents' quarters, training facilities and central service facilities operated in connection with hospitals.

(c) "Hospital" includes "special hospitals" or those hospital facilities providing primarily one type of medical or surgical care such as, but not in limitation thereof, orthopedic hospitals, children's hospitals, mental hospitals, psychiatric hospitals or maternity hospitals.

(3) "Governmental unit" means the state, any county, town, city, village, or other political subdivision or any combination thereof, department, division, board or other agency of any of the foregoing.

History: 1975 c. 413 ss. 4, 18; 1977 c. 83 s. 26 (4); 1979 c. 175.

50.34 Purpose. The purpose of ss. 50.32 to 50.39 is to provide for the development, establishment and enforcement of rules and standards for the construction, maintenance and operation of hospitals which, in the light of advancing knowledge, will promote safe and adequate care and treatment of patients in such hospitals.

History: 1975 c. 413 ss. 4, 18.

50.35 Application and approval. After January 1, 1966, application for approval to maintain a hospital shall be made to the department on forms provided by it. On receipt of an application, the department shall issue a certificate of approval if the applicant and hospital facilities meet the requirements established by the department. This approval shall be in effect until, for just cause and in the manner herein prescribed, it is suspended or revoked. The certificate of approval shall be issued only for the premises and persons or governmental unit named in the application and shall not be transferable or assignable. The department shall not withhold, suspend or revoke approval unless for a substantial failure to comply with ss. 50.32 to 50.39 or the rules and standards adopted by the department after giving a reasonable notice, a fair hearing and a reasonable opportunity to comply.

History: 1975 c. 413 ss. 4, 18.

50.36 Rules and standards. (1) The department shall promulgate, adopt, amend and enforce such rules and standards for hospitals for the construction, maintenance and operation

of the hospitals deemed necessary to provide safe and adequate care and treatment of the patients in the hospitals and to protect the health and safety of the patients and employes; and nothing contained herein shall pertain to a person licensed to practice medicine and surgery or dentistry. The building codes and construction standards of the department of industry, labor and human relations shall apply to all hospitals and the department may adopt additional construction codes and standards for hospitals, provided they are not lower than the requirements of the department of industry, labor and human relations. Except for the construction codes and standards of the department of industry, labor and human relations and except as provided in s. 50.39 (3), the department shall be the sole agency to adopt and enforce rules and standards pertaining to hospitals.

(2) The department may conduct plan reviews of all capital construction and remodeling projects of hospitals. The fees for each review shall be based on the architect's estimate of the total cost of the remodeling or construction project according to the following schedule:

(a) For an estimated dollar value of less than \$2,500, a fee of \$25.

(b) For an estimated dollar value of at least \$2,500 but less than \$25,000, a fee of \$200.

(c) For an estimated dollar value of at least \$25,000 but less than \$100,000, a fee of \$250.

(d) For an estimated dollar value of at least \$100,000 but less than \$500,000, a fee of \$500.

(e) For an estimated dollar value of at least \$500,000 but less than \$1,000,000, a fee of \$750.

(f) For an estimated dollar value of at least \$1,000,000 but less than \$5,000,000, a fee of \$1,000.

(g) For an estimated dollar value of \$5,000,000 or more, a fee of \$2,500.

(3) Any person granted a license to practice medicine and surgery under ss. 448.05 and 448.06 shall be afforded an equal opportunity to obtain hospital staff privileges. No such person may be denied hospital staff privileges solely for the reason that the person is an osteopathic physician and surgeon. Each individual hospital shall retain the right to determine whether the applicant's training, experience and demonstrated competence is sufficient to justify the granting of medical staff privileges. If, as a result of peer investigation or written notice thereof, a hospital staff member who is licensed by the medical examining board loses his or her hospital staff privileges for 30 days or more, or has his or her hospital staff privileges reduced for 30 days or more, or resigns from the hospital staff for 30 days or more, the hospital shall so notify the medical examining board within 30

days after the loss, reduction or resignation takes effect. Temporary suspension due to incomplete records need not be reported.

