CHAPTER 50

UNIFORM LICENSURE

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Cross-reference: See s. 46.011 for definitions applicable to chs. 46, 50, 51, 54, 55, and 58.

SUBCHAPTER I

CARE AND SERVICE RESIDENTIAL FACILITIES

50.01 Definitions. As used in this subchapter:

(1) "Adult family home" means one of the following and does not include a place that is specified in sub. (1g) (a) to (d), (f), or (g):

(a) A private residence to which all of the following apply:

1. Care and maintenance above the level of room and board but not including nursing care are provided in the private residence by the care provider whose primary domicile is this residence for 3 or 4 adults, or more adults if all of the adults are siblings, each of whom has a developmental disability, as defined in s. 51.01 (5), or, if the residence is licensed as a foster home, care and maintenance are provided to children, the combined total of adults and children so served being no more than 4, or more adults or children if all of the adults or all of the children are siblings.

2. The private residence was licensed under s. 48.62 as a home for the care of the adults specified in subd. 1. at least 12 months before any of the adults attained 18 years of age.

(b) A place where 3 or 4 adults who are not related to the operator reside and receive care, treatment or services that are above the level of room and board and that may include up to 7 hours per week of nursing care per resident.

(1b) "Advanced practice nurse prescriber" means an advanced practice nurse who is certified under s. 441.16 (2) to issue prescription orders.

(1e) "Basic care" includes periodic skilled nursing services or physical, emotional, social or restorative care.

(1g) "Community-based residential facility" means a place where 5 or more adults who are not related to the operator or administrator and who do not require care above intermediate level nursing care reside and receive care, treatment or services that are above the level of room and board but that include no more than 3 hours of nursing care per week per resident. "Community-based residential facility" does not include any of the following:

(a) A convent or facility owned or operated by members of a religious order exclusively for the reception and care or treatment of members of that order.

(b) A facility or private home that provides care, treatment, and services only for victims of domestic abuse, as defined in s. 49.165 (1) (a), and their children.

(c) A shelter facility as defined under s. 16.308 (1) (d).

(d) A place that provides lodging for individuals and in which all of the following conditions are met:

1. Each lodged individual is able to exit the place under emergency conditions without the assistance of another individual.

2. No lodged individual receives from the owner, manager or

operator of the place or the owner's, manager's or operator's agent or employee any of the following:

a. Personal care, supervision or treatment, or management, control or supervision of prescription medications.

b. Care or services other than board, information, referral, advocacy or job guidance; location and coordination of social services by an agency that is not affiliated with the owner, manager or operator, for which arrangements were made for an individual before he or she lodged in the place; or, in the case of an emergency, arrangement for the provision of health care or social services by an agency that is not affiliated with the owner, manager or operator.

(e) An adult family home.

(f) A residential care apartment complex.

(g) A residential facility in the village of Union Grove that was authorized to operate without a license under a final judgment entered by a court before January 1, 1982, and that continues to comply with the judgment notwithstanding the expiration of the judgment.

(h) A private residence that is the home to adults who independently arrange for and receive care, treatment, or services for themselves from a person or agency that has no authority to exercise direction or control over the residence.

(i) A group home licensed under s. 48.625 or a residential care center for children and youth licensed under s. 48.60 that provides care and maintenance for persons who are in extended out-of-home care under s. 48.366 or 938.366.

(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).

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

(1r) "Home health agency" has the meaning given under s. 50.49 (1) (a).

(1s) "Intensive skilled nursing care" means care requiring specialized nursing assessment skills and the performance of specific services and procedures that are complex because of the resident's condition or the type or number of procedures that are necessary, including any of the following:

(a) Direct patient observation or monitoring or performance of complex nursing procedures by registered nurses or licensed practical nurses on a continuing basis.

(b) Repeated application of complex nursing procedures or services every 24 hours.

(c) Frequent monitoring and documentation of the resident's condition and response to therapeutic measures.

(1t) "Intermediate level nursing care" means basic care that is required by a person who has a long-term illness or disability that has reached a relatively stable plateau.

(1w) "Licensed practical nurse" means a licensed practical nurse who is licensed or has a temporary permit under s. 441.10 or who holds a multistate license, as defined in s. 441.51 (2) (h), issued in a party state, as defined in s. 441.51 (2) (k).

(2) "Nurse aide" means a person who performs routine patient care duties delegated by a registered nurse or licensed practical nurse who supervises the person, for the direct health care of a patient or resident. "Nurse aide" does not mean a feeding assistant, as defined in s. 146.40 (1) (aw); a person who is licensed, permitted, certified, or registered under ch. 441, 448, 449, 450, 451, 455, 459, or 460; or a person whose duties primarily involve skills that are different than those taught in instructional programs for nurse aides.

(2m) "Nursing care" means nursing procedures, other than personal care, that are permitted to be performed by a registered nurse under s. 441.01 (3) or by a licensed practical nurse under s. 441.001 (3), directly on or to a resident.

(3) "Nursing home" means a place where 5 or more persons who are not related to the operator or administrator reside, receive care or treatment and, because of their mental or physical condition, require access to 24-hour nursing services, including limited nursing care, intermediate level nursing care and skilled nursing services. "Nursing home" does not include any of the following:

(c) A convent or facility owned or operated exclusively by and for members of a religious order that provides reception and care or treatment of an individual.

(d) A hospice, as defined in s. 50.90 (1), that directly provides inpatient care.

(e) A residential care apartment complex.

(4) "Nursing home administrator" has the meaning assigned in s. 456.01 (3).

(4m) "Operator" means any person licensed or required to be licensed under s. 50.03 (1) or a person who operates an adult family home that is licensed under s. 50.033 (1m) (b).

(4o) "Personal care" means assistance with the activities of daily living, such as eating, dressing, bathing and ambulation, but does not include nursing care.

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

(5m) "Recuperative care" means care anticipated to be provided in a nursing home for a period of 90 days or less for a resident whose physician has certified that he or she is convalescing or recuperating from an illness or medical treatment.

(5r) "Registered nurse" means a registered nurse who is licensed under s. 441.06 or permitted under s. 441.08 or who holds a multistate license, as defined in s. 441.51 (2) (h), issued in a party state, as defined in s. 441.51 (2) (k).

(6) "Resident" means a person who is cared for or treated in and is not discharged from a nursing home, community-based residential facility or adult family home, irrespective of how admitted.

(6d) "Residential care apartment complex" means a place where 5 or more adults reside that consists of independent apartments, each of which has an individual lockable entrance and exit, a kitchen, including a stove, and individual bathroom, sleeping and living areas, and that provides, to a person who resides in the place, not more than 28 hours per week of services that are supportive, personal and nursing services. "Residential care apartment complex" does not include a nursing home or a community-based residential facility, but may be physically part of a structure that is a nursing home or community-based residential facility. In this subsection, "stove" means a cooking appliance that is a microwave oven of at least 1,000 watts or that consists of burners and an oven.

(6g) "Respite care" means care anticipated to be provided in a nursing home for a period of 28 days or less for the purpose of temporarily relieving a family member or other caregiver from his or her daily caregiving duties.

(6r) "Short-term care" means recuperative care or respite care provided in a nursing home.

(6v) "Skilled nursing services" means those services, to which all of the following apply, that are provided to a resident under a physician's orders:

(a) The services require the skills of and are provided directly

by or under the supervision of a person whose licensed, registered, certified or permitted scope of practice is at least equivalent to that of a licensed practical nurse.

(b) Any of the following circumstances exist:

1. The inherent complexity of a service prescribed for a resident is such that it can be safely and effectively performed only by or under the supervision of registered nurses or licensed practical nurses.

2. The full recovery or medical improvement of the resident is not possible, but the services are needed to prevent, to the extent possible, deterioration of the resident's condition or to sustain current capacities of the resident.

3. Because of special medical complications, performing or supervising a service that is generally unskilled or observing the resident necessitates the use of a person whose licensed, registered, certified or permitted scope of practice is at least equivalent to that of a licensed practical nurse.

(7) "Violation" means a failure to comply with any provision of this subchapter or administrative rule promulgated 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; 1983 a. 189 s. 329 (18); 1985 a. 29, 276; 1985 a. 332 s. 251 (1); 1987 a. 127, 161; 1989 a. 31, 136, 199; 1991 a. 39; 1993 a. 327, 446, 491; 1995 a. 27; 1997 a. 13, 27, 156, 237; 1999 a. 22, 32; 2001 a. 74, 107; 2003 a. 33; 2005 a. 187; 2007 a. 20, 153; 2009 a. 28; 2011 a. 32, 70, 161; 2013 a. 20; 2013 a. 165 s. 114; 2015 a. 55; 2017 a. 135; 2021 a. 23.

Cross-reference: See s. 46.011 for definitions applicable to chs. 46, 48, 50, 51, 54, 55 and 58.

Up to seven hours of nursing care may be provided by a community-based residential facility under sub. (1g). Hacker v. DHSS, 197 Wis. 2d 441, 541 N.W.2d 766 (1995), 93-1043.

The department can constitutionally license and regulate community-based residential facilities operated by religious organizations that are not exempt under sub. (1) [now sub. (1g)] or s. 50.03 (9). 71. Atty. Gen. 112.

50.02 Department; powers and duties. (1) DEPARTMENTAL AUTHORITY. The department may provide uniform, statewide licensing, inspection, and regulation of community-based residential facilities and nursing homes as provided in this subchapter. The department shall certify, inspect, and otherwise regulate adult family homes, as specified under s. 50.032 and shall license adult family homes, as specified under s. 50.033. Nothing in this subchapter may be construed to limit the authority of the department of safety and professional services 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 regulations 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 safety and professional services when developing exemptions relating to physical plant requirements.

(ad) The department shall promulgate rules that require each facility licensed under this subchapter to provide information necessary for the department to assess the facility's compliance with s. 55.14.

(ag) The department shall, by rule, define "Class A" and "Class C" community-based residential facilities for the purposes of s. 50.035 (3).

(am) The department shall promulgate all of the following rules with respect to adult family homes:

1. For the purposes of s. 50.032, defining the term "permanent basis" and establishing minimum requirements for certification, certification application procedures and forms, standards for operation and procedures for monitoring, inspection, decertification and appeal of decertification. The rules shall be designed to protect and promote the health, safety and welfare of the disabled adults receiving care and maintenance in certified adult family homes.

2. For the purposes of s. 50.033, establishing minimum requirements for licensure, licensure application procedures and forms, standards for operation and procedures for monitoring, inspection, revocation and appeal of revocation.

(b) 1. The department shall conduct plan reviews of all capital construction and remodeling of nursing homes to ensure that the plans comply with building code requirements under ch. 101 and with life safety code and physical plant requirements under s. 49.498, this chapter or under rules promulgated under this chapter.

2. The department shall promulgate rules that establish a fee schedule for its services under subd. 1. in conducting the plan reviews. The schedule established under these rules shall set fees for nursing home plan reviews in amounts that are less than the sum of the amounts required on September 30, 1995, for fees under this paragraph and for fees for examination of nursing home plans under s. 101.19 (1) (a), 1993 stats.

(bm) The department shall, by rule, define "intermediate nursing care", "limited nursing care" and "skilled nursing services" for use in regulating minimum hours of service provided to residents of nursing homes.

(bn) The department may, by rule, increase the minimum hours of nursing home care per day that are specified in s. 50.04 (2) (d) 1. to 3.

(c) If a nursing home is certified as a provider of services under s. 49.45 (2) (a) 11. and is named in a verified complaint filed with the department stating that staffing requirements imposed on the nursing home are not being met, the department shall, in order to verify the staffing requirements, randomly inspect payroll records at the nursing home that indicate the actual hours worked by personnel and the number of personnel on duty. The department may not limit its inspection to schedules of work assignments prepared by the nursing home.

(d) The department shall promulgate rules that prescribe all of the following:

1. The method by which community-based residential facilities shall make referrals to resource centers or county departments under s. 50.035 (4n) and the method by which residential care apartment complexes shall make referrals to resource centers under s. 50.034 (5n).

2. The time period for nursing homes to provide information to prospective residents under s. 50.04 (2g) (a) and the time pe-

riod and method by which nursing homes shall make referrals to resource centers under s. 50.04 (2h) (a).

(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 homelike 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.

(d) The department shall promulgate rules to establish a procedure for the admission, evaluation and care of short-term care nursing home residents. These rules shall specify that the nursing home or community-based residential facility shall be required to provide to the department as documentation of this admission, evaluation and care only that amount of information commensurate with the length of stay and the medical needs, if any, of the particular resident.

(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 programs, new procedures and policies, complaint investigation and consumer participation in enforcement under this subchapter and changes that may be needed under this subchapter. The department shall submit at least one report annually to the board on aging and long-term care regarding implementation of rules under sub. (3) (d).

(5) DEATH INVESTIGATION. No later than 14 days after the date of a death reported under s. 50.035 (5) (b) or 50.04 (2t) (b), the department shall investigate the death.

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; 1983 a. 542; 1985 a. 29; 1987 a. 161; 1989 a. 336; 1991 a. 250; 1993 a. 16, 327; 1995 a. 27 ss. 3222 to 3225, 9116 (5); 1995 a. 98; 1997 a. 237; 1999 a. 9, 103; 2005 a. 264, 387; 2007 a. 20; 2009 a. 28; 2011 a. 32.

Cross-reference: See also ch. DHS 132 and 134, Wis. adm. code.

A municipal ordinance that required registration of nursing homes was in direct conflict with sub. (1) and, therefore, invalid. Volunteers of America v. Village of Brown Deer, 97 Wis. 2d 619, 294 N.W.2d 44 (Ct. App. 1980).

Sub. (2) (am) 2. provides that the rules for appealing the revocation of an adult family home operating license are determined by the Department of Health Services. Pursuant to this authority, the department promulgated a rule that states that an appeal from a license revocation must be received within ten days after the date of the notice. Section 801.15 (1) (b), which provides that when a deadline is less than 11 days, weekends and holidays are excluded from the counting period, only applies to proceedings before a circuit court and has no application to an appeal before an administrative agency. Baker v. Department of Health Services, 2012 WI App 71, 342 Wis. 2d 174, 816 N.W.2d 337, 11-1529.

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 department shall promulgate rules that establish a fee schedule for its services in conducting the plan reviews.

History: 1977 c. 29; 1977 c. 170 ss. 7, 9; 1993 a. 16.

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.

(1m) DISTINCT PART OR SEPARATE LICENSURE FOR INSTITUTIONS FOR MENTAL DISEASES. Upon application to the department, the department may approve licensure of the operation of a nursing home or a distinct part of a nursing home as an institution for mental diseases, as defined under 42 CFR 435.1009. Conditions and procedures for application for, approval of and operation under licensure under this subsection shall be established in rules promulgated by the department.

(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 750,000 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 promulgated under this section.

(c) The department shall 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 employee 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, employee 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 initial licensure denial, as provided in sub. (4), or suspension 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 department under s. 46.215 or 46.22 on forms supplied by the county department, unless the

county department designates the department of health services 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 of health services 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, registrant, or holder of a certificate or applicant for licensure, certification, or registration by the department under this subchapter 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, or by mail or electronic mail, with a return acknowledgement requested. The person authorized by a nursing home under this paragraph shall be located at the nursing home.

(b) Notwithstanding s. 879.05, whenever in this subchapter the department is required to serve any notice or other paper on a licensee or applicant for license, proper service is personal service or, if made to the most recent address on file with the department under par. (a), is the sending of the notice or paper by one of the following means:

1. By registered or certified mail, with a return receipt requested.

2. By mail or electronic mail, with a return acknowledgement requested.

(3) APPLICATION FOR REGISTRATION AND LICENSE. (am) In this subsection, "managing employee" means a general manager, business manager, administrator, director or other individual who exercises operational or managerial control over, or who directly or indirectly conducts, the operation of the facility.

(b) The application for a license and, except as otherwise provided in this subchapter, the report of a licensee 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. All managing employees and, if any, the director of nursing 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.

3L. If any person named in response to subd. 1. or 2. is a limited liability company, then each member.

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 subdivision 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 bank, 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 information required 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 shall report all formal complaints regarding their operation filed under sub. (2) (f) and the disposition of each when reporting under sub. (4) (c) 1.

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

b. Except as provided in sub. (4m) (b), the department shall issue a license for a community-based residential facility if it finds the applicant to be fit and qualified, if it finds that the community-based residential facility meets the requirements established by this subchapter and if the community-based residential facility has paid the license fee under s. 50.037 (2) (a). In determining whether to issue a license for a community-based residential facility, the department may consider any action by the applicant or by an employee of the applicant that constitutes a substantial failure by the applicant or employee to protect and promote the health, safety or welfare of a resident. The department may deny licensure to or revoke licensure for any person who conducted, maintained, operated or permitted to be maintained or operated a community-based residential facility for which licensure was revoked. 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. In reviewing the report of a community-based residential facility that is required to be submitted under par. (c) 1., the department shall consider all complaints filed under sub. (2) (f) since initial

license issuance or since the last review, whichever is later, and the disposition of each. The department shall promulgate rules defining "fit and qualified" for the purposes of this subd. 1. b.

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 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) 1. A community-based residential facility license is valid until it is revoked or suspended under this section. Every 24 months, on a schedule determined by the department, a community-based residential facility licensee shall submit through an online system prescribed by the department a report in the form and containing the information that the department requires, including payment of any fee due under s. 50.037 (2) (a). If a complete biennial report is not timely filed, the department shall issue a warning to the licensee. The department may revoke a community-based residential facility license for failure to timely and completely report within 60 days after the report date established under the schedule determined by the department.

2. A nursing home license is valid until it is revoked or suspended under this section. Every 12 months, on a schedule determined by the department, a nursing home licensee shall submit a report in the form and containing the information that the department requires, including payment of the fee required under s. 50.135 (2) (a). If a complete report is not timely filed, the department shall issue a warning to the licensee. The department may revoke a nursing home license for failure to timely and completely report within 60 days after the report date established under the schedule determined by the department.

(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. 227.44. 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 is not 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 number of the facility's beds that are licensed by the department, the person to whom the license is granted, the date of issuance, the maximum level of care for which the facility is licensed as a condition of its licensure and such additional information and special conditions as the department may prescribe.

(f) The issuance or continuance 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. (a) If the applicant for licensure as a nursing home has not been previously licensed under this subchapter or if the nursing home is not in operation at the time application is made, the department shall issue a probationary license. A probationary license shall be valid for 12 months from the date of issuance unless sooner suspended or revoked under sub. (5). Prior to the expiration of a probationary license, the department shall inspect the nursing home and, if the nursing home meets the applicable requirements for licensure and, if applicable, substantially complies with requirements under 42 CFR 483 related to the operation of a nursing home, shall issue a regular license under sub. (4) (a) 1. a. If the department finds that the nursing home does not meet the requirements for licensure or does not substantially comply with requirements under 42 CFR 483 related to the operation of a nursing home, the department may not issue a regular license under sub. (4) (a) 1. a.

(b) If the applicant for licensure as a community-based residential facility has not been previously licensed under this subchapter or if the community-based residential facility is not in operation at the time application is made, the department shall issue a probationary license, except that the department may deny licensure to any person who conducted, maintained, operated or permitted to be maintained or operated a community-based residential facility for which licensure was revoked within 5 years before application is made. A probationary license shall be valid for up to 12 months from the date of issuance unless sooner suspended or revoked under sub. (5g). Prior to the expiration of a probationary license, the department shall evaluate the community-based residential facility. In evaluating the community-based residential facility, the department may conduct an inspection of the community-based residential facility. If, after the department evaluates the community-based residential facility, the department finds that the community-based residential facility meets the applicable requirements for licensure, the department shall issue a regular license under sub. (4) (a) 1. b. If the department finds that the community-based residential facility does not meet the requirements for licensure, the department may not issue a regular license under sub. (4) (a) 1. b.