(4) The department shall make or cause to be made such inspections and investigation, as are reasonably deemed necessary to obtain compliance with the rules and standards. It shall afford an opportunity for representatives of the hospitals to consult with members of the staff of the department concerning compliance and non-compliance with rules and standards.

History: 1971 c. 211; 1975 c. 383 s. 4; 1975 c. 413 ss. 4, 18; 1975 c. 421; 1977 c. 29; 1979 c. 34; 1981 c. 135.

Hospital owes duty to its patients to exercise reasonable care in selection of medical staff and in granting special privileges. *Johnson v. Misericordia Community Hosp.* 99 W (2d) 708, 301 NW (2d) 156 (1981).

50.39 Exemptions and enforcement. (1) Sections 50.32 to 50.39 and the rules adopted pertaining thereto shall apply to all facilities coming under the definition of a "hospital" which are not specifically exempt by ss. 50.32 to 50.39.

(2) The use of the title "hospital" to represent or identify any facility which does not meet the definition of a "hospital" as provided herein or is not subject to approval under ss. 50.32 to 50.39 is prohibited, except that institutions governed by ss. 51.08, 51.09 and 149.01 are exempt.

(3) Facilities now governed by ss. 45.365, 48.62, 49.14, 49.171, 50.02, 51.08, 51.09, 58.06, 149.01, 149.02 and 149.06, correctional institutions governed by the department under s. 46.03 (1) and the offices and clinics of persons licensed to treat the sick under chs. 446, 447 and 448 are exempt from ss. 50.32 to 50.39. Nothing in ss. 50.32 to 50.39 shall abridge the rights of the medical examining board, dentistry examining board, pharmacy examining board, chiropractic examining board and board of nursing in carrying out their statutory duties and responsibilities.

(4) All orders issued by the department pursuant to ss. 50.32 to 50.39 shall be enforced by the attorney general. The circuit court of Dane county shall have jurisdiction to enforce such orders by injunctive and other appropriate relief.

History: 1971 c. 164; 1975 c. 39; 1975 c. 413 ss. 4, 18; 1975 c. 430 s. 80; 1977 c. 203; 1979 c. 89, 221, 337, 355.

SUBCHAPTER III

HOTELS, RESTAURANTS AND VENDING OF FOODS AND BEVERAGES

50.50 Definitions. As used in this chapter:

(1) "Hotel" means all places wherein sleeping accommodations are offered for pay to transients, in 5 or more rooms, and all places used in connection therewith. "Hotelkeeper",

"motelkeeper" and "innkeeper" are synonymous and "inn", "motel" and "hotel" are synonymous.

(a) The department may classify any hotel as herein defined as a "motel" on written request of the hotel operator on forms furnished by the department, provided that the operator of the hotel furnishes on-premise parking facilities for the motor vehicles of the hotel guests as a part of the room charge, without extra cost.

(2) "Tourist rooming house" means and includes all lodging places and tourist cabins and cottages, other than hotels, wherein sleeping accommodations are offered for pay to tourists or transients. It does not include private boarding or rooming houses, ordinarily conducted as such, not accommodating tourists or transients.

(3) "Restaurant" means any building, room or place wherein meals or lunches are prepared or served or sold to transients or the general public, and all places used in connection therewith. "Meals or lunches" shall not include soft drinks, ice cream, milk, milk drinks, ices and confections. The serving in taverns of free lunches consisting of popcorn, cheese, crackers, pretzels, cold sausage, cured fish or bread and butter shall not constitute such taverns to be restaurants. The term "restaurant" does not apply to churches, religious, fraternal, youths' or patriotic organizations, service clubs and civic organizations which occasionally prepare or serve or sell meals or lunches to transients or the general public nor shall it include any public or private school lunchroom or private individual selling foods from a movable or temporary stand at public farm sales.

(4) "Vending machine" as used in this chapter means any self-service device offered for public use which, upon insertion of a coin or token, or by other means, dispenses unit servings of food or beverage either in bulk or in package, without the necessity of replenishing the device between each vending operation. The term "vending machine" shall not include devices which dispense only bottled or prepackaged or canned soft drinks or one cent vending devices or vending machines dispensing only candy, gum, nuts, nut meats, cookies or crackers, nor shall it apply to prepackaged Grade A pasteurized milk or milk products. Bulk milk dispensers may be operated in a restaurant licensed by the department without an additional vending machine or vending machine operator permit being required. The serving of food or beverage through a licensed vending machine shall not constitute the operation of a restaurant.

(5) "Vending machine location" means the room, enclosure, space or area where one or

more vending machines are installed and operated.

(6) "Vending machine operator" means the person maintaining a place of business in the state and responsible for the operation of one or more vending machines.

(7) "Vending machine commissary" means any building, room or place in the state at which the food, beverage, ingredients, containers, transport equipment or supplies for vending machines are kept, handled, prepared or stored by a vending machine operator. A licensed restaurant may be operated as a vending machine commissary without a vending machine commissary permit. A vending machine commissary does not mean any place at which the operator is licensed to manufacture, distribute or sell food products under ch. 97.

(8) "Public health and safety" means the highest degree of protection against infection, contagion or disease and freedom from the danger of fire or accident that can be reasonably maintained in the operation of a hotel, restaurant, tourist rooming house, vending machine or vending machine commissary.

(9) "Department" means the department of health and social services.

(10) "Establishment" means a hotel, tourist rooming house, restaurant or vending machine commissary.

History: 1973 c. 190; 1975 c. 189; 1975 c. 413 s. 13.

A city health department may inspect and license public school lunchrooms pursuant to a specific ordinance even though (3) excludes public school lunchrooms from state regulation as restaurants. The authority in the department of public instruction under 115.33 to ensure a sanitary facility is not precluded by (3). 65 Atty. Gen. 54.

50.51 Permit. (1) No person shall conduct, maintain, manage or operate a hotel, restaurant, tourist rooming house, vending machine commissary or vending machine as defined in s. 50.50 who has not been issued an annual permit by the department.

(2) A separate permit shall be required for each type of establishment as defined in s. 50.50.

(3) A separate permit shall be required for each establishment excepting where more than one of the same type is operated on the same premises and under the same management a single permit for each type shall suffice.

(4) Permits shall not be transferable from one premise to another or from one person to another, except that a permit for "temporary restaurant" as defined by the department may be transferred to a premise other than that for which it was issued, provided that approval of the new premise is secured from a department representative prior to operation of the temporary restaurant at the new premise.

(5) All permits shall expire on June 30.

(6) Separations caused by a public highway shall not be considered in determining whether tracts of land constitute a single premise. A single premise includes tracts of an owner which merely corner on each other.

History: 1975 c. 413 ss. 13, 18.

50.52 Vending machine commissary outside the state. Foods, beverages and ingredients from commissaries outside the state may be sold within the state if such commissaries conform to the provisions of the food establishment sanitation rules of this state or to substantially equivalent provisions. To determine the extent of compliance with such provisions, the department may accept reports from the responsible authority in the jurisdiction where the commissaries are located.

History: 1975 c. 413 s. 13.

50.53 Fees. (1) The annual fee for a hotel shall be \$35.50 for those having 30 or less sleeping rooms, \$71.50 for those with more than 30 and less than 100 sleeping rooms and \$100 for those with 100 or more sleeping rooms.

(2) The annual fee for a tourist rooming house shall be \$18.

(3) (a) The annual fee for a restaurant shall be \$30 if anticipated gross annual food sales are less than \$5,000, and shall be \$80 if anticipated gross annual food sales are \$5,000 or more.

(b) The annual fee for a temporary restaurant, as defined by the department by rule, is \$36.