(5) SUSPENSION AND REVOCATION OF NURSING HOME LICENSES. (a) *Power of department.* The department, after notice to a nursing home applicant or licensee, may suspend or revoke a license in any case in which the department finds that the nursing home has substantially failed to comply with the applicable requirements of this subchapter and the rules promulgated under this subchapter, with s. 49.498, or with requirements under 42 CFR 483 related to the operation of a nursing home. No state or federal funds passing through the state treasury may be paid to a

nursing home that does not have a valid license issued under this section.

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

(c) *Contest of revocation.* If a nursing home desires to contest the revocation of a license, the nursing home shall, within 10 days after receipt of notice under par. (b), notify the department in writing of its request for a hearing under s. 227.44. The department shall hold the hearing within 30 days of receipt of such notice and shall send notice to the nursing home of the hearing as provided under s. 227.44 (2).

(d) *Effective date of revocation.* 1. Subject to s. 227.51 (3), revocation under this subsection 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.

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

(5g) SANCTIONS AND PENALTIES FOR COMMUNITY-BASED RESIDENTIAL FACILITIES. (a) In this subsection, "licensee" means a community-based residential facility that is licensed under sub. (4) or (4m) (b).

(b) If, based on an investigation made by the department, the department provides to a community-based residential facility written notice of the grounds for a sanction, an explanation of the types of sanctions that the department may impose under this subsection and an explanation of the process for appealing a sanction imposed under this subsection, the department may order any of the following sanctions:

1. That a person stop conducting, maintaining or operating the community-based residential facility if the community-based residential facility is without a valid license or probationary license in violation of sub. (1).

2. That, within 30 days after the date of the order, the community-based residential facility terminate the employment of any employed person who conducted, maintained, operated or permitted to be maintained or operated a community-based residential facility for which licensure was revoked before issuance of the department's order. This subdivision includes employment of a person in any capacity, whether as an officer, director, agent or employee of the community-based residential facility.

3. That a licensee stop violating any provision of licensure applicable to a community-based residential facility under sub. (4) or (4m) or of rules relating to community-based residential facilities promulgated by the department under sub. (4) or (4m).

4. That a licensee submit a plan of correction for violation of any provision of licensure applicable to a community-based residential facility under sub. (4) or (4m) or of a rule relating to community-based residential facilities promulgated by the department under sub. (4) or (4m).

5. That a licensee implement and comply with a plan of correction previously submitted by the licensee and approved by the department.

6. That a licensee implement and comply with a plan of correction that is developed by the department.

7. That a licensee accept no additional residents until all violations are corrected.

8. That a licensee provide training in one or more specific areas for all of the licensee's staff or for specific staff members.

(c) If the department provides to a community-based residential facility written notice of the grounds for a sanction or penalty, an explanation of the types of sanctions or penalties that the department may impose under this subsection and an explanation of the process for appealing a sanction or penalty imposed under this subsection, the department may impose any of the following against a licensee or other person who violates the applicable provisions of this section or rules promulgated under the applicable provisions of this section or who fails to comply with an order issued under par. (b) by the time specified in the order:

1. A daily forfeiture amount per violation of not less than $10 nor more than $1,000 for each violation, with each day of violation constituting a separate offense. All of the following apply to a forfeiture under this subdivision:

a. Within the limits specified in this subdivision, the department may, by rule, set daily forfeiture amounts and payment deadlines based on the size and type of community-based residential facility and the seriousness of the violation. The department may set daily forfeiture amounts that increase periodically within the statutory limits if there is continued failure to comply with an order issued under par. (b).

b. The department may directly assess a forfeiture imposed under this subdivision by specifying the amount of that forfeiture in the notice provided under this paragraph.

c. All forfeitures shall be paid to the department within 10 days after receipt of notice of assessment or, if the forfeiture is contested under par. (f), within 10 days after 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 sub. (11). The department shall remit all forfeitures paid under this subdivision to the secretary of administration for deposit in the school fund.

d. The attorney general may bring an action in the name of the state to collect any forfeiture imposed under this subdivision 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.

2. Suspension of licensure for the community-based residential facility for 14 days.

3. Revocation of licensure, as specified in pars. (d) to (g).

(cm) If the department imposes a sanction on or takes other enforcement action against a community-based residential facility for a violation of this subchapter or rules promulgated under it, and the department subsequently conducts an on-site inspection of the community-based residential facility to review the community-based residential facility's action to correct the violation, the department may impose a $200 inspection fee on the community-based residential facility.

(d) Under the procedure specified in par. (e), the department may revoke a license for a licensee for any of the following reasons:

1. The department has imposed a sanction or penalty on the licensee under par. (c) and the licensee continues to violate or resumes violation of a provision of licensure under sub. (4) or (4m), a rule promulgated under this subchapter or an order issued under par. (b) that forms any part of the basis for the penalty.

2. The licensee or a person under the supervision of the licensee has substantially violated a provision of licensure applicable to a community-based residential facility under sub. (4) or (4m), a rule relating to community-based residential facilities promulgated under this subchapter or an order issued under par. (b).

3. The licensee or a person under the supervision of the licensee has acted in relation to or has created a condition relating to the operation or maintenance of the community-based residen-

tial facility that directly threatens the health, safety or welfare of a resident of the community-based residential facility.

4. The licensee or a person under the supervision of the licensee has repeatedly violated the same or similar provisions of licensure under sub. (4) or (4m), rules promulgated under this subchapter or orders issued under par. (b).

(e) 1. The department may revoke a license for a licensee for the reason specified in par. (d) 1., 2., 3. or 4. if the department provides the licensee with written notice of revocation, the grounds for the revocation and an explanation of the process for appealing the revocation, at least 30 days before the date of revocation. The department may revoke the license only if the violation remains substantially uncorrected on the date of revocation or license expiration.

2. The department may revoke a license for a licensee for the reason specified in par. (d) 2. or 3. immediately if the department provides the licensee with written notice of revocation, the grounds for the revocation and an explanation of the process for appealing the revocation.

3. The department may deny a license for a licensee whose license was revoked under this paragraph.

(f) If a community-based residential facility desires to contest the revocation of a license or to contest the imposing of a sanction under this subsection, the community-based residential facility shall, within 10 days after receipt of notice under par. (e), notify the department in writing of its request for a hearing under s. 227.44. The department shall hold the hearing within 30 days after receipt of such notice and shall send notice to the community-based residential facility of the hearing as provided under s. 227.44 (2).

(g) 1. Subject to s. 227.51 (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.

3. The department may extend the effective date of license revocation 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 or revoked the existing license of the facility as provided under sub. (5).

3. The department has initiated revocation 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 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 percent 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 under s. 55.06, 2003 stats., or an order under s. 55.12 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 removed, 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 fa-

cility. 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, rules promulgated by the department under this subchapter, or requirements under 42 CFR 483 related to the operation of a nursing home where the violation affects the health, safety or welfare of the residents.

(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 promulgated 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.

(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 classification 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. 227.52, 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. 227.54 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 promulgated 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, or of requirements of 42 CFR 483 related to the operation of a nursing home, for which notice had been given to the transferor are outstanding and uncorrected, if the department determines that effective control over operation of the facility has not been transferred. If the transferor was a provider under s. 49.43 (10), the transferee and transferor shall comply with s. 49.45 (21).

(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 county departments of the county in which the facility is located that are responsible for providing services under s. 46.215 (1) (L), 46.22 (1) (b) 1. c., 51.42 or 51.437 shall participate in the development and implementation of individual relocation plans. Any county department of another county shall participate in the development and implementation of individual relocation plans in place of the county departments of the county in which the facility is located, if the county department 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 practicable, 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 meet the requirements of s. 54.10 (3).

(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; 1985 a. 29 ss. 1058, 3202 (56) (a); 1985 a. 176; 1985 a. 182 s. 57; 1985 a. 332 s. 251 (1), (3); 1987 a. 27, 127, 399; 1989 a. 31, 359; 1991 a. 39, 221; 1993 a. 27, 112, 375, 491; 1995 a. 27 ss. 3227 to 3232, 9126 (19); 1997 a. 27, 114; 2001 a. 16; 2003 a. 33; 2005 a. 264, 387; 2007 a. 20 s. 9121 (6) (a); 2007 a. 92; 2009 a. 28; 2011 a. 70; 2013 a. 20; 2017 a. 207 s. 5; 2019 a. 9; 2021 a. 240 s. 30.

The department can constitutionally license and regulate community-based residential facilities that are operated by religious organizations and that are not exempt convents or similar facilities under sub. (9) or s. 50.01 (1) [now s. 50.01 (1g)]. 71 Atty. Gen. 112.

50.032 Certification of certain adult family homes.

(1g) DEFINITION. In this section, "adult family home" has the meaning given in s. 50.01 (1) (a).

(1m) CERTIFICATION. (a) No person may operate an adult family home unless the adult family home is certified under this section.

(b) A county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 may certify an adult family home that is located in the county. The department shall certify an adult family home in a county that elects not to certify adult family homes.

(2) REGULATION. Except as provided in sub. (2d), standards for operation of certified adult family homes and procedures for application for certification, monitoring, inspection, decertification and appeal of decertification under this section shall be under rules promulgated by the department under s. 50.02 (2) (am) 1. An adult family home certification is valid until decertified under this section. Certification is not transferable.

(2d) ACCOMPANIMENT OR VISITATION. If an adult family home has a policy on who may accompany or visit a patient, the adult family home shall extend the same right of accompaniment or visitation to a patient's domestic partner under ch.770 as is accorded the spouse of a patient under the policy.

(2m) EXCEPTION. Notwithstanding s. 50.01 (1g) (b), if an individual served in an adult family home attains 18 years of age and leaves the adult family home on a permanent basis, as defined in rules promulgated by the department, he or she may be replaced for receipt of service by an individual who has a developmental disability, as defined in s. 51.01 (5).

(2r) REPORTING. Every 12 months, on a schedule determined by the department, a certified adult family home shall submit an annual report in the form and containing the information that the department requires, including payment of a fee, if any is required under rules promulgated under s. 50.02 (2) (am) 1. If a complete annual report is not timely filed, the department shall issue a warning to the operator of the certified adult family home. The department may decertify a certified adult family home for failure to timely and completely report within 60 days after the report date established under the schedule determined by the department.

(3) INVESTIGATION OF ALLEGED VIOLATIONS. If the department or a certifying county department under sub. (1m) (b) is advised or has reason to believe that any person is violating this section or the rules promulgated under s. 50.02 (2) (am) 1., the department or the certifying county department shall make an investigation to determine the facts. For the purposes of this investigation, the department or the certifying county department may inspect the premises where the violation is alleged to occur. If the department or the certifying county department finds that the re-

quirements of this section and of rules under s. 50.02 (2) (am) 1. are met, the department or the certifying county department may certify the premises under this section. If the department or the certifying county department finds that a person is violating this section or the rules under s. 50.02 (2) (am) 1., the department or the certifying county department may institute an action under sub. (5) or (6).

(4) DECERTIFICATION. A certified adult family home may be decertified because of the substantial and intentional violation of this section or of rules promulgated by the department under s. 50.02 (2) (am) 1. or because of failure to meet the minimum requirements for certification. The operator of the certified adult family home shall be given written notice of any decertification and the grounds for the decertification. Any adult family home certification applicant or operator of a certified adult family home may, if aggrieved by the failure to issue the certification or by decertification, appeal under the procedures specified by the department by rule under s. 50.02 (2) (am) 1.

(5) INJUNCTION. The department or a certifying county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 may commence an action in circuit court to enjoin the operation of an adult family home that is not certified under sub. (1m) or that is certified and has repeatedly used methods of operation in substantial violation of the rules promulgated under s. 50.02 (2) (am) 1. or that endanger the health, safety or welfare of any disabled adult receiving care and maintenance in an adult family home.

(6) PENALTIES. Any person who violates this section or rules promulgated under s. 50.02 (2) (am) 1. may be fined not more than $500 or imprisoned for not more than one year in the county jail or both.

History: 1987 a. 161, 403; 1993 a. 327; 1997 a. 27; 2009 a. 28.
Cross-reference: See also ch. DHS 82, Wis. adm. code.

50.033 Licensure of certain adult family homes. (1) DEFINITION. In this section, "adult family home" has the meaning given in s. 50.01 (1) (b).

(1m) LICENSURE. (a) No person may operate an adult family home unless the adult family home is licensed under this section.

(b) A county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 may license an adult family home that is located in the county. The department shall license an adult family home in a county that elects not to license adult family homes.

(2) REGULATION. Except as provided in sub. (2d), standards for operation of licensed adult family homes and procedures for application for licensure, monitoring, inspection, revocation and appeal of revocation under this section shall be under rules promulgated by the department under s. 50.02 (2) (am) 2. An adult family home licensure is valid until revoked under this section. Licensure is not transferable. The biennial licensure fee for a licensed adult family home is $171, except that the department may, by rule, increase the amount of the fee. The fee is payable to the county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437, if the county department licenses the adult family home under sub. (1m) (b), and is payable to the department, on a schedule determined by the department if the department licenses the adult family home under sub. (1m) (b).

(2d) ACCOMPANIMENT OR VISITATION. If an adult family home has a policy on who may accompany or visit a patient, the adult family home shall extend the same right of accompaniment or visitation to a patient's domestic partner under ch. 770 as is accorded the spouse of a patient under the policy.

(2m) REPORTING. Every 24 months, on a schedule determined by the department, a licensed adult family home shall submit through an online system prescribed by the department a biennial report in the form and containing the information that the department requires, including payment of any fee due under sub. (2). If a complete biennial report is not timely filed, the department shall issue a warning to the licensee. The department may revoke the license for failure to timely and completely report within 60 days after the report date established under the schedule determined by the department.

(3) INVESTIGATION OF ALLEGED VIOLATIONS. If the department or a licensing county department under sub. (1m) (b) is advised or has reason to believe that any person is violating this section or the rules promulgated under s. 50.02 (2) (am) 2., the department or the licensing county department shall make an investigation to determine the facts. For the purposes of this investigation, the department or the licensing county department may inspect the premises where the violation is alleged to occur. If the department or the licensing county department finds that the requirements of this section and of rules under s. 50.02 (2) (am) 2. are met, the department or the licensing county department may, if the premises are not licensed, license the premises under this section. If the department or the licensing county department finds that a person is violating this section or the rules under s. 50.02 (2) (am) 2., the department or the licensing county department may institute an action under sub. (5). If the department takes enforcement action against an adult family home for violating this section or rules promulgated under s. 50.02 (2) (am) 2., and the department subsequently conducts an on-site inspection of the adult family home to review the adult family home's action to correct the violation, the department may impose a $200 inspection fee on the adult family home.

(4) LICENSE REVOCATION. The license of a licensed adult family home may be revoked because of the substantial and intentional violation of this section or of rules promulgated by the department under s. 50.02 (2) (am) 2. or because of failure to meet the minimum requirements for licensure. The operator of the licensed adult family home shall be given written notice of any revocation and the grounds for the revocation. Any adult family home licensure applicant or operator of a licensed adult family home may, if aggrieved by the failure to issue the license or by revocation, appeal under the procedures specified by the department by rule under s. 50.02 (2) (am) 2.

(5) INJUNCTION. The department or a licensing county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 may commence an action in circuit court to enjoin the operation of an adult family home that is not licensed under sub. (1m) or that is licensed and has repeatedly used methods of operation in substantial violation of the rules promulgated under s. 50.02 (2) (am) 2. or that endanger the health, safety or welfare of any adult receiving care and maintenance in an adult family home.

(6) PENALTIES. Any person who violates this section or rules promulgated under s. 50.02 (2) (am) 2. may be fined not more than $500 or imprisoned for not more than one year in the county jail or both.

History: 1993 a. 327; 1995 a. 27; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2007 a. 20; 2009 a. 28; 2019 a. 9.
Cross-reference: See also ch. DHS 88, Wis. adm. code.

50.034 Residential care apartment complexes. (1) CERTIFICATION OR REGISTRATION REQUIRED. (a) No person may operate a residential care apartment complex that provides living space for residents who are clients under s. 46.277 and publicly funded services as a home health agency or under contract with a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 that is a home health agency unless the residential care apartment complex is certified by the department under this section. The department may charge a fee, in an amount determined by the department, for certification under this paragraph. The amount of any fee charged by the department for certification of a residential care apartment complex need not be promulgated as a rule under ch. 227.

(b) No person may operate a residential care apartment complex that is not certified as required under par. (a) unless the residential care apartment complex is registered by the department.

(2) RULES. The department shall promulgate all of the following rules for the regulation of certified residential care apartment complexes and for the registration of residential care apartment complexes under this section:

(b) Establishing standards for operation of certified residential care apartment complexes.

(c) Establishing minimum information requirements for registration and registration application procedures and forms for residential care apartment complexes that are not certified.

(d) Establishing procedures for monitoring certified residential care apartment complexes.

(e) Establishing intermediate sanctions and penalties for and standards and procedures for imposing intermediate sanctions or penalties on certified residential care apartment complexes and for appeals of intermediate sanctions or penalties.

(f) Establishing standards and procedures for appeals of revocations of certification or refusal to issue or renew certification.

(2m) REPORTING. Every 24 months, on a schedule determined by the department, a residential care apartment complex shall submit through an online system prescribed by the department a report in the form and containing the information that the department requires, including payment of any fee required under sub. (1). If a complete report is not timely filed, the department shall issue a warning to the operator of the residential care apartment complex. The department may revoke a residential care apartment complex's certification or registration for failure to timely and completely report within 60 days after the report date established under the schedule determined by the department. Notwithstanding the reporting schedule under this subsection, a certified residential care apartment complex shall continue to pay required fees on the schedule established in rules promulgated by the department.

(3) REQUIREMENTS FOR OPERATION. A certified or registered residential care apartment complex shall do all of the following:

(a) Establish, with each resident of the residential care apartment complex, a mutually agreed-upon written service agreement that identifies the services to be provided to the resident, based on a comprehensive assessment of the resident's needs and preferences that is conducted by one of the following:

2. For residents for whom services are reimbursable under s. 46.277, by the county department under s. 46.277 (4) (a) in the county.

3. For residents who have private or 3rd-party funding, by the residential care apartment complex.

(b) Establish a schedule of fees for services to residents of the residential care apartment complex.

(c) Provide or ensure the provision of services that are sufficient and qualified to meet the needs identified in a resident's service agreement under par. (a), to meet unscheduled care needs and to provide emergency assistance 24 hours a day.

(d) Establish, with each resident of the residential care apartment complex, a signed, negotiated risk agreement that identifies situations that could put the resident at risk and for which the resident understands and accepts responsibility.

(e) If a residential care apartment complex has a policy on who may accompany or visit a patient, the residential care apartment complex shall extend the same right of accompaniment or visitation to a patient's domestic partner under ch. 770 as is accorded the spouse of a patient under the policy.

(4) LIMITATION. A nursing home or a community-based residential facility may not convert a separate area of its total area to a residential care apartment complex unless the department first approves the conversion. A nursing home, other than a Wisconsin veterans home operated by the department of veterans affairs under s. 45.50, that intends to convert a separate area of its total area to a residential care apartment complex shall also agree to reduce its licensed nursing home beds by the corresponding number of residential care apartment complex residential units proposed for the conversion.

(5) USE OF NAME PROHIBITED. An entity that does not meet the definition under s. 50.01 (6d) may not designate itself as a "residential care apartment complex" or use the words "residential care apartment complex" to represent or tend to represent the entity as a residential care apartment complex or services provided by the entity as services provided by a residential care apartment complex.