(4) The annual fee for a vending machine operator is \$15. The annual fee for a vending machine commissary is \$71.50. The annual fee for each vending machine is \$5.

(5) An additional penalty fee of \$20 shall be required for each permit whenever the annual fee for renewal is not paid prior to expiration of the permit.

(6) In the administration and enforcement of this chapter, the department may use cities or counties as its agents in making inspections and investigations. When the designation is made and the services are furnished, the department shall reimburse the city or county furnishing the service at the rate of 85% of the net license fee per license per year issued in the municipality.

(7) (a) The department shall not grant a permit to a person intending to operate a new hotel, tourist rooming house or restaurant or to a person intending to be the new operator of an existing hotel, tourist rooming house or restaurant without a preinspection.

(b) The preinspection fee for a restaurant, vending machine commissary or a hotel shall be \$45.25.

(c) The preinspection fee for a tourist rooming house shall be \$18.

(d) This subsection shall not apply to a "temporary restaurant" as defined by rule of the department.

(e) Agents designated by the department under sub. (6) shall make preinspections as required under this subsection and shall be reimbursed for those services at the rate of 85% of the preinspection fee designated in this subsection.

(8) A fee of \$5 is required to issue any duplicate permit, except that the fee for a duplicate vending machine operator's permit or vending machine permit is \$1.

History: 1973 c. 333; 1975 c. 224; 1975 c. 413 s. 13; 1977 c. 222; 1979 c. 34; 1981 c. 20.

50.54 Application. (1) An applicant for a hotel, tourist rooming house, restaurant, vending machine commissary, vending machine operator or vending machine permit shall complete an application furnished by the department and provide such information as it requires.

(2) Upon receipt of an application for a vending machine operator permit, the department may cause an investigation to be made of the applicant's commissary, servicing and transport facilities, if any, and representative machines and machine locations. The operator shall maintain at his place of business within this state a list of all vending machines operated by him and their location. This information shall be kept current and shall be made available to the department upon request. The operator shall notify the department of any change in operations involving new types of vending machines or conversion of existing machines to dispense products other than those for which such machine was originally designed and constructed.

History: 1975 c. 413 s. 13.

50.55 Rules of health and safety. Every hotel, tourist rooming house, restaurant, vending machine commissary and vending machine shall be operated and maintained with a strict regard to the public health and safety and in conformity with this chapter and the rules and orders of the department.

History: 1975 c. 413 s. 13.

50.56 Hotel safety. (1) Every hotel with sleeping accommodations with more than 12 bedrooms above the first story shall, between the hours of 12 midnight and 6 a.m. provide a system of watchman patrol, or of mechanical and electrical devices, or both, adequate, according to standards established by the department of industry, labor and human relations, to

warn all guests and employes in time to permit their evacuation in case of fire.

(2) Every hotel shall offer to every guest, at the time of registration for accommodation and of making a reservation for accommodation, an opportunity to identify himself or herself as a person needing assistance in an emergency because of a physical condition and shall keep a record at the registration desk of where each person so identified is lodged. No hotel may lodge any person so identified in areas other than those designated by the local fire department as safe for persons so identified, based on the capabilities of apparatus normally available to the fire company or companies assigned the first alarm. A person who does not identify himself or herself as permitted in this subsection may be lodged in the same manner as any other guest. Violation of this subsection shall be punished by a forfeiture of not more than \$50 for the first violation and not more than \$100 for each subsequent violation.

History: 1975 c. 112, 199; 1975 c. 413 s. 13.

50.57 Powers of department. The department shall appoint assistants with such qualifications as it deems necessary and fix their compensation, administer and enforce the rules and the laws relating to the public health and safety in hotels, tourist rooming houses, restaurants, vending machine commissaries, vending machines and vending machine locations, ascertain and prescribe what alterations, improvements or other means or methods are necessary to protect the public health and safety therein, prescribe rules and fix standards, including rules covering the general sanitation and cleanliness of the vending machine commissary and vending machines and their location and servicing, and enforce such rules and laws.