(5m) PROVISION OF INFORMATION REQUIRED. When a residential care apartment complex first provides written material regarding the residential care apartment complex to a prospective resident, the residential care apartment complex shall also provide the prospective resident information specified by the department concerning the services of a resource center under s. 46.283, the family care benefit under s. 46.286, and the availability of a functional screening and a financial and cost-sharing screening to determine the prospective resident's eligibility for the family care benefit under s. 46.286 (1).

(5n) REQUIRED REFERRAL. When a residential care apartment complex first provides written material regarding the residential care apartment complex to a prospective resident who is at least 65 years of age or has developmental disability or a physical disability and whose disability or condition is expected to last at least 90 days, the residential care apartment complex shall refer the prospective resident to a resource center under s. 46.283, unless any of the following applies:

(a) For a person for whom a screening for functional eligibility under s. 46.286 (1) (a) has been performed within the previous 6 months, the referral under this subsection need not include performance of an additional functional screening under s. 46.283 (4) (g).

(b) The person is entering the residential care apartment complex only for respite care.

(c) The person is an enrollee of a care management organization.

(d) For a person who seeks admission or is about to be admitted on a private pay basis and who waives the requirement for a financial and cost-sharing screening under s. 46.283 (4) (g), the referral under this subsection may not include performance of a financial and cost-sharing screening under s. 46.283 (4) (g), unless the person is expected to become eligible for medical assistance within 6 months.

(5t) NOTICE OF LONG-TERM CARE OMBUDSMAN PROGRAM. A residential care complex shall post in a conspicuous location in the residential care apartment complex a notice, provided by the board on aging and long-term care, of the name, address, and telephone number of the Long-Term Care Ombudsman Program under s. 16.009 (2) (b).

(6) FUNDING. Funding for supportive, personal or nursing services that a person who resides in a residential care apartment complex receives, other than private or 3rd-party funding, may be provided only under s. 46.277 (5) (e), except if the provider of the services is a certified medical assistance provider under s. 49.45 or if the funding is provided as a family care benefit under ss. 46.2805 to 46.2895.

(7) REVOCATION OF CERTIFICATION. Certification for a residential care apartment complex may be revoked because of the substantial and intentional violation of this section or of rules

promulgated by the department under sub. (2) or because of failure to meet the minimum requirements for certification. The operator of the certified residential care apartment complex shall be given written notice of any revocation of certification and the grounds for the revocation. Any residential care apartment complex certification applicant or operator of a certified residential care apartment complex may, if aggrieved by the failure to issue or renew the certification or by revocation of certification, appeal under the procedures specified by the department by rule under sub. (2).

(8) FORFEITURES. (a) Whoever violates sub. (5m) or (5n) or rules promulgated under sub. (5m) or (5n) may be required to forfeit not more than $500 for each violation.

(b) 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, it shall send a notice of assessment to the residential care apartment complex. The notice shall specify the amount of the forfeiture assessed, the violation and the statute or rule alleged to have been violated, and shall inform the residential care apartment complex of the right to a hearing under par. (c).

(c) A residential care apartment complex may contest an assessment of a forfeiture by sending, within 10 days after receipt of notice under par. (b), a written request for a hearing under s. 227.44 to the division of hearings and appeals created under s. 15.103 (1). The administrator of the division may designate a hearing examiner to preside over the case and recommend a decision to the administrator under s. 227.46. The decision of the administrator of the division shall be the final administrative decision. The division shall commence the hearing within 30 days after receipt of the request for a hearing and shall issue a final decision within 15 days after the close of the hearing. Proceedings before the division are governed by ch. 227. In any petition for judicial review of a decision by the division, the party, other than the petitioner, who was in the proceeding before the division shall be the named respondent.

(d) All forfeitures shall be paid to the department within 10 days after receipt of notice of assessment or, if the forfeiture is contested under par. (c), within 10 days after receipt of the final decision after exhaustion of administrative review, unless the final decision is appealed and the order is stayed by court order. The department shall remit all forfeitures paid to the secretary of administration for deposit in the school fund.

(e) 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.

(10) INSPECTION FEE. If the department takes enforcement action against a residential care apartment complex for a violation of this section or rules promulgated under sub. (2), and the department subsequently conducts an on-site inspection of the residential care apartment complex to review the residential care apartment complex's action to correct the violation, the department may impose a $200 inspection fee on the residential care apartment complex.

History: 1995 a. 27; 1997 a. 13, 252; 1999 a. 9, 63, 185; 2001 a. 16; 2003 a. 33; 2005 a. 22; 2007 a. 20; 2009 a. 28; 2013 a. 165 s. 114; 2019 a. 9.

Cross-reference: See also ch. DHS 89, Wis. adm. code.

50.035 Special provisions relating to regulation of community-based residential facilities. (1) PERSONNEL TRAINING. (a) Each employee of a community-based residential facility shall, within 90 days after the beginning date of employment, receive basic first aid training and other safety training. The department shall indicate acceptable sources from which facility employees may receive this training. The department shall also develop instructional materials for use by facilities concerning acceptable methods of operation and procedures for protecting and serving the needs of facility residents. The department may require that all facility employees complete a program involving these materials and may sell the materials to facilities at cost.

(b) Each employee of a community-based residential facility shall, within 90 days after the beginning date of employment, receive training in fire prevention and control and evacuation techniques. Each facility shall coordinate its training in fire prevention and control and evacuation techniques with the local fire department.

(c) Each employee of a community-based residential facility who has regular, direct contact with facility residents who are on probation, extended supervision, or parole shall, within 60 days after the beginning date of employment and at least every 2 years thereafter, receive training on identifying and preventing human trafficking crimes, as defined in s. 165.505 (1) (am). The training required under this paragraph shall include at least all of the following:

1. The definitions of human trafficking and the commercial exploitation of children.

2. Guidance on how to identify individuals who are most at risk for human trafficking.

3. The difference between labor trafficking and sex trafficking.

(2) FIRE PROTECTION. (a) 1. Except as provided in subd. 2., each community-based residential facility shall provide, at a minimum, a low-voltage interconnected smoke detection system to protect the entire facility that, if any detector is activated, either triggers alarms throughout the building or triggers an alarm located centrally.

2. A community-based residential facility that has 8 or less beds may use a radio-transmitting smoke detection system that triggers an audible alarm in a central area of the facility in lieu of the interconnected smoke detection system specified in subd. 1.

3. The department or the department of safety and professional services may waive the requirement under subd. 1. or 2. for a community-based residential facility that has a smoke detection or sprinkler system in place that is at least as effective for fire protection as the type of system required under the relevant subdivision.

(b) No facility may install a smoke detection system that fails to receive the approval of the department or of the department of safety and professional services. At least one smoke detector shall be located at each of the following locations:

1. At the head of every open stairway.

2. At the door leading to every enclosed stairway on each floor level.

3. In every corridor, spaced not more than 30 feet apart and not further than 15 feet from any wall.

4. In each common use room, including living rooms, dining rooms, family rooms, lounges and recreation rooms but not including kitchens.

5. In each sleeping room in which smoking is allowed.

(c) A community-based residential facility does not have to meet the requirements under pars. (a) and (b) prior to May 1, 1985. Beginning on May 1, 1985, the department may waive the requirements under pars. (a) and (b) for a community-based residential facility for a period not to exceed 6 months if the department finds that compliance with those requirements would result in an extreme hardship for the facility.

(2d) ACCOMPANIMENT OR VISITATION. If a community-

based residential facility has a policy on who may accompany or visit a patient, the community-based residential facility shall extend the same right of accompaniment or visitation to a patient's domestic partner under ch. 770 as is accorded the spouse of a patient under the policy.

(3) MANAGER'S PRESENCE IN FACILITY. (a) The person responsible for managing a Class C community-based residential facility, or that person's agent, shall be present in the facility at any time that residents are in the facility. The person responsible for managing a Class A community-based residential facility, or that person's agent, shall be present in the facility from 7 p.m. to 7 a.m. when residents are in the facility.

(b) The department may waive a requirement under par. (a) for a community-based residential facility:

1. For a specified period of time, not to exceed one year, if the department finds that compliance with the requirement would result in an unreasonable hardship for the facility and that all of the residents are physically and mentally capable of taking independent action in an emergency; or

2. For a specified period of time if the department finds that the primary purpose of the facility's program is to promote the independent functioning of its residents with minimum supervision.

(4) FIRE NOTICE. The licensee of a community-based residential facility, or his or her designee, shall notify the department and any county department under s. 46.215 or 46.22 that has residents placed in the facility of any fire that occurs in the facility for which the fire department is contacted. The notice shall be provided within 72 hours after such a fire occurs.

(4m) PROVISION OF INFORMATION REQUIRED. When a community-based residential facility first provides written material regarding the community-based residential facility to a prospective resident, the community-based residential facility shall also provide the prospective resident information specified by the department concerning the services of a resource center under s. 46.283, the family care benefit under s. 46.286, and the availability of a functional screening and a financial and cost-sharing screening to determine the prospective resident's eligibility for the family care benefit under s. 46.286 (1).

(4n) REQUIRED REFERRAL. When a community-based residential facility first provides written information regarding the community-based residential facility to a prospective resident who is at least 65 years of age or has developmental disability or a physical disability and whose disability or condition is expected to last at least 90 days, the community-based residential facility shall refer the individual to a resource center under s. 46.283, unless any of the following applies:

(a) For a person for whom a screening for functional eligibility under s. 46.286 (1) (a) has been performed within the previous 6 months, the referral under this subsection need not include performance of an additional functional screening under s. 46.283 (4) (g).

(b) The person is entering the community-based residential facility only for respite care.

(c) The person is an enrollee of a care management organization.

(d) For a person who seeks admission or is about to be admitted on a private pay basis and who waives the requirement for a financial and cost-sharing screening under s. 46.283 (4) (g), the referral under this subsection may not include performance of a financial and cost-sharing screening under s. 46.283 (4) (g), unless the person is expected to become eligible for medical assistance within 6 months.

(5) REPORTS OF DEATH REQUIRED. (a) In this subsection:

1. "Physical restraint" includes all of the following:

a. A locked room.

b. A device or garment that interferes with an individual's freedom of movement and that the individual is unable to remove easily.

c. Restraint by a facility staff member of a resident by use of physical force.

2. "Psychotropic medication" means an antipsychotic, antidepressant, lithium carbonate or a tranquilizer.

(b) No later than 24 hours after the death of a resident of a community-based residential facility, the community-based residential facility shall report the death to the department if one of the following applies:

1. There is reasonable cause to believe that the death was related to the use of physical restraint or a psychotropic medication.

3. There is reasonable cause to believe that the death was a suicide.

(6) POSTING OF NOTICE REQUIRED. The licensee of a community-based residential facility, or his or her designee, shall post in a conspicuous location in the community-based residential facility a notice, provided by the board on aging and long-term care, of the name, address and telephone number of the long-term care ombudsman program under s. 16.009 (2) (b).

(10) EXCEPTIONS TO CARE LIMITATIONS. (a) Notwithstanding the limitations on the type of care that may be required by and provided to residents under s. 50.01 (1g) (intro.), the following care may be provided in a community-based residential facility under the following circumstances:

1. Subject to par. (b), a community-based residential facility may provide more than 3 hours of nursing care per week or care above intermediate level nursing care for not more than 30 days to a resident who does not have a terminal illness but who has a temporary condition that requires the care, if all of the following conditions apply:

a. The resident is otherwise appropriate for the level of care that is limited in a community-based residential facility under s. 50.01 (1g) (intro.).

b. The services necessary to treat the resident's condition are available in the community-based residential facility.

2. Subject to par. (b) and if a community-based residential facility has obtained a waiver from the department or has requested such a waiver from the department and the decision is pending, the community-based residential facility may provide more than 3 hours of nursing care per week or care above intermediate level nursing care for more than 30 days to a resident who does not have a terminal illness but who has a stable or long-term condition that requires the care, if all of the following conditions apply:

a. The resident is otherwise appropriate for the level of care that is limited in a community-based residential facility under s. 50.01 (1g) (intro.).

b. The services necessary to treat the resident's condition are available in the community-based residential facility.

c. The community-based residential facility has obtained a waiver from the department under this subdivision or has requested such a waiver from the department and the decision is pending.

3. A community-based residential facility may provide more than 3 hours of nursing care per week or care above intermediate level nursing care to a resident who has a terminal illness and requires the care, under the following conditions:

a. If the resident's primary care provider is a licensed hospice or a licensed home health agency.

b. If the resident's primary care provider is not a licensed

hospice or a licensed home health agency, but the community-based residential facility has obtained a waiver of the requirement under subd. 3. a. from the department or has requested such a waiver and the department's decision is pending.

(b) A community-based residential facility may not have a total of more than 4 residents or 10 percent of the facility's licensed capacity, whichever is greater, who qualify for care under par. (a) 1. or 2. unless the facility has obtained a waiver from the department of the limitation of this paragraph or has requested such a waiver and the department's decision is pending.

(c) The department may grant a waiver of the limitation under par. (a) 2. or 3. a. or (b).

(11) FORFEITURES. (a) Whoever violates sub. (4m) or (4n) or rules promulgated under sub. (4m) or (4n) may be required to forfeit not more than $500 for each violation.

(b) 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, it shall send a notice of assessment to the community-based residential facility. The notice shall specify the amount of the forfeiture assessed, the violation and the statute or rule alleged to have been violated, and shall inform the licensee of the right to a hearing under par. (c).

(c) A community-based residential facility may contest an assessment of a forfeiture by sending, within 10 days after receipt of notice under par. (b), a written request for a hearing under s. 227.44 to the division of hearings and appeals created under s. 15.103 (1). The administrator of the division may designate a hearing examiner to preside over the case and recommend a decision to the administrator under s. 227.46. The decision of the administrator of the division shall be the final administrative decision. The division shall commence the hearing within 30 days after receipt of the request for a hearing and shall issue a final decision within 15 days after the close of the hearing. Proceedings before the division are governed by ch. 227. In any petition for judicial review of a decision by the division, the party, other than the petitioner, who was in the proceeding before the division shall be the named respondent.

(d) All forfeitures shall be paid to the department within 10 days after receipt of notice of assessment or, if the forfeiture is contested under par. (c), within 10 days after receipt of the final decision after exhaustion of administrative review, unless the final decision is appealed and the order is stayed by court order. The department shall remit all forfeitures paid to the secretary of administration for deposit in the school fund.

(e) 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.

History: 1983 a. 363; 1985 a. 176; 1987 a. 403 ss. 67, 256; 1989 a. 336; 1991 a. 39; 1995 a. 27 ss. 3235 to 3237, 9116 (5); 1997 a. 27, 114, 237; 1999 a. 9, 32, 103, 186; 2001 a. 16; 2003 a. 33; 2007 a. 20; 2009 a. 28; 2011 a. 32; 2019 a. 9; 2023 a. 237.

Cross-reference: See also ch. DHS 83, Wis. adm. code.

50.037 Community-based residential facility licensing fees. (1) DEFINITION. In this section, "total monthly charges" means the total amount paid per month, including the basic monthly rate plus any additional fees, for care, treatment and services provided to a resident of a community-based residential facility by a community-based residential facility.

(2) FEES. (a) 1. Except as provided in subd. 2., the biennial fee for a community-based residential facility is $389, plus a biennial fee of $50.25 per resident, based on the number of residents that the facility is licensed to serve.

2. The department may, by rule, increase the amount of the fee under subd. 1.

(b) Fees specified under par. (a) shall be paid to the department by the community-based residential facility before the department may issue a license under s. 50.03 (4) (a) 1. b. A licensed community-based residential facility shall pay the fee under par. (a) by the date established by the department. A newly licensed community-based residential facility shall pay the fee under this subsection no later than 30 days before the opening of the facility.

(c) A community-based residential facility that fails to submit the biennial fee prior to the date established by the department, or a new community-based residential facility subject to this section that fails to submit the biennial fee by 30 days prior to the opening of the new community-based residential facility, shall pay an additional fee of $10 per day for every day after the deadline that the facility does not pay the fee.

(3) EXEMPTION. Community-based residential facilities where the total monthly charges for each resident do not exceed the monthly state supplemental payment rate under s. 49.77 (3s) that is in effect at the time the fee under sub. (2) is assessed are exempt from this section.

History: 1973 c. 90, 243, 333; 1975 c. 413 s. 18; 1975 c. 430 ss. 73, 80; 1977 c. 26, 418; 1979 c. 221; 1983 a. 27; 1987 a. 161 s. 13m; 1991 a. 39; 1993 a. 16; 1993 a. 27 ss. 253 to 256; Stats. 1993 s. 50.037; 1993 a. 183, 375; 1995 a. 27; 1997 a. 27; 1999 a. 9; 2009 a. 28.

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).

(1m) DEFINITIONS. In this section, "class "C" repeat violation" means a class "C" violation by a nursing home under the same statute or rule under which, within the previous 2 years, the department has served the nursing home a notice of violation or a correction order or has made a notation in the report under sub. (3) (b).

(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.

(c) 1. Except as provided in subd. 2., beginning July 1, 1988, the department shall enforce nursing home minimum staffing requirements based on daily staffing levels.

2. The department may enforce nursing home minimum staffing requirements based on weekly staffing levels for a nursing home if the secretary determines that the nursing home is unable to comply with nursing home minimum staffing requirements based on daily staffing levels because:

a. The nursing home minimum staffing requirements based on daily staffing levels violate the terms of a collective bargaining agreement that is in effect on December 8, 1987; or

b. A shortage of nurses or nurse aides available for employment by the nursing home exists.

(d) Each nursing home, other than nursing homes that primar-

ily serve the developmentally disabled, shall provide at least the following hours of service by registered nurses, licensed practical nurses, or nurse aides and may not use hours of service by a feeding assistant, as defined in s. 146.40 (1) (aw), in fulfilling these requirements:

1. For each resident in need of intensive skilled nursing care, 3.25 hours per day, of which a minimum of 0.65 hour shall be provided by a registered nurse or licensed practical nurse.

2. For each resident in need of skilled nursing care, 2.5 hours per day, of which a minimum of 0.5 hour shall be provided by a registered nurse or licensed practical nurse.

3. For each resident in need of intermediate or limited nursing care, 2.0 hours per day, of which a minimum of 0.4 hour shall be provided by a registered nurse or licensed practical nurse.

(2d) ACCOMPANIMENT OR VISITATION. If a nursing home has a policy on who may accompany or visit a patient, the nursing home shall extend the same right of accompaniment or visitation to a patient's domestic partner under ch. 770 as is accorded the spouse of a patient under the policy.

(2g) PROVISION OF INFORMATION REQUIRED. (a) A nursing home shall, within the time period after inquiry by a prospective resident that is prescribed by the department by rule, inform the prospective resident of the services of a resource center under s. 46.283, the family care benefit under s. 46.286, and the availability of a functional screening and a financial and cost-sharing screening to determine the prospective resident's eligibility for the family care benefit under s. 46.286 (1).

(b) Failure to comply with this subsection is a class "C" violation under sub. (4) (b) 3.

(2h) REQUIRED REFERRAL. (a) A nursing home shall, within the time period prescribed by the department by rule, refer to a resource center under s. 46.283 a person who is seeking admission, who is at least 65 years of age or has developmental disability or physical disability and whose disability or condition is expected to last at least 90 days, unless any of the following applies:

1. For a person for whom a screening for functional eligibility under s. 46.286 (1) (a) has been performed within the previous 6 months, the referral under this paragraph need not include performance of an additional functional screening under s. 46.283 (4) (g).

2. The person is seeking admission to the nursing home only for respite care.

3. The person is an enrollee of a care management organization.

4. For a person who seeks admission or is about to be admitted on a private pay basis and who waives the requirement for a financial and cost-sharing screening under s. 46.283 (4) (g), the referral under this subsection may not include performance of a financial and cost-sharing screening under s. 46.283 (4) (g), unless the person is expected to become eligible for medical assistance within 6 months.

(b) Failure to comply with this subsection is a class "C" violation under sub. (4) (b) 3.

(2r) ADMISSIONS REQUIRING APPROVAL. Except in an emergency, a nursing home that is not certified as a provider of medical assistance or that is an intermediate care facility for persons with an intellectual disability, as defined in s. 46.278 (1m) (am), or an institution for mental diseases, as defined under 42 CFR 435.1009, may not admit as a resident an individual who has a developmental disability, as defined in s. 51.01 (5), or who is both under age 65 and has mental illness, as defined in s. 51.01 (13), unless the county department under s. 46.23, 51.42 or 51.437 of the individual's county of residence has recommended the admission.

(2t) REPORTS OF DEATH REQUIRED. (a) In this subsection:

1. "Physical restraint" includes all of the following:

a. A locked room.

b. A device or garment that interferes with an individual's freedom of movement and that the individual is unable to remove easily.

c. Restraint by a facility staff member of a resident by use of physical force.

2. "Psychotropic medication" means an antipsychotic, antidepressant, lithium carbonate or a tranquilizer.

(b) No later than 24 hours after the death of a resident of a nursing home, the nursing home shall report the death to the department if one of the following applies:

1. There is reasonable cause to believe that the death was related to the use of physical restraint or a psychotropic medication.

3. There is reasonable cause to believe that the death was a suicide.

(2v) POSTING OF NOTICE REQUIRED. A nursing home shall post in a conspicuous location in the nursing home all of the following:

(a) A notice, provided by the board on aging and long-term care, of the name, address and telephone number of the long-term care ombudsman program under s. 16.009 (2) (b).

(b) The most recent copy of the report for the nursing home that is specified under s. 50.095 (3).

(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.

(d) *Survey of institutions for mental diseases.* During inspections conducted under par. (a), the department shall conduct a survey to determine whether any nursing home that is licensed under this section is an institution for mental diseases, as defined under 42 CFR 435.1009.

(4) NOTICE OF VIOLATION; CORRECTION. (a) *Notice of violation; exceptions.* 1. Except as provided in par. (am) 2., if upon inspection or investigation the department determines that a nursing home is in violation of this subchapter or the rules promulgated under it and the violation is a class "A" or "B" violation, it shall promptly serve a notice of violation upon the licensee. Each notice of violation shall be prepared in writing and shall specify the nature of the violation, and the statutory provision or rule alleged to have been violated. The notice shall inform the licensee of the right to a hearing under par. (e). The written notice of a

class "A" violation may be written and served by an agent of the department at the time of the inspection.

1g. a. If upon inspection or investigation the department determines that a nursing home is in violation of this subchapter or the rules promulgated under it and the violation is a class "C" violation, the department may serve a correction order upon the licensee unless the nursing home corrects the violation before the completion of the inspection or investigation. If the correction is made before the completion of the inspection or investigation, the department may make a notation in the report under sub. (3) (b) that shall specify the nature of the violation and the statute or rule alleged to have been violated.

b. If upon inspection or investigation the department determines that a nursing home is in violation of this subchapter or the rules promulgated under it and the violation is a class "C" repeat violation, the department may serve a correction order or notice of violation upon the nursing home. If the nursing home corrects the violation before completion of the inspection or investigation, the department may, as an alternative to serving a correction order or notice of violation, make a notation in the report under sub. (3) (b) that shall specify the nature of the violation and the statute or rule alleged to have been violated.

1m. A correction order shall be prepared in writing and shall specify the nature of the violation, the statutory provision or rule alleged to have been violated and the date by which the violation shall be corrected. The department may grant an extension of the date for correction specified in the correction order. The nursing home shall correct the class "C" violation by the date specified in the correction order or the extended date, if granted.

1r. The department may serve a notice of violation on a nursing home determined to be in violation of this subchapter or the rules promulgated under it for a class "C" violation if either of the following conditions apply:

a. The nursing home fails to make a correction by the date specified in a correction order served under subd. 1g. b. or by an extension of the date, if granted.

b. The violation is a class "C" repeat violation, regardless of whether a correction order has first been served.

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, or the nursing home has corrected the violation.

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.

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

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

(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 or immediate jeopardy shall be abated or eliminated immediately unless a fixed period of time, as determined by the department and specified in the notice of violation, is required for correction. If the class "A" violation or immediate jeopardy is not abated or eliminated within the specified time period, the department shall maintain an action in circuit court for injunction or other process against the licensee, owner, operator, administrator or representative of the facility to restrain and enjoin violation of applicable rules, regulations and statutes.

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 10 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.

5. This paragraph does not apply to notices of violation served under par. (a) 1r.

(d) *Suspension of admissions.* 1. The department shall suspend new admissions to a nursing home if all of the following apply:

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

b. In any 15-month period during the 36 months immediately

preceding the period specified in subd. 1. a., the nursing home received written notice of a violation of a state statute or rule or a federal statute or regulation that involved immediate jeopardy to a resident; a class "A" violation; or 3 or more class "B" violations or violations that constituted actual harm not involving immediate jeopardy to a resident.

2. A suspension of admissions under subd. 1. shall begin 90 days after a nursing home received its last notice of violation for a violation specified in subd. 1. a. if the department determines that the violation remains uncorrected 90 days after the nursing home received the last notice of the violation. A suspension of admissions under subd. 1. shall remain in effect until the department determines that the nursing home has corrected the violation. Admission of a new resident during the period for which admissions have been suspended constitutes a class "B" violation.

3. In determining whether subd. 1. applies, the department may not consider a notice of violation found to be unjustified after hearing.

4. If the department suspends new admissions to a nursing home under this paragraph, the department shall publish a class 1 notice under ch. 985 in a newspaper likely to give notice in the area where the nursing home is located.

(dm) *Inspection fee.* If the department takes enforcement action against a nursing home, including an intermediate care facility for persons with an intellectual disability, as defined in s. 50.14 (1) (b), for a violation of this subchapter or rules promulgated under it or for a violation of a requirement under 42 USC 1396r, and the department subsequently conducts an on-site inspection of the nursing home to review the nursing home's action to correct the violation, the department may, unless the nursing home is operated by the state, impose a $200 inspection fee on the nursing home.

(e) *Hearings.* 1. If a nursing home desires to contest any department action under this subsection, it shall send a written request for a hearing under s. 227.44 to the division of hearings and appeals created under s. 15.103 (1) within 60 days of receipt of notice of the contested action. Department action that is subject to a hearing under this subsection includes service of a notice of a violation of this subchapter or rules promulgated under this subchapter, a notation in the report under sub. (3) (b), imposition of a plan of correction, and rejection of a nursing home's plan of correction, but does not include a correction order. Upon the request of the nursing home, the division shall grant a stay of the hearing under this paragraph until the department assesses a forfeiture, so that its hearing under this paragraph is consolidated with the forfeiture appeal hearing held under sub. (5) (e). All agency action under this subsection arising out of a violation, deficiency, or rejection and imposition of a plan of correction shall be the subject of a single hearing. Unless a stay is granted under this paragraph, the division shall commence the hearing within 30 days of the request for hearing, within 30 days of the department's acceptance of a nursing home's plan of correction, or within 30 days of the department's imposition of a plan of correction, whichever is later. The division shall send notice to the nursing home in conformance with s. 227.44. Issues litigated at the hearing may not be relitigated at subsequent hearings under this paragraph arising out of the same violation or deficiency.

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.

3. In any petition for judicial review of a decision by the division under subd. 2., the department, if not the petitioner who was in the proceeding before the division under subd. 1., shall be the named respondent.

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

1. A class "A" violation may be subject to a forfeiture of not more than $10,000 for each violation.

2. A class "B" violation may be subject to a forfeiture of not more than $5,000 for each violation.

3. A class "C" violation may be subject to a forfeiture of not more than $500. No forfeiture may be assessed for a class "C" violation unless at least one of the following applies:

a. The department serves the nursing home a notice of violation following the nursing home's failure to correct a class "C" violation by the date specified in a correction order or an extended date set by the department, if granted.

b. The department serves the nursing home a notice of violation for a class "C" repeat violation.

4. Notwithstanding subds. 1., 2. and 3., if the violation or group of violations results from inadequate staffing, the amount of the forfeiture that the department may assess 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. A nursing home that violates a statute or rule resulting in a class "A" violation and that has received a notice of violation for a class "A" violation within the previous 3-year period involving the same situation shall be subject to a forfeiture 3 times the amount authorized for a class "A" violation.

b. Except as provided in subd. 5. a., a nursing home that violates a statute or rule resulting in a class "A" or class "B" violation and that has received a notice of a class "A" or class "B" violation of the same statute or rule within the previous 3-year period may be subject to a forfeiture 3 times the amount authorized for the most recent class of violation involved.

c. A notice of violation found to be unjustified after hearing may not be considered in applying this subdivision.

d. The forfeiture amount that is tripled under this subdivision shall be the amount assessed after all appeals have been exhausted. If an assessment of forfeiture is not contested and the forfeiture is paid as provided in par. (fm), the forfeiture amount that is tripled is the amount assessed after the reduction specified in par. (fm).

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 a violation continues after a report of correction, the department may assess upon the licensee a separate forfeiture of not more than $10,000 for class "A" violations, and may assess a separate forfeiture of not more than $5,000 for class "B" violations, for each day of continuing violation.

(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 rules were violated.

2. "Good faith" exercised by the licensee. Indications of good faith include, but are not limited to, awareness of the appli-

cable 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, the department shall send a notice of assessment of forfeiture to the nursing home. The notice shall specify the amount of the forfeiture assessed, the violation, and the statute or rule alleged to have been violated and shall inform the licensee of the right to hearing under par. (e). If the department does not issue a notice of forfeiture within 120 days after the date on which a nursing home receives the notice of a violation, the department may not assess a forfeiture for the violation.

(d) *Forfeiture period.* 1. In the case of a class "B" 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.

2. In the case of a class "C" violation for which a notice of violation has been served, a forfeiture may be assessed:

a. Under par. (a) 3. a., for the period beginning on the date for correction set forth in the correction order or an extended date set by the department, if granted, and ending on the date on which the violation is corrected.

b. Under par. (a) 3. b., for each day of the period during which the violation occurred.

(dm) *Forfeiture assessment date.* In the case of a class "B" 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 a forfeiture by sending, within 60 days after receipt of notice of the assessment of the forfeiture, a written request for hearing under s. 227.44 to the division of hearings and appeals created under s. 15.103 (1). The administrator of the division may designate a hearing examiner to preside over the case and recommend a decision to the administrator under s. 227.46. The decision of the administrator of the division shall be the final administrative decision. The division shall commence the hearing within 30 days of receipt of the request for hearing and shall issue a final decision within 15 days after the close of the hearing. Proceedings before the division are governed by ch. 227. In any petition for judicial review of a decision by the division, the party, other than the petitioner, who was in the proceeding before the division shall be the named respondent. If, after receipt of notice of assessment of a forfeiture, a nursing home that has timely requested a hearing under sub. (4) (e) on the notice of violation under sub. (4) for which the forfeiture was assessed requests a hearing under this paragraph on the assessment of the forfeiture, the hearing on the notice of violation under sub. (4) and the hearing on the assessment of the forfeiture shall be consolidated.

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

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

(fr) *Report to the legislature.* Annually, the department shall submit a report to the legislature under s. 13.172 (2) that specifies for the previous year the number of class "A" violations, the amount of the forfeiture assessment for each of those violations and, if known, the amount of the forfeiture actually paid and collected with respect to those violations. The report shall also include an explanation for any assessment that was less than $2,500 for the violations specified in the report.

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

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

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

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

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

(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 a case conference prior to issuance of the conditional license under par. (d) and of its right to a full hearing under par. (e).

(d) *Case conference.* If the facility desires to have a case conference it shall, within 4 working days of receipt of the notice under par. (c), send a written request for a case conference to the department. The department shall, within 4 working days from the receipt of the request, hold a case 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 case conference, or after the time for requesting a case conference has expired, prior to any further hearing.

(e) *Hearing.* If after the case 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.

(7) VIOLATIONS. If an act forms the basis for a violation of this section and s. 49.498, the department or the attorney general may impose sanctions in conformity with this section or under s. 49.498, but not both.

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

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

History: 1977 c. 170 ss. 6, 29; 1977 c. 272; 1979 c. 34; 1981 c. 20, 121, 317, 391; 1983 a. 27 s. 2200 (1); 1985 a. 29; 1985 a. 182 s. 57; 1985 a. 332 s. 251 (1), (7); 1987 a. 27, 127, 399; 1989 a. 31, 336; 1991 a. 39, 269, 315; 1995 a. 27; 1997 a. 27, 114, 237, 252, 280; 1999 a. 9, 32, 103; 2003 a. 33; 2007 a. 20, 153; 2009 a. 28; 2011 a. 70, 126; 2019 a. 9; 2021 a. 240 s. 30.

A state nursing home is not subject to the forfeiture provisions of this chapter. Wisconsin Veterans Home v. Division of Nursing Home Forfeiture Appeals, 104 Wis. 2d 106, 310 N.W.2d 646 (Ct. App. 1981).

A county-operated nursing home was subject to forfeitures under sub. (5). Lakeland Home v. Nursing Home Appeals Division, 118 Wis. 2d 636, 348 N.W.2d 523 (1984).

The sub. (5) (e) 30-day limit for commencing a hearing is directory, not mandatory. St. Michael's Church v. DOA, 137 Wis. 2d 326, 404 N.W.2d 114 (Ct. App. 1987).

The requirement under sub. (2r) that an individual may not be admitted to an intermediate care facility unless the county department of the individual's county of residence has recommended admission is a residency requirement, which in the case of a private facility is an unconstitutional restriction on travel. Bethesda Lutheran Homes & Services v. Leean, 122 F.3d 443 (1997).

50.045 Therapeutic alternate drug selections in nursing homes.

(1) A nursing home that does not maintain a quality assessment and assurance committee under s. 49.498 (2) (a) 2. may maintain a committee that consists of the director of nursing services, a physician, as defined in s. 448.01 (5), a pharmacist, as defined in s. 450.01 (15), and at least 2 other members of the nursing home staff.

(2) A committee with the members specified under sub. (1) may establish written guidelines or procedures for making therapeutic alternate drug selections for the purposes of s. 450.01 (16) (hm).

History: 2013 a. 294.

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.

1L. With respect to a limited liability company, each member 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; each limited liability company and each member or manager thereof of which that person or any affiliate of that person is a member or manager; 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.

(dm) "Nursing facility" has the meaning given in s. 49.498 (1) (i).

(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 percent 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 the secretary, as specified in sub. (4), 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 or revoked the existing license of the facility.

(c) The department has initiated revocation procedures under s. 50.03 (5) and has determined that the lives, health, safety, or welfare of the residents cannot be adequately assured pending a full hearing on license 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 or that placement of a monitor or appointment of a receiver is necessary to protect the health, safety or welfare of the residents.

(f) The facility is a nursing facility that is in violation of s. 49.498, a rule promulgated under s. 49.498, or a requirement under 42 CFR 483 related to the operation of a nursing facility, meets the criteria established by rule under s. 49.498 (14) (c) for placement of a monitor or appointment of a receiver, and there is

a need for placement of a monitor or appointment of a receiver during the period that any of the following applies:

1. There is an orderly closure of the nursing facility.

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

(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. The department may require payment by the operator or controlling person of the facility for the costs of placement of a person to act as monitor in the facility.

(4) APPOINTMENT OF RECEIVER. Only the secretary, represented by the department of justice, may apply for a court order appointing the secretary or the secretary's designee receiver of the facility. The secretary, as represented, may apply by verified petition to the circuit court for Dane County for the order. 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. Notwithstanding ss. 803.01 to 803.09 and 844.18, the only persons who may appear as a party at a hearing under this subsection or sub. (5) are the secretary or the secretary's designee and the operator of the facility. The court shall appoint a receiver for a specified time period requested by the secretary up to 120 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 30-day increments only on the petition of the department and if the court finds that the department has been unable to transfer all of the residents to another suitable location or the department has determined that it is necessary for the receivership to be extended for the continued health, safety and welfare of the residents. Notwithstanding s. 808.03 (1), any order issued at the hearing on the petition for receivership under this subsection or sub. (5) or at a subsequent hearing concerning matters arising under the receivership or concerning termination of the receivership under sub. (14) may be appealed as a matter of right.

(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. An appearance by the secretary or the secretary's designee to obtain the order is not a hearing of any preliminary contested matter for the purposes of s. 801.58 (1). 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 tangible 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 presents an immediate or serious danger to the health or safety 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 only on application from the receiver.

(f) May let contracts and hire agents and employees to carry out the powers and duties created under this section. 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 employees of the facility, subject to any contract rights they may have. The receiver shall pay employees at the same rate of compensation, including benefits, that the employees would have received from the operator, except that the receiver shall compensate employees for time actually worked during the period of receivership and may reimburse for vacations or periods of sick leave. The receiver may grant salary increases and fringe benefits to employees of a nursing home, in accord with the facility payment formula under s. 49.45 (6m). Receivership does not relieve the operator of any obligation to employees not carried out by the receiver.

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

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

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

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

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

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

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

(m) May restrict admissions to the facility.

(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 any of the following is applicable:

1. The person seeking payment under the lease, mortgage, secured transaction or other wholly or partially executory contract was an operator or controlling person of the facility or was an affiliate of an operator or controlling person at the time the lease, mortgage, secured transaction or other wholly or partially executory contract was made.

2. The rental, price or rate of interest required to be paid under the lease, mortgage, secured transaction or other wholly or partially executory contract was in excess of a reasonable rental, price or rate of interest at the time the contract was entered into.

3. Payment under the lease, mortgage, secured transaction or other wholly or partially executory contract has been modified by the parties' subsequent oral or written agreement or constructive waiver.

(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.

(c) During the period of appointment of a receiver, there may be no foreclosure of a mortgage entered into by the owner or operator of the facility or eviction of facility residents if the foreclosure or eviction serves to defeat the purpose of the appointment.

(9m) IMPEDING RECEIVERSHIP PROHIBITED; AUTOMATIC STAY. No person may impede the operation of a receivership established under this section. After the appointment of a receiver, any action that interferes with the functioning of the facility, including cancellation of an insurance policy executed on behalf of the facility, repossession of equipment used in the facility or termination of utility services or other services or goods that are necessary to protect the health, safety or welfare of the nursing home residents, is automatically stayed for a period of not more than 60 days.

(10) CONTINGENCY FUND. If funds collected under subs. (3), (7) and (8) are insufficient to meet the expenses of performing the powers and duties conferred on the receiver by this section, or if there are insufficient funds on hand to meet those expenses, the department may draw from the supplemental fund created under s. 20.435 (6) (dm) to pay the expenses associated with the placement of a monitor, if any, in a nursing home and the receivership of a nursing home. Operating funds collected under this section and not applied to the expenses of the placement of a monitor, if any, and the receivership, except for the amount of a security, if any is required under sub. (14m), shall be used to reimburse the fund for advances made under this section.

(11) COMPENSATION OF MONITOR OR RECEIVER. The court shall set the compensation of a person placed as a monitor, if any, and of the receiver, which will be considered necessary expenses of a receivership.

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

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

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

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

(14) TERMINATION OF RECEIVERSHIP. (a) Except as provided under par. (b), the court may not terminate a receivership for any reason other than as specified under subds. 1. to 3. and shall, after the department determines and notifies the court that the facility is able to ensure continued compliance with federal and state laws, terminate the receivership:

1. If the time period specified in the order appointing the receiver elapses and the department has not petitioned for an extension;

2. 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

3. If all of the residents in the facility have been provided al-

ternative modes of health care, either in another facility or otherwise.