History: 1975 c. 413 s. 13.

50.58 Causing fires by tobacco smoking.

(1) Any person who, by smoking, or attempting to light or to smoke cigarettes, cigars, pipes or tobacco, in any manner in which lighters or matches are employed, shall, in a careless, reckless or negligent manner, set fire to any bedding, furniture, curtains, drapes, house or any household fittings, or any part of any building specified in sub. (2), so as to endanger life or property in any way or to any extent, shall be fined not less than \$50 nor more than \$250, together with costs, or imprisoned not less than 10 days nor more than 6 months or both.

(2) In each sleeping room of all hotels, rooming houses, lodging houses and other places of public abode, a plainly printed notice shall be

kept posted in a conspicuous place advising tenants of the provisions of this section.

History: 1975 c. 413 s. 13.

50.59 Penalty. Excepting s. 50.84, anyone violating this chapter or any rule or regulation of the department hereunder shall be fined not less than \$25 nor more than \$200; and anyone failing to comply with an order of the department hereunder shall forfeit \$5 for each day of noncompliance after the order is served upon or directed to him, and in case of action under s. 50.71, after lapse of a reasonable time after final determination.

History: 1975 c. 413 ss. 13, 18.

50.60 Authority of department of industry, labor and human relations. Nothing in this chapter shall affect the authority of the department of industry, labor and human relations relative to places of employment, elevators, boilers, fire escapes, fire protection, or the construction of public buildings.

History: 1973 c. 413 s. 13.

50.61 Joint employment. The department and the department of industry, labor and human relations may employ experts, inspectors or other assistants jointly.

History: 1975 c. 413 s. 13.

50.70 Suspension or revocation of permit. The department may refuse or withhold issuance of a permit or may suspend or revoke a permit for violation of any provision of this chapter or any rule, regulation or order of the department.

History: 1975 c. 413 s. 14.

50.71 Court review. Orders of the department shall be subject to review in the manner provided in ch. 227.

History: 1975 c. 413 s. 14.

50.80 Hotelkeeper's liability. (1) A hotelkeeper who complies with sub. (2) is not liable to a guest for loss of money, jewelry, precious metals or stones, personal ornaments or valuable papers which are not offered for safekeeping.

(2) To secure exemption from liability the hotelkeeper must (a) have doors on sleeping rooms equipped with locks or bolts; (b) offer, by notice printed in large plain English type and kept conspicuously posted in each such room, to receive valuable articles for safekeeping, and explain in such notice that the hotel is not liable for loss unless articles are tendered for safekeeping; (c) keep a safe or vault suitable for keeping such articles and receive them for safekeeping

when tendered by a guest, except as provided in sub. (3).

(3) A hotelkeeper is liable for loss of articles accepted for safekeeping up to \$300. He need not receive for safekeeping property over \$300 in value. This subsection may be varied by written agreement between the parties.

History: 1975 c. 413 s. 15.

50.81 Hotelkeeper's liability for baggage; limitation. Every guest and intended guest of any hotel upon delivering to the hotelkeeper or to his servants any baggage or other property for safekeeping (elsewhere than in the room assigned to the guest) shall demand and the hotelkeeper shall give a check or receipt, to evidence the delivery. No hotelkeeper shall be liable for the loss of or injury to the baggage or other property of his guest, unless it was delivered to the hotelkeeper or his servants for safekeeping or unless the loss or injury occurred through the negligence of the hotelkeeper or his servants.

History: 1975 c. 413 s. 15.