(b) The court may terminate a receivership of a nursing facility imposed because of a violation of s. 49.498 or a rule promulgated under s. 49.498 if the department submits testimony to the satisfaction of the court that the nursing facility has the management capability to ensure continued compliance with the requirements of s. 49.498 or a rule promulgated under s. 49.498.

(14m) BOND UPON TERMINATION; REAPPOINTMENT. If the court terminates a receivership under sub. (14) and the department grants a license for the facility to the same applicant under which the facility was licensed immediately prior to appointment of a receiver under sub. (4) or (5), the court may require that person to post a bond for a period of not less than 120 days in an amount fixed by the court as security for maintaining compliance with this subchapter and the rules promulgated under this subchapter. If the court, after notice to the parties in the receivership proceeding and after a hearing, finds that the standards for appointment under sub. (4) are met, the court may reappoint the receiver. If the court reappoints the receiver, the receiver may use the security, if any has been required under this subsection, in addition to funds under subs. (7), (8) and (10), for purposes of payment of the placement of a monitor, if any, and for the receivership.

(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 monitor, if any is placed in a nursing home, and the receivership.

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

(c) The department has 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.

5. Any other property or assets of the operator or controlling person if no property or proceeds exist under subds. 1. to 4.

(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 or a lien under s. 292.31 (8) (i) or 292.81.

(e) The clerk of circuit court for the county in which the facility is located shall record the filing of the petition for receivership in the judgment and 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 judgment and lien docket kept under s. 779.07. If the lien is on personal property, notice of the lien shall be filed in the same manner, form, and place as financing statements are filed under subch. V of ch. 409 regarding debtors who are located in this state. The department of financial institutions shall file the notice of the lien in the same file as financing statements are filed under subch. V of ch. 409. 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 employees during the term of the receivership.

History: 1977 c. 112; 1979 c. 32 s. 92 (9); 1979 c. 34; 1981 c. 121; 1983 a. 27 s. 2202 (20); 1985 a. 29 s. 3200 (23) (b), (c); 1987 a. 27; 1989 a. 31; 1993 a. 112, 453; 1995 a. 27, 224, 227; 1997 a. 27, 35; 1999 a. 83; 2001 a. 10; 2011 a. 70.

50.053 Case conference. The department may hold a case 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 case conference.

History: 1977 c. 170; 1999 a. 103.

50.06 Certain admissions to facilities. (1) In this section, "incapacitated" means unable to receive and evaluate information effectively or to communicate decisions to such an extent that the individual lacks the capacity to manage his or her health care decisions, including decisions about his or her post-hospital care.

(2) An individual under sub. (3) may consent to admission, directly from a hospital to a facility, of an incapacitated individual who does not have a valid power of attorney for health care and who has not been adjudicated incompetent in this state, if all of the following apply:

(a) No person who is listed under sub. (3) in the same order of priority as, or higher in priority than, the individual who is consenting to the proposed admission disagrees with the proposed admission.

(am) 1. Except as provided in subd. 2., no person who is

listed under sub. (3) and who resides with the incapacitated individual disagrees with the proposed admission.

2. Subdivision 1. does not apply if any of the following applies:

a. The individual who is consenting to the proposed admission resides with the incapacitated individual.

b. The individual who is consenting to the proposed admission is the spouse or domestic partner under ch. 770 of the incapacitated person.

(b) The individual for whom admission is sought is not diagnosed as developmentally disabled or as having a mental illness at the time of the proposed admission.

(c) A petition for guardianship for the individual under s. 54.34 and a petition under s. 55.075 for protective placement of the individual are filed prior to the proposed admission.

(d) The incapacitated individual does not verbally object to or otherwise actively protest the admission. If he or she makes such an objection or protest, he or she may be admitted to the facility, but the person in charge of the facility shall immediately notify the county department under s. 55.02 (2) for the county in which the individual is living or the agency with which the county department contracts. Representatives of the county department or agency shall visit the individual as soon as possible, but not later than 72 hours after notification, and do all of the following:

1. Determine whether the protest persists or has been voluntarily withdrawn and consult with the person who consented to the admission regarding the reasons for the admission.

2. Attempt to have the incapacitated individual released within 72 hours if the protest is not withdrawn and the individual does not satisfy all of the criteria under s. 55.08 (1) or 55.135 (1), and provide assistance in identifying appropriate alternative living arrangements.

3. Comply with s. 55.135 if the requirements of s. 55.135 (1) are met and emergency protective placement in that facility or another facility is necessary. The court, with the permission of the facility, may order the incapacitated individual to remain in the facility pending the outcome of the protective placement proceedings.

(3) The following individuals, in the following order of priority, may consent to an admission under sub. (2):

(a) The spouse or domestic partner under ch. 770 of the incapacitated individual.

(b) An adult son or daughter of the incapacitated individual.

(c) A parent of the incapacitated individual.

(d) An adult brother or sister of the incapacitated individual.

(e) A grandparent of the incapacitated individual.

(f) An adult grandchild of the incapacitated individual.

(g) An adult close friend of the incapacitated individual.

(4) A determination that an individual is incapacitated for purposes of sub. (2) shall be made by 2 physicians, as defined in s. 448.01 (5), or by one physician and one psychologist, who personally examine the individual and sign a statement specifying that the individual is incapacitated. Mere old age, eccentricity, or physical disability, either singly or together, are insufficient to make a finding that an individual is incapacitated. Neither of the individuals who make a finding that an individual is incapacitated may be a relative, as defined in s. 242.01 (11), of the individual or have knowledge that he or she is entitled to or has a claim on any portion of the individual's estate. A copy of the statement shall be included in the individual's records in the facility to which he or she is admitted.

(5) (a) Except as provided in par. (b), an individual who consents to an admission under this section may, for the incapacitated individual, make health care decisions to the same extent as a guardian of the person may and authorize expenditures related to health care to the same extent as a guardian of the estate may, until the earliest of the following:

1. Sixty days after the admission to the facility of the incapacitated individual.

2. Discharge of the incapacitated individual from the facility.

3. Appointment of a guardian for the incapacitated individual.

(b) An individual who consents to an admission under this section may not authorize expenditures related to health care if the incapacitated individual has an agent under a durable power of attorney, as defined in s. 244.02 (3), who may authorize expenditures related to health care.

(6) If the incapacitated individual is in the facility after 60 days after admission and a guardian has not been appointed, the authority of the person who consented to the admission to make decisions and, if sub. (5) (a) applies, to authorize expenditures is extended for 30 days for the purpose of allowing the facility to initiate discharge planning for the incapacitated individual.

(7) An individual who consents to an admission under this section may request a functional screening and a financial and cost-sharing screening to determine eligibility for the family care benefit under s. 46.286 (1). If admission is sought on behalf of the incapacitated individual or if the incapacitated individual is about to be admitted on a private pay basis, the individual who consents to the admission may waive the requirement for a financial and cost-sharing screening under s. 46.283 (4) (g), unless the incapacitated individual is expected to become eligible for medical assistance within 6 months.

History: 1993 a. 187; 1999 a. 9; 2005 a. 264, 387; 2007 a. 20, 45; 2009 a. 28, 319; 2019 a. 9; 2021 a. 22, 131; 2021 a. 239 s. 74.

50.065 Criminal history and patient abuse record search.

(1) In this section:

(ag) 1. "Caregiver" means any of the following:

a. A person who is, or is expected to be, an employee or contractor of an entity, who is or is expected to be under the control of an entity, as defined by the department by rule, and who has, or is expected to have, regular, direct contact with clients of the entity.

b. A person who has, or is seeking, a license, certification, registration, or certificate of approval issued or granted by the department to operate an entity.

c. A person who is, or is expected to be, an employee of the board on aging and long-term care and who has, or is expected to have, regular, direct contact with clients.

2. "Caregiver" does not include a person who is certified as an emergency medical services practitioner under s. 256.15 if the person is employed, or seeking employment, as an emergency medical services practitioner and does not include a person who is certified as an emergency medical responder under s. 256.15 if the person is employed, or seeking employment, as an emergency medical responder.

(am) "Certificate of approval" means a certificate of approval issued under s. 50.35.

(b) "Client" means a person who receives direct care or treatment services from an entity.

(bm) "Contractor" means, with respect to an entity, a person, or that person's agent, who provides services to the entity under an express or implied contract or subcontract, including a person who has staff privileges at the entity.

(br) "Direct contact" means face-to-face physical proximity to a client that affords the opportunity to commit abuse or neglect of a client or to misappropriate the property of a client.

(c) "Entity" means a facility, organization or service that is li-

censed or certified by or registered with the department to provide direct care or treatment services to clients; or an agency that employs or contracts with an individual to provide personal care services. "Entity" includes a hospital, a home health agency licensed under s. 50.49, a temporary employment agency that provides caregivers to another entity, and the board on aging and long-term care. "Entity" does not include any of the following:

1. Licensed or certified child care under ch. 48.

2. Kinship care under s. 48.57 (3m) or long-term kinship care under s. 48.57 (3n).

3. A person certified as a medical assistance provider, as defined in s. 49.43 (10), who is not otherwise approved under par. (cm), licensed or certified by or registered with the department.

4. An entity, as defined in s. 48.685 (1) (b).

6. A public health dispensary established under s. 252.10.

(cm) "Hospital" means a facility approved as a hospital under s. 50.35.

(cn) "Nonclient resident" means a person who resides, or is expected to reside, at an entity, who is not a client of the entity and who has, or is expected to have, regular, direct contact with clients of the entity.

(cr) "Personal care services" means any of the following:

1. Assistance with any of the following activities of daily living:

a. Eating.

b. Bathing.

c. Grooming.

d. Dressing.

e. Transferring.

f. Toileting.

2. Assistance with the following activities incidental to activities of daily living under subd. 1.:

a. Meal preparation.

b. Food purchasing.

c. Changing or laundering of a client's linens or clothing.

d. Routine care of vision or hearing aids.

e. Light cleaning in areas of the residence that are used during provision of services under subd. 1. or under subd. 2. a. to d.

(dm) "Reservation" means land in this state within the boundaries of a reservation of a tribe or within the bureau of Indian affairs service area for the Ho-Chunk Nation.

(e) 1. "Serious crime" means a violation of s. 940.19 (3), 1999 stats., a violation of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19 (2), (4), (5) or (6), 940.198 (2), 940.22 (2) or (3), 940.225 (1), (2) or (3), 940.285 (2), 940.29, 940.295, 948.02 (1), 948.025 or 948.03 (2) (a) or (5) (a) 1., 2., or 3., or a violation of the law of any other state or United States jurisdiction that would be a violation of s. 940.19 (3), 1999 stats., or a violation of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19 (2), (4), (5) or (6), 940.198 (2), 940.22 (2) or (3), 940.225 (1), (2) or (3), 940.285 (2), 940.29, 940.295, 948.02 (1), 948.025 or 948.03 (2) (a) or (5) (a) 1., 2., or 3. if committed in this state.

2. For the purposes of an entity that serves persons under the age of 18, "serious crime" includes a violation of s. 948.02 (2), 948.03 (2) (b) or (c) or (5) (a) 4., 948.05, 948.051, 948.055, 948.06, 948.07, 948.08, 948.085, 948.11 (2) (a) or (am), 948.12, 948.125, 948.13, 948.21 (2), 948.215, 948.30, or 948.53 or a violation of the law of any other state or United States jurisdiction that would be a violation of s. 948.02 (2), 948.03 (2) (b) or (c) or (5) (a) 4., 948.05, 948.051, 948.055, 948.06, 948.07, 948.08, 948.085, 948.11 (2) (a) or (am), 948.12, 948.125, 948.13, 948.21 (2), 948.30, or 948.53 if committed in this state.

(g) "Tribe" means a federally recognized American Indian tribe or band in this state.

(2) (am) The department shall obtain all of the following with respect to a person specified under sub. (1) (ag) 1. b. and a person who is a nonclient resident or prospective nonclient resident of an entity:

1. A criminal history search from the records maintained by the department of justice.

2. Information that is contained in the registry under s. 146.40 (4g) regarding any findings against the person.

3. Information maintained by the department of safety and professional services regarding the status of the person's credentials, if applicable.

4. Information maintained by the department regarding any final determination under s. 48.981 (3) (c) 5m. or, if a contested case hearing is held on such a determination, any final decision under s. 48.981 (3) (c) 5p. that the person has abused or neglected a child.

5. Information maintained by the department under this section regarding any denial to the person of a license, certification, certificate of approval or registration or of a continuation of a license, certification, certificate of approval or registration to operate an entity for a reason specified in sub. (4m) (a) 1. to 5. and regarding any denial to the person of employment at, a contract with or permission to reside at an entity for a reason specified in sub. (4m) (b) 1. to 5. If the information obtained under this subdivision indicates that the person has been denied a license, certification, certificate of approval or registration, continuation of a license, certification, certificate of approval or registration, a contract, employment or permission to reside as described in this subdivision, the department need not obtain the information specified in subds. 1. to 4.

(b) Every entity shall obtain all of the following with respect to a caregiver of the entity:

1. A criminal history search from the records maintained by the department of justice.

2. Information that is contained in the registry under s. 146.40 (4g) regarding any findings against the person.

3. Information maintained by the department of safety and professional services regarding the status of the person's credentials, if applicable.

4. Information maintained by the department regarding any final determination under s. 48.981 (3) (c) 5m. or, if a contested case hearing is held on such a determination, any final decision under s. 48.981 (3) (c) 5p. that the person has abused or neglected a child.

5. Information maintained by the department under this section regarding any denial to the person of a license, certification, certificate of approval or registration or of a continuation of a license, certification, certificate of approval or registration to operate an entity for a reason specified in sub. (4m) (a) 1. to 5. and regarding any denial to the person of employment at, a contract with or permission to reside at an entity for a reason specified in sub. (4m) (b) 1. to 5. If the information obtained under this subdivision indicates that the person has been denied a license, certification, certificate of approval or registration, continuation of a license, certification, certificate of approval or registration, a contract, employment or permission to reside as described in this subdivision, the entity need not obtain the information specified in subds. 1. to 4.

(bb) If information obtained under par. (am) or (b) indicates a charge of a serious crime, but does not completely and clearly indicate the final disposition of the charge, the department or entity shall make every reasonable effort to contact the clerk of courts to determine the final disposition of the charge. If a background in-

formation form under sub. (6) (a) or (am), or any disclosure made pursuant to a disclosure policy described under sub. (6) (am), indicates a charge or a conviction of a serious crime, but information obtained under par. (am) or (b) does not indicate such a charge or conviction, the department or entity shall make every reasonable effort to contact the clerk of courts to obtain a copy of the criminal complaint and the final disposition of the complaint. If information obtained under par. (am) or (b), a background information form under sub. (6) (a) or (am), any disclosure made pursuant to a disclosure policy described under sub. (6) (am), or any other information indicates a conviction of a violation of s. 940.19 (1), 940.195, 940.20, 940.204, 941.30, 942.08, 947.01 (1), or 947.013 obtained not more than 5 years before the date on which that information was obtained, the department or entity shall make every reasonable effort to contact the clerk of courts to obtain a copy of the criminal complaint and judgment of conviction relating to that violation.

(bd) Notwithstanding pars. (am) and (b) 1., the department is not required to obtain the information specified in par. (am) 1. to 5., and an entity is not required to obtain the information specified in par. (b) 1. to 5., with respect to a person under 18 years of age whose background information form under sub. (6) (am), or whose response or lack of response to a disclosure policy described under sub. (6) (am), indicates that the person is not ineligible to be employed, contracted with or permitted to reside at an entity for a reason specified in sub. (4m) (b) 1. to 5. and with respect to whom the department or entity otherwise has no reason to believe that the person is ineligible to be employed, contracted with or permitted to reside at an entity for any of those reasons. This paragraph does not preclude the department from obtaining, at its discretion, the information specified in par. (am) 1. to 5. with respect to a person described in this paragraph who is a nonclient resident or a prospective nonclient resident of an entity.

(bg) If an entity hires or contracts with a caregiver for whom, within the last 4 years, the information required under par. (b) 1. to 3. and 5. has already been obtained by another entity, the entity may obtain that information from that other entity, which, notwithstanding par. (br), shall provide the information, if possible, to the requesting entity. If an entity cannot obtain the information required under par. (b) 1. to 3. and 5. from another entity or if an entity has reasonable grounds to believe that any information obtained from another entity is no longer accurate, the entity shall obtain that information from the sources specified in par. (b) 1. to 3. and 5.

(bm) If the person who is the subject of the search under par. (am) or (b) is not a resident of this state, or if at any time within the 3 years preceding the date of the search that person has not been a resident of this state, or if the department or entity determines that the person's employment, licensing or state court records provide a reasonable basis for further investigation, the department or entity shall make a good faith effort to obtain from any state or other United States jurisdiction in which the person is a resident or was a resident within the 3 years preceding the date of the search information that is equivalent to the information specified in par. (am) 1. or (b) 1. The department or entity may require the person to be fingerprinted on 2 fingerprint cards, each bearing a complete set of the person's fingerprints. The department of justice may provide for the submission of the fingerprint cards to the federal bureau of investigation for the purposes of verifying the identity of the person fingerprinted and obtaining records of his or her criminal arrests and convictions.

(br) 1. Except as provided in subd. 2, an entity that receives information regarding the arrest or conviction of a caregiver from the federal bureau of investigation in connection with a criminal history search under this section may use the information only to determine whether the caregiver's arrest or conviction record disqualifies him or her from serving as a caregiver. An entity is immune from civil liability to a caregiver for using arrest or conviction information provided by the federal bureau of investigation to make an employment determination regarding the caregiver.

2. Subdivision 1. does not apply to use by an entity of arrest or conviction information that the entity requests from the federal bureau of investigation after September 30, 2007.

(d) Every entity shall maintain, or shall contract with another person to maintain, the most recent background information obtained on a caregiver under par. (b). The information shall be made available for inspection by authorized persons, as defined by the department by rule.

(2m) (a) Any entity that places a caregiver in a client's residence to provide personal care services shall, before the caregiver provides services to the client, do all of the following:

1. Except as provided in par. (b), disclose to the client or the client's guardian in writing all information obtained under sub. (2) (b) 1. or (bb) regarding any conviction of the caregiver for a crime that is specified by rule under par. (d), and, if the caregiver has demonstrated that he or she has been rehabilitated under sub. (5), notice of that fact.

2. Except as provided in par. (b), disclose to the client or the client's guardian in writing all information obtained under sub. (2) (b) 2., 4., or 5. regarding the caregiver.

3. Notify the client or the client's guardian that, for a fee, the department of justice performs for any person a criminal history record search on an individual.

4. Notify the client or the client's guardian in writing that if the regularly assigned caregiver is unavailable and the entity assigns a substitute caregiver to provide personal care services to the client, the entity is not required to provide the disclosures under subd. 1. or 2. for the substitute caregiver.

(b) If a caregiver whom an entity has placed in a client's residence to provide personal care services is not available to provide the services and the entity assigns a substitute caregiver to provide personal care services to the client, the entity is not required to make the disclosures under par. (a) 1. and 2. for the substitute caregiver.

(c) Each time that an entity requests information under sub. (3) (b) regarding a caregiver who provides personal care services, the entity shall provide the disclosures required under par. (a) 1. and 2. to each client for whom the caregiver provides personal care services or to the client's guardian.

(d) The department shall promulgate rules to specify crimes for which an entity must disclose a conviction to a client or the client's guardian under par. (a) 1., and to specify who is a substitute caregiver for purposes of pars. (a) 4. and (b).

Cross-reference: See also s. DHS 12.115, Wis. adm. code.

(3) (a) Every 4 years or at any time within that period that the department considers appropriate, the department shall request the information specified in sub. (2) (am) 1. to 5. for all persons who are licensed to operate an entity and for all persons who are nonclient residents of an entity.

(b) Every 4 years or at any other time within that period that an entity considers appropriate, the entity shall request the information specified in sub. (2) (b) 1. to 5. for all caregivers of the entity.

(3m) Notwithstanding subs. (2) (b) and (3) (b), if the department obtains the information required under sub. (2) (am) or (3) (a) with respect to a person who is a caregiver specified under sub. (1) (ag) 1. b. and that person is also an employee, contractor or nonclient resident of the entity, the entity is not required to obtain the information specified in sub. (2) (b) or (3) (b) with respect to that person.

(4) An entity that violates sub. (2), (3) or (4m) (b) may be re-

quired to forfeit not more than $1,000 and may be subject to other sanctions specified by the department by rule.

(4m) (a) Notwithstanding s. 111.335, and except as provided in sub. (5), the department may not license, certify, issue a certificate of approval to or register a person to operate an entity or continue the license, certification, certificate of approval or registration of a person to operate an entity if the department knows or should have known any of the following:

1. That the person has been convicted of a serious crime.

3. That a unit of government or a state agency, as defined in s. 16.61 (2) (d), has made a finding that the person has abused or neglected any client or misappropriated the property of any client.

4. That a final determination has been made under s. 48.981 (3) (c) 5m. or, if a contested case hearing is held on such a determination, a final decision has been made under s. 48.981 (3) (c) 5p. that the person has abused or neglected a child.

5. That, in the case of a position for which the person must be credentialed by the department of safety and professional services, the person's credential is not current or is limited so as to restrict the person from providing adequate care to a client.

(b) Notwithstanding s. 111.335, and except as provided in sub. (5), an entity may not employ or contract with a caregiver or permit to reside at the entity a nonclient resident, if the entity knows or should have known any of the following:

1. That the person has been convicted of a serious crime.

3. That a unit of government or a state agency, as defined in s. 16.61 (2) (d), has made a finding that the person has abused or neglected any client or misappropriated the property of any client.

4. That a final determination has been made under s. 48.981 (3) (c) 5m. or, if a contested case hearing is held on such a determination, a final decision has been made under s. 48.981 (3) (c) 5p. that the person has abused or neglected a child.

5. That, in the case of a position for which the person must be credentialed by the department of safety and professional services, the person's credential is not current or is limited so as to restrict the person from providing adequate care to a client.

(c) If the background information form completed by a person under sub. (6) (am), or a person's response or lack of response to a disclosure policy described under sub. (6) (am), indicates that the person is not ineligible to be employed or contracted with for a reason specified in par. (b) 1. to 5., an entity may employ or contract with the person for not more than 60 days pending the receipt of the information sought under sub. (2) (b). If the background information form completed by a person under sub. (6) (am), or a person's response or lack of response to a disclosure policy described under sub. (6) (am), indicates that the person is not ineligible to be permitted to reside at an entity for a reason specified in par. (b) 1. to 5. and if an entity otherwise has no reason to believe that the person is ineligible to be permitted to reside at an entity for any of those reasons, the entity may permit the person to reside at the entity for not more than 60 days pending receipt of the information sought under sub. (2) (am). An entity shall provide supervision for a person who is employed or contracted with or permitted to reside as permitted under this paragraph.

(5) The department may license, certify, issue a certificate of approval to or register to operate an entity a person who otherwise may not be licensed, certified, issued a certificate of approval or registered for a reason specified in sub. (4m) (a) 1. to 5., and an entity may employ, contract with or permit to reside at the entity a person who otherwise may not be employed, contracted with or permitted to reside at the entity for a reason specified in sub. (4m) (b) 1. to 5., if the person demonstrates to the department, or, in the case of an entity that is located within the boundaries of a reservation, to the person or body designated by the tribe under sub. (5d) (a) 3., by clear and convincing evidence and in accordance with procedures established by the department by rule, or by the tribe, that he or she has been rehabilitated. The department shall permit any person who has been convicted of a crime specified by rule under sub. (2m) (d) and who wishes to provide personal care services to demonstrate to the department or, if the person wishes to provide personal care services only within the boundaries of a reservation and the department has approved a plan for the tribe to conduct rehabilitation reviews under sub. (5d), to the tribe that he or she has been rehabilitated.

(5c) Any person who is permitted but fails under sub. (5) to demonstrate to the department that he or she has been rehabilitated may appeal to the secretary of health services or his or her designee. Any person who is adversely affected by a decision of the secretary or his or her designee under this subsection has a right to a contested case hearing under ch. 227.

(5d) (a) Any tribe that chooses to conduct rehabilitation reviews under sub. (5) shall submit to the department a rehabilitation review plan that includes all of the following:

1. The criteria to be used to determine if a person has been rehabilitated.

2. The title of the person or body designated by the tribe to whom a request for review must be made.

3. The title of the person or body designated by the tribe to determine whether a person has been rehabilitated.

3m. The title of the person or body designated by the tribe to whom a person may appeal an adverse decision made by the person specified under subd. 3. and whether the tribe provides any further rights of appeal.

4. The manner in which the tribe will submit information relating to a rehabilitation review to the department so that the department may include that information in its report to the legislature required under sub. (5g).

5. A copy of the form to be used to request a review and a copy of the form on which a written decision is to be made regarding whether a person has demonstrated rehabilitation.

(b) If, within 90 days after receiving the plan, the department does not disapprove the plan, the plan shall be considered approved. If, within 90 days after receiving the plan, the department disapproves the plan, the department shall provide notice of that disapproval to the tribe in writing, together with the reasons for the disapproval. The department may not disapprove a plan unless the department finds that the plan is not rationally related to the protection of clients. If the department disapproves the plan, the tribe may, within 30 days after receiving notice of the disapproval, request that the secretary review the department's decision. A final decision under this paragraph is not subject to further review under ch. 227.

(5g) Beginning on January 1, 1999, and annually thereafter, the department shall submit a report to the legislature under s. 13.172 (2) that specifies the number of persons in the previous year who have requested to demonstrate to the department that they have been rehabilitated under sub. (5), the number of persons who successfully demonstrated that they have been rehabilitated under sub. (5) and the reasons for the success or failure of a person who has attempted to demonstrate that he or she has been rehabilitated.

(5m) Notwithstanding s. 111.335, the department may refuse to license, certify or register, or issue a certificate of approval to, a caregiver and an entity may refuse to employ or contract with a caregiver or to permit a nonclient resident to reside at the entity, if the caregiver or nonclient resident has been convicted of an offense that is not a serious crime, but that is, in the estimation of

the department or entity, substantially related to the care of a client.

(6) (a) The department shall require any person who applies for issuance or continuation of a license, certification, certificate of approval or registration to operate an entity to complete a background information form that is provided by the department.

(am) Every 4 years an entity shall require its caregivers and nonclient residents to complete a background information form that is provided to the entity by the department, except that an entity need not require those caregivers to whom par. (b) does not apply to complete the form if the entity requires the caregivers to disclose to the entity, in writing, all information requested on the form and notifies the caregivers annually of the disclosure requirement.

(b) For caregivers who are licensed, issued a certificate of approval or certified by, or registered with, the department, for nonclient residents, and for other persons specified by the department by rule, the entity shall send the background information form to the department.

(c) A person who provides false information on a background information form required under this subsection or a caregiver who fails to report information as required under a disclosure policy described under par. (am) may be required to forfeit not more than $1,000 and may be subject to other sanctions specified by the department by rule.

(7) The department shall do all of the following:

(c) Conduct throughout the state periodic training sessions that cover criminal background investigations; reporting and investigating misappropriation of property or abuse or neglect of a client; and any other material that will better enable entities to comply with the requirements of this section.

(d) Provide a background information form that requires the person completing the form to include his or her date of birth on the form.

(8) The department may charge a fee for obtaining the information required under sub. (2) (am) or (3) (a) or for providing information to an entity to enable the entity to comply with sub. (2) (b) or (3) (b). No fee may be charged to a nurse aide, as defined in s. 146.40 (1) (d), for obtaining or maintaining the information if to do so would be inconsistent with federal law.

History: 1997 a. 27, 105, 237; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2005 a. 25, 184, 277, 351; 2007 a. 20 s. 9121 (6) (a); 2007 a. 97, 116, 130, 153, 172; 2009 a. 276; 2011 a. 32, 35; 2013 a. 20; 2013 a. 173 s. 33; 2015 a. 366; 2017 a. 12, 283; 2021 a. 76, 209; 2021 a. 240 s. 30; 2023 a. 224.

When a collective bargaining agreement required just cause for termination and provided the right to grieve any termination decision, a county did not have sole discretion under sub. (5m) to decide whether to terminate an employee for the commission of a non-serious crime substantially related to the care of a client. As the county had the authority under sub. (5m) to retain the employee despite a conviction, nothing prevented it from agreeing to do so in a manner consistent with the collective bargaining agreement. Brown County v. WERC, 2007 WI App 247, 306 Wis. 2d 213, 742 N.W.2d 916, 07-0135.

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 employee for contacting or providing information to any state official, including any representative of the office of the long-term care ombudsman under s. 16.009 (4), or for initiating, participating in, or testifying in an action for any remedy authorized under this subchapter.

(em) Intentionally retaliate or discriminate against any resident or employee on whose behalf another person contacted or provided information to any state official, including any representative of the office of the long-term care ombudsman under s. 16.009 (4), or initiated, participated in or testified 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.

(3) (b) Any employee who is discharged or otherwise retaliated or discriminated against in violation of sub. (1) (e) or (em) may file a complaint with the department of workforce development under s. 106.54 (5).

(c) Any person not described in par. (b) who is retaliated or discriminated against in violation of sub. (1) (e) or (em) may commence an action in circuit court for damages incurred as a result of the violation.

History: 1977 c. 170; 1997 a. 131; 1999 a. 82; 2003 a. 33.

Sub. (1) (e) does not provide a remedy to a terminated employee and does not prevent a private action for wrongful termination to an employee who reports abuse. There is a public policy exception to the employment-at-will doctrine in this case. Hausman v. St. Croix Care Center, Inc., 214 Wis. 2d 655, 571 N.W.2d 393 (1997), 96-0866.

This section is similar to a patient's bill of rights. Sub. (1) (e) protects both patients and employees. An insurance policy providing coverage to a nursing home for personal injuries interfering with rights provided by a patient's bill of rights was applicable to a wrongful discharge claim alleging interference with the plaintiff's rights under sub. (1) (e). St. Paul Fire & Marine Insurance Co. v. Hausman, 231 Wis. 2d 25, 604 N.W.2d 908 (Ct. App. 1999), 99-1125.

50.08 Informed consent for psychotropic medications. (1) In this section:

(a) "Degenerative brain disorder" has the meaning given in s. 55.01 (1v).

(b) "Incapacitated" has the meaning given in s. 50.06 (1).

(c) "Person acting on behalf of the resident" means a guardian of the person, as defined in s. 54.01 (12), or a health care agent, as defined in s. 155.01 (4).

(d) "Psychotropic medication" means an antipsychotic, an antidepressant, lithium carbonate, or a tranquilizer.

(2) A physician, an advanced practice nurse prescriber certified under s. 441.16 (2), or a physician assistant who prescribes a psychotropic medication to a nursing home resident who has degenerative brain disorder shall notify the nursing home if the prescribed medication has a boxed warning under 21 CFR 201.57.

(3) (a) Except as provided in sub. (3m) or (4), before administering a psychotropic medication that has a boxed warning under 21 CFR 201.57 to a resident who has degenerative brain disorder, a nursing home shall obtain written informed consent from the resident or, if the resident is incapacitated, a person acting on behalf of the resident, on a form provided by the department under par. (b) or on a form that contains the same information as the form under par. (b).

(b) The department shall make available on its website or by mail multiple, drug-specific forms for obtaining informed consent under par. (a) for the administration of psychotropic medication that contain all of the following:

1. A space for a description of the benefits of the proposed treatment and the way the medication will be administered.

2. A description, using the most recently issued information from the federal food and drug administration, of the side effects or risks of side effects of the medication and any warnings about the medication.

3. A space for a description of any alternative treatment modes or medications.

4. A space for a description of the probable consequences of not receiving the medication.

5. A space for indicating the period for which the informed consent is effective, which shall be no longer than 15 months from the time the consent is given.

6. A statement that the resident or a person acting on behalf of the resident may withdraw informed consent, in writing, at any time.

7. A declaration that the resident or the person acting on behalf of the resident has been provided with specific, complete, and accurate information, and time to study the information or to seek additional information concerning the medication.

8. A space for the signature of the resident or the person acting on behalf of the resident.

(c) Written informed consent provided by a guardian is subject to s. 54.25 (2) (d) 2. ab. and ac.

(cm) If a health care agent is acting on behalf of a resident, the health care agent shall give informed consent in accordance with the desires of the resident as expressed in the power of attorney for health care instrument under ch. 155 or, if the resident's desires are unknown, in accordance with s. 155.20 (5).

(d) Upon request, the nursing home shall give the resident, or a person acting on behalf of the resident, a copy of the completed informed consent form.

(e) Unless consent is withdrawn sooner, written informed consent obtained under this subsection is valid for the period specified on the informed consent form but not for longer than 15 months from the date the resident, or a person acting on behalf of the resident, signed the form.

(f) A resident, or a person acting on behalf of the resident, may withdraw consent, in writing, at any time.

(fm) At the time a resident, or a person acting on behalf of the resident, signs the informed consent form, the nursing home shall orally inform the resident, or the person acting on behalf of the resident, of all of the following:

1. That the resident, or the person on behalf of the resident, may withdraw consent, in writing, at any time.

2. That, unless consent is withdrawn sooner, the informed consent is valid for the period specified on the informed consent form or for 15 months from the date on which the resident, or the person acting on behalf of the resident, signs the form, whichever is shorter.

(g) No person may retaliate against or threaten to retaliate against a resident or person acting on behalf of a resident for refusing to provide or withdrawing consent.

(h) The nursing home shall use the most current written informed consent forms available from the department or shall update its own forms with the most current information about the medications available from the department.

(3m) A nursing home is not required to obtain written informed consent before administering a psychotropic medication to a resident under sub. (3) if the prescription for the psychotropic medication is written or reauthorized while the resident is off of the nursing home's premises.

(4) (a) A nursing home is not required to obtain written informed consent before administering a psychotropic medication to a resident under sub. (3) if all of the following apply:

1. The resident is not the subject of a court order to administer psychotropic medications under s. 55.14.

2. There is an emergency in which a resident is at significant risk of physical or emotional harm or the resident puts others at significant risk of physical harm and in which time and distance preclude obtaining written informed consent before administering psychotropic medication.

3. A physician has determined that the resident or others will be harmed if the psychotropic medication is not administered before written informed consent is obtained.

(b) If par. (a) applies, the nursing home shall obtain oral consent from the resident or, if the resident is incapacitated, a person acting on behalf of the resident, before administering the psychotropic medication, except as provided in par. (c). The oral consent shall be entered in the resident's medical record. The oral consent shall be valid for 10 days, after which time the nursing home may not continue to administer the psychotropic medication unless it has obtained written informed consent under sub. (3).

(c) If par. (a) applies, the resident is incapacitated, and the nursing home has made a good faith effort to obtain oral consent, under par. (b), of a person acting on behalf of the resident but has been unable to contact such a person, the nursing home may administer the psychotropic medication to the resident for up to 24 hours before obtaining consent under par. (a) or sub. (3).

(5) This section does not abridge any rights that a resident has under s. 51.61 (1) (g).

History: 2009 a. 281; 2017 a. 365 s. 112; 2021 a. 23.

50.085 Visitation by family members. (1) DEFINITIONS. In this section:

(a) "Adult child" means an individual who is at least 18 years of age and who is related to a resident biologically, through adoption, through the marriage or former marriage of the resident to the biological parent of the adult child, or by a judgment of parentage entered by a court of competent jurisdiction.

(am) "Family member" means any spouse, adult child, adult grandchild, parent, or sibling of a resident.

(b) "Resident" means an adult resident of any of the following:

1. A hospital, as defined in s. 50.33 (2).

2. A hospice, as defined in s. 50.90 (1).

3. A nursing home, as defined in s. 50.01 (3).

4. A community-based residential facility, as defined in s. 50.01 (1g).

5. Any home or other residential dwelling in which the resident is receiving care and services from any person.

(c) "Visitation" means an in-person meeting or any telephonic, written, or electronic communication.

(2) PETITION FOR VISITATION. If a family member is being denied visitation with a resident, the family member may petition a court to compel visitation with the resident. The court may not issue an order compelling visitation if the court finds any of the following:

(a) The resident, while having the capacity to evaluate and communicate decisions regarding visitation, expresses a desire to not have visitation with that family member.

(b) Visitation between the petitioning family member and the resident is not in the best interest of the resident.

(3) EXPEDITED HEARING. If the petition under sub. (2) states that the resident's health is in significant decline or that the resident's death may be imminent, the court shall conduct an emer-

gency hearing on the petition under sub. (2) as soon as practicable and no later than 10 days after the date the petition is filed with the court.

(4) SANCTIONS; REMEDIES. Upon a motion or on the court's own motion, if the court finds during a hearing on a petition under sub. (2) that a person is knowingly isolating a resident, the court shall order the person to pay court costs and reasonable attorney fees of the petitioner under sub. (2) and may order other appropriate remedies. No costs, fees, or other sanctions may be paid from the resident's finances or estate.

History: 2015 a. 343.

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, physician assistant, advanced practice nurse prescriber, attorney, and any other person, unless medically contraindicated as documented by the resident's physician, physician assistant, or advanced practice nurse prescriber 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 employees 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 or domestic partner. If both spouses or both domestic partners under ch. 770 are residents of the same facility, the spouses or domestic partners shall be permitted to share a room unless medically contraindicated as documented by the resident's physician, physician assistant, or advanced practice nurse prescriber 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 s. 146.82 (2) and (3).

(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, physician assistant, or advanced practice nurse prescriber 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 the transfer or discharge. The facility to which the resident is to be transferred must have accepted the resident for transfer, except in a medical emergency or if the transfer or discharge is for nonpayment of charges following a reasonable opportunity to pay a deficiency. No person may be involuntarily discharged for nonpayment under this paragraph if the person meets all of the following conditions:

1. He or she is in need of ongoing care and treatment and has not been accepted for ongoing care and treatment by another facility or through community support services.

2. The funding of his or her care in the nursing home or community-based residential facility under s. 49.45 (6m) is reduced or terminated because of one of the following:

a. He or she requires a level or type of care which is not provided by the nursing home or community-based residential facility.

b. The nursing home is found to be an institution for mental diseases, as defined under 42 CFR 435.1009.

(k) Be free from mental and physical abuse, and be free from chemical and physical restraints except as authorized in writing by a physician, physician assistant, or advanced practice nurse prescriber 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, physician assistant, or advanced practice nurse prescriber 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 that interferes with the free movement of the resident and that 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 adjudicated incompetent in this state 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 each resident's legal representative, if any, at or prior to the time of admission to the facility, to each person who is a resident of the facility 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 of corrections, be applicable to residents in such facilities, if the resident is in the legal custody of the department of corrections and is a correctional client in such a 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, examining or affiliated credentialing board and to the person against whom the allegation has been made. Any employee 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 the report required under s. 50.03 (4) (c) 1. or 2. The 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 the statement in reviewing the report.

History: 1975 c. 119, 199; 1977 c. 170 s. 33; Stats. 1977 s. 50.09; 1979 c. 175, 221; 1987 a. 27; 1989 a. 31; 1991 a. 39; 1997 a. 27, 114, 175; 2005 a. 187, 387; 2007 a. 97; 2009 a. 28; 2011 a. 161.