50.82 Liability of hotelkeeper for loss of property by fire or theft; owner's risk. A hotelkeeper is not liable for the loss of baggage or other property of his guest by fire (not intentional) produced by the hotelkeeper or his servants. Every hotelkeeper is liable for loss of baggage or other property of his guest caused by theft or gross negligence of the hotelkeeper or his servants. Such liability shall not exceed \$200 for each trunk and its contents, \$75 for each valise and its contents and \$10 for each box, bundle or package and contents, so placed under his care; and \$50 for all other effects including wearing apparel and personal belongings, unless he has agreed in writing with the guest to assume a greater liability. When any person suffers his baggage or property to remain in any hotel, after his status as a guest has ceased, or forwards the same to a hotel before becoming a guest and the same is received into the hotel, the hotelkeeper holds such baggage or property at the risk of the owner.

History: 1975 c. 413 s. 15.

50.83 Persons with communicable disease not to be guest; penalty. No person is entitled to accommodation at a hotel who has a communicable disease. No person who has had any such disease shall be entitled to such accommodation until all danger of spreading contagion therefrom is past. This section does not authorize compulsory removal of or refusal of shelter to any such person who is receiving accommodation at any hotel, if removal would specially endanger his life or health. Any person

who knowingly and wilfully solicits or receives accommodation in violation of this section shall be punished by a fine not exceeding \$100 or by imprisonment not exceeding 6 months.

History: 1975 c. 413 s. 15; 1981 c. 291.

50.84 Hotel rates posted; rate charges; special rates. Every hotelkeeper shall keep posted in a conspicuous place in each sleeping room in his hotel, in type not smaller than 12-point, the rates per day for each occupant. Such rates shall not be changed until notice to that effect has been posted, in a similar manner, for 10 days previous to each change. Any hotelkeeper who fails to have the rates so posted or who charges, collects or receives for the use of any room a sum different from the authorized charge shall be punished by a fine of not less than \$50 nor more than \$100. A hotelkeeper may permit a room to be occupied at the rate of a lower priced room when all of the lower priced rooms are taken and until one of them becomes unoccupied. Special rates may be made for the use of sleeping rooms, either by the week, month or for longer periods or for use by families or other collective groups. The department or its representatives may enforce the posting of rates as provided in this section.

History: 1975 c. 413 s. 15.

50.85 Motel rates. (1) DEFINITIONS. (a) "Outdoor sign" or "outside sign" means any sign visible to passers-by whether the same shall be located within or without buildings.

(b) "Room rates" means the rates at which rooms or other accommodations are rented to occupants.

(c) "Operator" includes a manager or any person in charge of the operation of motels and like establishments. "Operator" or "owner" includes natural persons, firms and corporations.

(2) RENTAL POSTED. It is unlawful for any owner or operator of any establishment held out

as a motel, motor court, tourist cabin or like accommodation to post or maintain posted on any outdoor or outside advertising sign pertaining to such establishment, any rates for accommodations in such establishment unless the sign shall have posted thereon both the minimum and maximum room, or other rental unit rates for accommodations offered for rental. All posted rates and descriptive data required by this section shall be in type and material of the same size and prominence as the aforesaid data. This section shall not be held to be complied with by signs stating the rate per person or bearing the legend "and up".

(3) ACCOMMODATIONS MUST EXIST. It is unlawful for any owner or operator of any motel, motor court, tourist cabin or like accommodation to post or maintain posted on outdoor or outside advertising signs rates for accommodations in any such establishment unless there shall be available in any such establishment, when vacant, accommodations for immediate occupancy to meet the posted rates on such advertising signs.

(4) MISREPRESENTATION. It is unlawful for any owner or operator of any motel, motor court, tourist cabin or like accommodation to post or maintain outdoor or outside advertising signs in connection with any such establishment relating to rates which have thereon any untrue, misleading, false, or fraudulent representations.

(5) CONSTRUCTION. Nothing contained in this section shall be construed so as to require such establishments to have outdoor or outside signs. This section shall be liberally construed so as to prevent untrue, misleading, false, or fraudulent representations relating to rates being placed upon outdoor or outside signs pertaining to such establishments.

(6) PENALTY. Any person violating this section shall be fined not exceeding \$300, or imprisoned not exceeding 6 months, or both.

History: 1975 c. 413 s. 15.