A resident's right under sub. (1) (e) to be treated with respect is not waived by misbehavior. Hacker v. DHSS, 189 Wis. 2d 328, 525 N.W.2d 364 (Ct. App. 1994).

Abuse and Neglect in Long-term Care Facilities: The Civil Justice System's Response. Studinski. Wis. Law. Aug. 2004.

Preventing Abuse and Neglect in Health Care Settings: The Regulatory Agency's Responsibility. Dawson. Wis. Law. Aug. 2004.

Seeking Justice in Death's Waiting Room: Barriers to Effectively Prosecuting Crime in Long-term Care Facilities. Hanrahan. Wis. Law. Aug. 2004.

A Response: Issues Affecting Long-term Care. Purtell. Wis. Law. Oct. 2004.

50.095 Resident's right to know; nursing home reports. (1) Every resident in or prospective resident of a nursing home has the right to know certain information from the nursing home which would aid an individual in assessing the quality of care provided by a nursing home.

(2) The department may request from a nursing home information necessary for preparation of a report under sub. (3), and the nursing home, if so requested, shall provide the information.

(3) By July 1, 1998, and annually thereafter, the department shall provide each nursing home and the office of the long-term care ombudsman with a report that includes the following information for the nursing home:

(am) The ratio of nursing staff available to residents per shift at each skill level for the previous year for the nursing home, under criteria that the department shall promulgate as rules.

(b) The staff replacement rates for full-time and part-time nursing staff, nurse aides, and administrators for the previous year for the nursing home and for all similar nursing homes in the same geographical area, as determined by the department.

(c) Violations of statutes or rules by the nursing home during the previous year for the nursing home and for all similar nursing homes in the same geographical area, as determined by the department.

(3m) The department shall prepare a simplified summary of the information required under sub. (3) (am) to (c), as specified by rule by the department. The summary shall be on one sheet of paper and shall be in language that is easily understood by laypersons. The summary shall state that a complete copy of the most recent report of inspection of the nursing home is available from the department, upon request, for a minimal fee.

(4) Upon receipt of a report under sub. (3), the nursing home shall make the report available to any person requesting the report. Upon receipt of a summary under sub. (3m), the nursing home shall provide a copy of the summary to every resident of the nursing home and his or her guardian, if any, to every prospective resident of the nursing home, if any, and to every person who accompanies a prospective resident or acts as the prospective resident's representative, as defined in s. 655.001 (12), if any.

History: 1987 a. 27, 127; 1997 a. 114 ss. 20 to 25; 1997 a. 237; 2007 a. 153.

50.097 Registry. Any person may receive, upon specific written request to the department, requested information that is contained in the registry of individuals under s. 146.40 (4g) (a).

History: 1989 a. 31; 1991 a. 39; 2007 a. 153.

50.098 Appeals of transfers or discharges. The department shall promulgate rules establishing a fair mechanism for hearing appeals on transfers and discharges of residents from nursing homes.

History: 1989 a. 31.

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.

This section applies only to residents of a nursing home, which is different from a community based residential facility. Residents of community-based residential facilities do not have a private cause of action for statutory or administrative code violations. Farr v. Alternative Living Services, Inc., 2002 WI App 88, 253 Wis. 2d 790, 643 N.W.2d 841, 01-0971.

Wisconsin's Private Cause of Action for Nursing Home Residents. Bertrand. Wis. Law. Sept. 1989.

Protecting the Rights of Nursing Home Residents. Spitzer-Resnick. Wis. Law. May 1993.

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 obtaining 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, 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 and for any waivers necessary to implement the special requirements promulgated under s. 50.02 (3) (d).

History: 1981 c. 121; 1985 a. 29.

50.13 Fees permitted for a workshop or seminar. If the department develops and provides a workshop or seminar relating to the provision of service by facilities, adult family homes or residential care apartment complexes under this subchapter, the department may establish a fee for each workshop or seminar and impose the fee on registrants for the workshop or seminar. A fee so established and imposed shall be in an amount sufficient to reimburse the department for the costs directly associated with developing and providing the workshop or seminar.

History: 1985 a. 120; 1997 a. 27.

50.135 Licensing and approval fees for inpatient health care facilities. (1) DEFINITION. In this section, "inpatient health care facility" means any hospital, nursing home, county home, county mental hospital or other place licensed or approved by the department under ss. 49.70, 49.71, 49.72, 50.02, 50.03, 50.35, 51.08 and 51.09, but does not include community-based residential facilities.

(2) FEES. (a) The annual fee for any inpatient health care facility except a nursing home is $18 per bed, based on the number of beds for which the facility is licensed. The annual fee for any nursing home is $6 per bed, based on the number of beds for which the nursing home is licensed. This fee shall be paid to the department on or before October 1 for the ensuing year. Each new inpatient health care facility shall pay this fee no later than 30 days before it opens.

(b) Any inpatient health care facility that fails to pay its fee on or before the date specified in par. (a) shall pay an additional fee of $10 per day for every day after the deadline.

(c) The fees collected under par. (a) shall be credited to the appropriation account under s. 20.435 (6) (jm) for licensing, review and certifying activities.

(3) EXEMPTION. The inpatient health care facilities under ss. 45.50, 48.62, 51.05, 51.06, 233.40, 233.41, 233.42 and 252.10 are exempt from this section.

History: 1983 a. 27, 192; 1985 a. 29; 1987 a. 27; 1993 a. 16; 1993 a. 27 s. 257; Stats. 1993 s. 50.135; 1995 a. 27; 1997 a. 27, 35; 1999 a. 9; 2005 a. 22, 25.

Sub. (1) requires that all of the specifically enumerated facilities must be places licensed or approved by the Department of Health and Family Services. A VA hospital is not within the definition of inpatient health care facility as it is subject to federal regulation and is not licensed or regulated by the state. State v. Powers, 2004 WI App 156, 276 Wis. 2d 107, 687 N.W.2d 50, 03-1514.

50.14 Assessments on licensed beds. (1) In this section:

(a) Notwithstanding s. 50.01 (1m), "facility" means a nursing home or an intermediate care facility for persons with an intellectual disability that is not located outside the state.

(b) "Intermediate care facility for persons with an intellectual disability" has the meaning given for "intermediate care facility for the mentally retarded" under 42 USC 1396d (d).

(2) For the privilege of doing business in this state, there is imposed on all licensed beds of a facility an assessment in the following amount per calendar month per licensed bed of the facility:

(am) For nursing homes, an amount not to exceed $150 in state fiscal year 2009-10, and, beginning in state fiscal year 2010-11, an amount not to exceed $170.

(bm) For intermediate care facilities for persons with an intellectual disability, $910.

(2g) The assessment moneys collected under this section shall be deposited in the Medical Assistance trust fund.

(2r) In determining the number of licensed beds, all of the following apply:

(a) If the amount of the beds is other than a whole number, the fractional part of the amount shall be disregarded unless it equals 50 percent or more of a whole number, in which case the amount shall be increased to the next whole number.

(b) The number of licensed beds of a nursing home includes any number of beds that have been delicensed under s. 49.45 (6m) (ap) 1. but not deducted from the nursing home's licensed bed capacity under s. 49.45 (6m) (ap) 4. a.

(3) By the end of each month, each facility shall submit to the department the amount due under sub. (2) for each licensed bed of the facility for the month preceding the month during which the payment is being submitted. The department shall verify the number of beds licensed and, if necessary, make adjustments to the payment, notify the facility of changes in the payment owing and send the facility an invoice for the additional amount due or send the facility a refund.

(4) Sections 77.59 (1) to (5m), (6) (intro.), (a) and (c) and (7) to (10), 77.60 (1) to (7), (9) and (10), 77.61 (9) and (12) to (14) and 77.62, as they apply to the taxes under subch. III of ch. 77, apply to the assessment under this section, except that the amount of any assessment collected under s. 77.59 (7) in a fiscal year shall be deposited in the Medical Assistance trust fund.

(5) (a) The department shall levy, enforce and collect the assessment under this section and shall develop and distribute forms necessary for levying and collection.

(b) The department shall promulgate rules that establish procedures and requirements for levying the assessment under this section.

(6) (a) An affected facility may contest an action by the department under this section by submitting a written request for a hearing to the department within 30 days after the date of the department's action.

(b) Any order or determination made by the department under a hearing as specified in par. (a) is subject to judicial review as prescribed under ch. 227.

History: 1991 a. 269; 1993 a. 16; 1995 a. 27; 1997 a. 114; 2003 a. 33; 2005 a. 25, 49; 2007 a. 20, 95, 97, 153; 2009 a. 28, 180; 2011 a. 126; 2013 a. 20.

Cross-reference: See also ch. DHS 15, Wis. adm. code.

SUBCHAPTER II

HOSPITALS

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; Stats. 1975 s. 50.32.

Cross-reference: See also ch. DHS 124, Wis. adm. code.

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

(1c) "Conditions for Medicare participation for hospitals" means the conditions of participation specified under 42 CFR 482 or, with respect to critical access hospitals, 42 CFR 485.

(1g) "Critical access hospital" means a hospital that is designated by the department as meeting the requirements of 42 USC 1395i-4 (c) (2) (B) and is federally certified as meeting the requirements of 42 USC 1395i-4 (e).

(1r) "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.

(2) (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 that provide a limited type of medical or surgical care, including orthopedic hospitals, children's hospitals, critical access hospitals, mental hospitals, psychiatric hospitals or maternity hospitals.

(2d) "Hospital-associated service" means a health care service that meets all of the following conditions:

(a) The service is of the same type as those furnished by a hospital in an inpatient or outpatient facility.

(b) The service is of a type for which a payment could be claimed as a hospital service under the federal Medicare program, 42 USC 1395 et seq.

(c) The service is provided at a location other than in a facility approved by the department under s. 50.35.

(d) The service is provided in a home setting.

(3) "Requirements for hospitals" means all of the rules, standards, and requirements described in or promulgated under ss. 50.32 to 50.39 that apply to hospitals, including the standards described under s. 50.36 (1).

History: 1975 c. 413 ss. 4, 18; Stats. 1975 s. 50.33; 1977 c. 83 s. 26 (4); 1979 c. 175; 1983 a. 189; 1997 a. 237; 2013 a. 236; 2021 a. 10, 208.

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; Stats. 1975 s. 50.34.

50.35 Application and approval. Application for approval to maintain a hospital shall be made to the department on forms provided by the department. On receipt of an application, the department shall, except as provided in s. 50.498, issue a certificate of approval if the applicant and hospital facilities meet the requirements for hospitals. The department shall issue a single certificate of approval for the University of Wisconsin Hospitals and Clinics Authority that applies to all of the Authority's inpatient and outpatient hospital facilities that meet the requirements for hospitals and for which the Authority requests approval. For a free-standing pediatric teaching hospital, the department shall issue a single certificate of approval that applies to all of the hospital's inpatient and outpatient hospital facilities that meet the requirements for hospitals and for which the hospital requests approval. Except as provided in s. 50.498, 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 may be issued only for the premises and persons or governmental unit named in the application and is not transferable or assignable. The department shall withhold, suspend, or revoke approval for a failure to comply with s. 165.40 (6) (a) 1. or 2., but, except as provided in s. 50.498, otherwise may not withhold, suspend, or revoke approval unless for a substantial failure to comply with the requirements for hospitals after giving a reasonable notice, a fair hearing, and a reasonable opportunity to comply. Failure by a hospital to comply with s. 50.36 (3m) shall be considered to be a substantial failure to comply under this section.

History: 1975 c. 413 ss. 4, 18; Stats. 1975 s. 50.35; 1989 a. 37; 1997 a. 93, 237; 2009 a. 2, 28; 2013 a. 236.

50.355 Reporting. Every 12 months, on a schedule determined by the department, an approved hospital shall submit an annual report in the form and containing the information that the department requires, including payment of the fee required under s. 50.135 (2) (a). If a complete annual report is not timely filed, the department shall issue a warning to the holder of the certificate for approval. The department may revoke approval for failure to timely and completely report within 60 days after the report date established under the schedule determined by the department.

History: 1997 a. 27.

50.36 Rules and standards. (1) The department may use and enforce the conditions in 42 CFR 482.60 as standards that apply to psychiatric hospitals, which are hospitals primarily engaged in providing psychiatric services for the diagnosis and treatment of persons who have mental illness. Beginning on July 1, 2016, except as otherwise provided under ss. 50.32 to 50.39, the department shall use and enforce the conditions for Medicare participation for hospitals as the minimum standards that apply to hospitals. The department shall interpret the conditions for Medicare participation for hospitals using guidelines adopted by the federal centers for medicare and medicaid services, unless the department determines that a different interpretation is reasonably necessary to protect public health and safety. The department may promulgate, adopt, amend, and enforce additional rules and standards for the construction, maintenance, and operation of hospitals that the department determines are necessary to provide safe and adequate care and treatment of hospital patients and to protect the health and safety of the patients and employees. The building codes and construction standards of the department of safety and professional services shall apply to all hospitals to the extent that they are not incompatible with any building codes or construction standards required by the conditions for Medicare participation for hospitals. Except for the construction codes and standards of the department of safety and professional services 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.

(1m) (a) Notwithstanding sub. (1) and except as provided pars. (b) and (c), all of the following apply:

1. Beginning on July 1, 2016, the department may not enforce any of the rules contained in s. DHS 124.40 or subch. II, III, or IV of ch. DHS 124, Wis. Adm. Code, in effect on April 10, 2014.

2. The department shall, within the scope of the department's rule-making authority under sub. (1), promulgate rules to repeal and recreate ch. DHS 124, Wis. Adm. Code.

(b) Paragraph (a) 1. does not apply to s. DHS 124.24 (3), Wis. Adm. Code.

(c) Paragraph (a) does not apply beginning on the date that a permanent rule promulgated under ch. 227 that repeals and recreates ch. DHS 124, Wis. Adm. Code, takes effect as provided in s. 227.22.

NOTE: Chapter DHS 124, Wis. Adm. Code, was substantially revised eff. 7-1-20 by CR 19-135. Among other changes, CR 19-135 repealed ss. DHS 124.24

(3) and 124.40 and subchs. III and IV of ch. DHS 124, Wis. Adm. Code, and repealed and recreated subch. II of ch. DHS 124, Wis. Adm. Code.

(2) (a) Notwithstanding sub. (3L), the department shall conduct plan reviews of all capital construction and remodeling projects of hospitals to ensure that the plans comply with any applicable building code requirements under ch. 101 and with any physical plant requirements under this chapter or under rules promulgated under this chapter.

(b) The department shall promulgate rules that establish a fee schedule for its services in conducting the plan reviews under par. (a).

(3) (a) Any person licensed to practice medicine and surgery under subch. II of ch. 448 or podiatry under subch. IV of ch. 448 shall be afforded an equal opportunity to obtain hospital staff privileges and may not be denied hospital staff privileges solely for the reason that the person is an osteopathic physician and surgeon or a podiatrist. 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 hospital staff privileges or is sufficient to justify the granting of limited hospital staff privileges.

(am) A hospital may grant any practitioner the opportunity to be a member of the hospital staff and obtain hospital staff privileges if the membership or privileges are not prohibited under sub. (1) and are consistent with the practitioner's scope of practice.

(b) If, as a result of peer investigation or written notice thereof, a hospital staff member who is licensed by the medical examining board or podiatry affiliated credentialing board, for any reasons that include the quality of or ability to practice, loses his or her hospital staff privileges, has his or her hospital staff privileges reduced or resigns from the hospital staff, the hospital shall so notify the medical examining board or podiatry affiliated credentialing board, whichever is applicable, within 30 days after the loss, reduction or resignation takes effect. Temporary suspension due to incomplete records need not be reported.

(c) If, as a result of peer investigation or written notice thereof, a hospital staff member who is licensed by the medical examining board or podiatry affiliated credentialing board, for reasons that do not include the quality of or ability to practice, loses his or her hospital staff privileges for 30 days or more, 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 or podiatry affiliated credentialing board, whichever is applicable, within 30 days after the loss, reduction or resignation takes effect. Temporary suspension due to incomplete records need not be reported.

(3d) (a) A hospital shall develop and maintain a system under which the hospital may grant emergency staff privileges to a health care provider, as defined in s. 146.81 (1), to whom all of the following apply:

1. The health care provider seeks to provide care at the hospital during a period of a state of emergency related to public health declared by the governor under s. 323.10.

2. The health care provider does not have staff privileges at the hospital at the time that the state of emergency related to public health is declared by the governor under s. 323.10.

3. The health care provider has staff privileges at another hospital.

(b) A hospital that grants emergency staff privileges under par. (a) has immunity from civil liability for acts or omissions by a health care provider who is granted emergency staff privileges under par. (a).

(3j) If a hospital has a policy on who may accompany or visit a patient, the hospital shall extend the same right of accompaniment or visitation to a patient's domestic partner under ch. 770 as is accorded the spouse of a patient under the policy.

(3L) A hospital accredited by an approved national accrediting organization pursuant to 42 USC 1395bb (a) (1) is exempt from routine inspections and investigations to determine compliance with and is considered to be in compliance with the requirements for hospitals. The department may inspect an accredited hospital to investigate a complaint or comply with the request of the federal centers for medicare and medicaid services, including a request to validate the findings of the accrediting organization.

(3m) The department shall require a hospital that is accredited as a hospital by a national accrediting organization pursuant to 42 USC 1395bb (a) (1) to submit to the department evidence of current accreditation. Any evidence of accreditation and other accreditation-related correspondence or other materials submitted by or on behalf of a hospital to the department, except those submitted by a county mental health complex under s. 51.08, under this subsection are not subject to inspection, copying, or receipt under s. 19.35 (1) and may not be released by the department.

(4) Except as provided in sub. (3L), the department shall make or cause to be made such inspections and investigation, as are reasonably deemed necessary to obtain compliance with the requirements for hospitals. It shall afford an opportunity for representatives of the hospitals to consult with members of the staff of the department concerning compliance and noncompliance with the requirements for hospitals. If the department takes enforcement action against a hospital for a violation of the requirements for hospitals, and the department subsequently conducts an on-site inspection of the hospital to review the hospital's action to correct the violation, the department may, unless the hospital is operated by the state, impose a $200 inspection fee on the hospital.

(5) Before providing emergency services in a hospital, medical and nursing personnel shall have proficiency in the use of an automated external defibrillator, as defined in s. 256.15 (1) (cr), achieved through instruction provided by an individual, organization, or institution of higher education that is approved under s. 46.03 (38) to provide such instruction.

(5m) If the federal centers for medicare and medicaid services has approved a hospital to provide any hospital-associated service, the department may apply to and enforce upon the hospital as the state standard for the hospital-associated service any rule or standard that is required by the centers for medicare and medicaid services for the service.

(6) If the department receives a credible complaint that a pharmacy located in a hospital has violated its duty to dispense contraceptive drugs and devices under s. 450.095 (2), the department shall refer the complaint to the department of safety and professional services.

(6m) (a) The secretary or his or her designee may grant a variance to or a waiver from any of the requirements for hospitals if all of the following apply:

2. A hospital has requested the variance or waiver.

3. The secretary or his her designee determines that the variance or waiver is necessary to protect the public health, safety, or welfare or to support the efficient and economic operation of the hospital.

(b) A variance or waiver granted under par. (a) may be for a stated term. If a variance or waiver is for a stated term, the secretary or his her designee may extend the variance or waiver upon request by the hospital if he or she determines that an extension is necessary to protect the public health, safety, or welfare or to support the efficient and economic operation of the hospital.

History: 1971 c. 211; 1975 c. 383 s. 4; 1975 c. 413 ss. 4, 18; 1975 c. 421; Stats.

1975 s. 50.36; 1977 c. 29; 1979 c. 34; 1981 c. 135; 1985 a. 340; 1989 a. 37; 1991 a. 129; 1993 a. 16, 30, 270; 1995 a. 27 ss. 3245, 3246, 9116 (5); 1997 a. 175; 1999 a. 9; 2001 a. 109; 2007 a. 20, 104; 2009 a. 28, 42, 113, 180; 2011 a. 32; 2011 a. 260 s. 80; 2013 a. 236; 2021 a. 10, 208.

Cross-reference: See also ch. DHS 124, Wis. adm. code.

A hospital owes a duty to its patients to exercise reasonable care in the selection of medical staff and in granting special privileges. Johnson v. Misericordia Community Hospital, 99 Wis. 2d 708, 301 N.W.2d 156 (1981).

50.37 Notification to accrediting organization. The department shall notify a national accrediting organization that has accredited a hospital and the board of governors of the injured patients and families compensation fund under s. 619.04 (3) if the department has done any of the following:

(1) Suspended or revoked the hospital's approval under s. 50.35.

(2) Issued an order to the hospital.

(3) Suspended new admissions to the hospital under s. 50.39 (5).

(4) Recommended to the federal centers for medicare and medicaid services that the hospital be decertified from the federal medicare program under 42 USC 1395 to 1395ccc or the federal medicaid program under 42 USC 1396 to 1396r-3 for failure to meet a condition of participation under the program.

History: 1989 a. 37; 2003 a. 111; 2013 a. 236.

50.375 Emergency contraception for sexual assault victims. (1) In this section:

(a) "Emergency contraception" means a drug, medicine, oral hormonal compound, mixture, preparation, instrument, article, or device that is approved by the federal food and drug administration and that prevents a pregnancy after sexual intercourse. "Emergency contraception" does not include a drug, medicine, oral hormonal compound, mixture, preparation, instrument, article, or device of any nature that is prescribed to terminate the pregnancy of a female.

(b) "Sexual assault" means a violation of s. 940.225 (1), (2), or (3).

(c) "Victim" means a female who alleges or for whom it is alleged that she suffered sexual assault and who, as a result of the sexual assault, presents as a patient at a hospital that provides emergency services.

(2) A hospital that provides emergency services to a victim shall do all of the following:

(a) Provide to the victim medically and factually accurate and unbiased written and oral information about emergency contraception and its use and efficacy.

(b) Orally inform the victim of all of the following:

1. Her option to receive emergency contraception at the hospital.

2. Her option to report the sexual assault to a law enforcement agency.

3. Any available options for her to receive an examination to gather evidence regarding the sexual assault.

(c) Except as specified in sub. (4), immediately provide to the victim upon her request emergency contraception, in accordance with instructions approved by the federal food and drug administration. If the medication is taken in more than one dosage, the hospital shall provide all subsequent dosages to the victim for later self administration.

(3) A hospital that provides emergency care shall ensure that each hospital employee who provides care to a victim has available medically and factually accurate and unbiased information about emergency contraception.

(4) No hospital may be required to provide emergency contraception to a victim who is pregnant, as indicated by a test for pregnancy.

(5) The department shall respond to any complaint received by the department concerning noncompliance by a hospital with the requirements of subs. (2) and (3) and shall periodically review hospital procedures to determine whether a hospital is in compliance with the requirements.

History: 2007 a. 102.

50.377 Forfeiture. (1) Whoever violates a requirement under s. 50.375 (2) or (3) may be required to forfeit not less than $2,500 nor more than $5,000 for each violation.

(2) The department may directly assess forfeitures provided for under sub. (1). If the department determines that a forfeiture should be assessed for a particular violation, the department shall send a notice of assessment to the hospital. The notice shall specify the amount of the forfeiture assessed, the violation and the statute or rule alleged to have been violated, and shall inform the hospital of the right to a hearing under sub. (3).

(3) A hospital may contest an assessment of a forfeiture by sending, within 10 days after receipt of notice under sub. (2), a written request for a hearing under s. 227.44 to the division of hearings and appeals created under s. 15.103 (1). The administrator of the division may designate a hearing examiner to preside over the case and recommend a decision to the administrator under s. 227.46. The decision of the administrator of the division shall be the final administrative decision. The division shall commence the hearing within 30 days after receipt of the request for a hearing and shall issue a final decision within 15 days after the close of the hearing. Proceedings before the division are governed by ch. 227. In any petition for judicial review of a decision by the division, the party, other than the petitioner, who was in the proceeding before the division shall be the named respondent.

(4) All forfeitures shall be paid to the department within 10 days after receipt of notice of assessment or, if the forfeiture is contested under sub. (3), within 10 days after receipt of the final decision after exhaustion of administrative review, unless the final decision is appealed and the order is stayed by court order. The department shall remit all forfeitures paid to the secretary of administration for deposit in the school fund.

(5) 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.

History: 2007 a. 102; 2009 a. 2 s. 70.

50.378 Victim advocates. (1) DEFINITIONS. In this section:

(a) "Victim advocate" has the meaning given in s. 905.045 (1) (e).

(b) "Victim of sexual assault, human trafficking, or child sexual abuse" means a person who alleges or for whom it is alleged that he or she suffered from a violation of s. 940.22, 940.225, or 940.302, involving a commercial sex act, or s. 948.02, 948.025, or 948.05 to 948.11 and who, as a result of the alleged violation, presents as a patient at a hospital that provides emergency services.

(2) RIGHT TO ACCOMPANIMENT BY A VICTIM ADVOCATE. (a) Except as provided in par. (f) or (g), a hospital that provides emergency services to a victim of sexual assault, human trafficking, or child sexual abuse shall, at the request of the victim, permit a victim advocate to accompany the victim to any examination or consultation that is performed at the hospital as a result of the violation.

(b) 1. A parent, guardian, or legal custodian of a minor who is at least 10 years of age and who is a victim of sexual assault, human trafficking, or child sexual abuse may make a request under

par. (a) for a victim advocate to accompany the minor victim of sexual assault, human trafficking, or child sexual abuse.

2. A treating medical provider may make a request under par. (a) for a victim advocate to accompany a minor who has not attained the age of 10 and who is a victim of sexual assault, human trafficking, or child sexual abuse.

(c) A minor who is a victim of sexual assault, human trafficking, or child sexual abuse may make a request under par. (a) for a victim advocate to accompany him or her without the consent of his or her parent, guardian, or legal custodian.

(d) The hospital shall notify the victim and, if the victim is a minor who is at least 10 years of age, the victim's parent, guardian, or legal custodian, of his or her right to be accompanied by a victim advocate and of his or her rights under par. (h). The hospital may make notification under this paragraph using a form provided by the department under sub. (4) (c).

(e) A victim may request exclusion of a victim advocate at any examination or consultation that is performed at the hospital as a result of the sexual assault, human trafficking, or child sexual abuse. The victim advocate shall comply with a request under this paragraph.

(f) The hospital need not delay examining or treating the victim pending the arrival of a victim advocate, if the delay would endanger the health or safety of the victim or risk the loss of evidence.

(g) The hospital may exclude the victim advocate if any of the following occurs:

1. The presence or continued presence of the victim advocate obstructs the provision of necessary medical care to the victim.

2. The victim advocate fails to comply with hospital policies governing the conduct of individuals accompanying patients in the hospital.

3. The hospital has knowledge that the victim advocate, in his or her role as a victim advocate at any hospital, has taken one of the following actions and is more likely than not to take that action again:

a. Failing to agree to or comply with confidentiality requirements relating to another individual at a hospital.

b. Failing to comply with a request by a victim under par. (e).

(h) If a hospital has excluded a specific victim advocate under par. (g), the hospital shall, at the request of the victim, permit a different victim advocate to accompany the victim.

(3) IMMUNITY FROM LIABILITY. A hospital and its employees or agents are immune from civil liability for allowing a victim advocate to accompany a victim, for any failure to comply with any requirement in sub. (2), and for any act or omission by a victim advocate.

(4) DUTIES OF THE DEPARTMENT. (a) The department shall respond to any complaint received by the department concerning noncompliance by a hospital with the requirements of sub. (2).

(b) The department, in cooperation with the department of justice, shall develop guidelines for, and provide assistance to, hospitals that are subject to the requirements of sub. (2).

(c) The department shall prescribe a form to be used by hospitals that provide emergency services to victims of sexual assault, human trafficking, or child sexual abuse to provide notification to victims and, if a victim is a minor who is at least 10 years of age, the victim's parent, guardian, or legal custodian, of his or her right to be accompanied by a victim advocate under sub. (2). The form shall include all of the following information:

1. The right to request accompaniment under sub. (2) (a) to (c).

2. The right to exclude a victim advocate under sub. (2) (e).

3. The procedure to make a complaint to the department under sub. (4) (a).

History: 2015 a. 351.

50.38 Hospital assessment. (1) In this section "eligible hospital" means a hospital that is not any of the following:

(b) An institution for mental diseases, as defined in s. 46.011 (1m).

(c) A general psychiatric hospital for which the department has issued a certificate of approval under s. 50.35 that applies only to the psychiatric hospital, and that is not a satellite of an acute care hospital.

(2) (a) For the privilege of doing business in this state, there is imposed on each eligible hospital that is not a critical access hospital an assessment each state fiscal year that is equal to a uniform percentage, determined under sub. (3), of the hospital's gross patient revenues, as reported under s. 153.46 (5) and determined by the department. The assessments shall be deposited in the hospital assessment fund.

(b) For the privilege of doing business in this state, there is imposed on each critical access hospital an assessment each state fiscal year that is equal to a uniform percentage, determined under sub. (3), of the critical access hospital's gross inpatient revenues, as reported under s. 153.46 (5) and determined by the department. The assessments shall be deposited in the critical access hospital assessment fund.

(3) The department shall establish the percentage that is applicable under sub. (2) (a) and (b) so that the total amount of assessments collected under sub. (2) (a) in a state fiscal year is equal to $414,507,300.

(4) Except as provided in sub. (5), each eligible hospital shall pay the applicable annual assessment under sub. (2) in 4 equal amounts that are due by September 30, December 31, March 31, and June 30 of each year.

(5) At the discretion of the department, a hospital that is unable timely to make a payment by a date specified under sub. (4) may be allowed to make a delayed payment. A determination by the department that a hospital may not make a delayed payment under this subsection is final and is not subject to review under ch. 227.

(6) (a) 1. If the federal government does not provide federal financial participation under the federal Medicaid program for amounts collected under sub. (2) (a) that are used to make payments required under s. 49.45 (3) (e) 11. or (5r), that are transferred under sub. (8) and used to make payments from the Medical Assistance trust fund, or that are transferred under sub. (9) and expended under s. 20.435 (4) (jw), the department shall, from the fund from which the payment or expenditure was made, refund eligible hospitals, other than critical access hospitals, the amount for which the federal government does not provide federal financial participation.

2. If the department makes a refund under subd. 1. as result of failure to obtain federal financial participation under the federal Medicaid program for a payment required under s. 49.45 (3) (e) 11. or (5r) or a payment from the Medical Assistance trust fund, the department shall recoup the part of the payment for which the federal government does not provide federal financial participation.

3. Moneys recouped under subd. 2. for payments made from the hospital assessment fund shall be deposited in the hospital assessment fund.

4. Moneys recouped under subd. 2. for payments made from the Medical Assistance trust fund shall be deposited in the Medical Assistance trust fund.

(b) On June 30 of each state fiscal year, the department shall,

from the appropriation account under s. 20.435 (4) (xc), refund to eligible hospitals, other than critical access hospitals, any amounts not expended or encumbered from that appropriation in the fiscal year or transferred under sub. (8).

(c) The department shall allocate any refund under this subsection to eligible hospitals, other than critical access hospitals, in proportion to the percentage of the total assessments collected under sub. (2) (a) that each hospital paid.

(6m) (a) 1. If the federal government does not provide federal financial participation under the federal Medicaid program for amounts collected under sub. (2) (b) that are used to make payments required under s. 49.45 (3) (e) 12. or that are transferred under sub. (10) and used to make payments from the Medical Assistance trust fund, the department shall, from the fund from which the payment or expenditure was made, refund critical access hospitals the amount for which the federal government does not provide federal financial participation.

2. If the department makes a refund under subd. 1. as result of failure to obtain federal financial participation under the federal Medicaid program for a payment required under s. 49.45 (3) (e) 12. or a payment from the Medical Assistance trust fund, the department shall recoup the part of the payment for which the federal government does not provide federal financial participation.

3. Moneys recouped under subd. 2. for payments made from the critical access hospital assessment fund shall be deposited in the critical access hospital assessment fund.

4. Moneys recouped under subd. 2. for payments made from the Medical Assistance trust fund shall be deposited in the Medical Assistance trust fund.

(b) On June 30 of each state fiscal year, the department shall, from the appropriation account under s. 20.435 (4) (xe), refund to critical access hospitals any amounts not expended or encumbered from that appropriation in the fiscal year or transferred under sub. (10).

(c) The department shall allocate any refund under this subsection to critical access hospitals in proportion to the percentage of the total assessments collected under sub. (2) (b) that each critical access hospital paid.

(7) By January 1 of each year the department shall report to the joint committee on finance all of the following information for the state fiscal year ending the previous June 30:

(a) The amount each eligible hospital paid under sub. (2).

(b) The amounts the department paid each health maintenance organization under s. 49.45 (59) (a).

(c) The total amounts that each eligible hospital received from health maintenance organizations under s. 49.45 (59) (b).

(d) The total amount of payment increases the department made, in connection with implementation of the hospital assessments under sub. (2), for inpatient and outpatient hospital services that are reimbursed on a fee-for-service basis.

(e) The total amount of payments that the department made to each hospital under the Medical Assistance Program under subch. IV of ch. 49.

(f) The portion of capitated payments that the department made to each health maintenance organization under the Medical Assistance Program under subch. IV of ch. 49 from appropriation accounts of general purpose revenues that is for inpatient and outpatient hospital services.

(g) The results of any audits conducted by the department under s. 49.45 (59) (e) 3. and any actions taken by the department as a result of the audits.

(8) In each state fiscal year, the secretary of administration shall transfer from the hospital assessment fund to the Medical Assistance trust fund an amount equal to the amount collected under sub. (2) (a) for that fiscal year minus the state share of payments to hospitals required under s. 49.45 (3) (e) 11., and minus any refunds paid to hospitals from the hospital assessment fund under sub. (6) (a) in that fiscal year.

(9) On June 30 of each state fiscal year, the secretary of administration shall transfer from the Medical Assistance trust fund to the appropriation account under s. 20.435 (4) (jw), an amount equal to 0.5 percent of the amount transferred under sub. (8).

(10) In each state fiscal year, the secretary of administration shall transfer from the critical access hospital assessment fund to the Medical Assistance trust fund an amount equal to the amount collected under sub. (2) (b) minus the state share of the amount required to be expended under s. 49.45 (3) (e) 12., minus the amounts appropriated under s. 20.285 (1) (qe) and (qj), and minus any refunds paid to critical access hospitals from the critical access hospital assessment fund under sub. (6m) (a) in that fiscal year.

History: 2009 a. 2, 190; 2011 a. 260 s. 81; 2017 a. 59.

50.39 Exemptions and enforcement. (1) The requirements for hospitals 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 s. 51.09 are exempt.

(3) Facilities governed by ss. 45.50, 48.62, 49.70, 49.72, 50.02, 51.09, and 252.10, juvenile correctional facilities as defined in s. 938.02 (10p), correctional institutions governed by the department of corrections under s. 301.02, 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. Sections 50.32 to 50.39 do not abridge the rights of the medical examining board, physician assistant affiliated credentialing board, physical therapy examining board, podiatry affiliated credentialing 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 injunctional and other appropriate relief.

(5) (a) The department may, in the event of an emergency condition that imminently threatens the health or safety of patients of a hospital, suspend new admissions to all or a part of the hospital until such time as the department decides that the hospital has removed or corrected the causes or deficiencies creating the emergency.

(b) Immediately upon the suspension of new admissions under par. (a), the department shall notify the hospital in writing. Notice of the suspension shall include a clear and concise statement of the causes or deficiencies creating the emergency condition on which the suspension is based and notice of the opportunity for a hearing on the suspension or on recision of the suspension under s. 227.44. If the hospital desires to contest the suspension, it shall provide written notice to the department of a request for a hearing within 10 days after receipt of the notice of suspension. If the hospital desires to contest failure by the department to rescind the suspension, it shall provide written notice to the department of a request for a hearing.

(6) In addition to any other remedies provided by law, any person suffering a pecuniary loss because of a violation of s.

50.36 (3) (a) may bring a civil action in any court of competent jurisdiction to recover the amount of the pecuniary loss, together with costs and disbursements, including reasonable attorney fees.

History: 1971 c. 164; 1975 c. 39; 1975 c. 413 ss. 4, 18; 1975 c. 430 s. 80; Stats. 1975 s. 50.39; 1977 c. 203; 1979 c. 89, 221, 337, 355; 1985 a. 332 s. 251 (1); 1989 a. 31, 37, 107; 1991 a. 39; 1993 a. 27, 30, 107; 1995 a. 27, 77; 1997 a. 175; 1999 a. 9; 2005 a. 22, 344; 2007 a. 97; 2009 a. 113, 149; 2011 a. 258; 2013 a. 236; 2021 a. 23.

Cross-reference: See also ch. DHS 124, Wis. adm. code.

50.49 Licensing and regulation of home health agencies. (1) DEFINITIONS. As used in this section, unless a different meaning appears from the context:

(a) "Home health agency" means an organization that:

1. Primarily provides skilled nursing and other therapeutic services;

2. Has policies established by a professional group including at least one physician and at least one registered nurse to govern services, and provides for supervision of these services by a physician or a registered nurse; and

3. Maintains clinical records on all patients.

(b) "Home health services" means the following items and services that are furnished to an individual, who is under the care of a physician, physician assistant, or advanced practice nurse prescriber, by a home health agency, or by others under arrangements made by the home health agency, that are under a plan for furnishing those items and services to the individual that is established and periodically reviewed by a physician, physician assistant, or advanced practice nurse prescriber and that are, except as provided in subd. 6., provided on a visiting basis in a place of residence used as the individual's home:

1. Part-time or intermittent nursing care provided by or under the supervision of a registered professional nurse;

2. Physical or occupational therapy or speech-language pathology;

3. Medical social services under the direction of a physician;

4. Medical supplies, other than drugs and biologicals, and the use of medical appliances, while under such a plan;

5. In the case of a home health agency which is affiliated or under common control with a hospital, medical services provided by an intern or resident-in-training of such hospital, under an approved teaching program of such hospital; and

6. Any of the foregoing items and services which are provided on an outpatient basis, under arrangements made by the home health agency, at a hospital or extended care facility, or at a rehabilitation center which meets such standards as may be prescribed by rule, and the furnishing of which involves the use of equipment of such a nature that the items and services cannot readily be made available to the individual in such place of residence, or which are furnished at such facility while the individual is there to receive any such item or service, but not including transportation of the individual in connection with any such item or service.

(c) "Patient" means individuals cared for or treated by home health agencies.

(2) RULES. (a) The department may develop, establish and enforce standards for the care, treatment, health, safety, welfare and comfort of patients by home health agencies and for the maintenance and operation of home health agencies which, in the light of advancing knowledge, will promote safe and adequate care and treatment of such patients by home health agencies.

(b) The department shall, by rule, set a license fee to be paid by home health agencies.

(3) ADMINISTRATION. The administration of this section shall be under the department which shall make or cause to be made such inspections and investigations as it deems necessary.

(4) LICENSING, INSPECTION AND REGULATION. Except as provided in sub. (6m), the department may register, license, inspect and regulate home health agencies as provided in this section. The department shall ensure, in its inspections of home health agencies, that a sampling of records from private pay patients are reviewed. The department shall select the patients who shall receive home visits as a part of the inspection. Results of the inspections shall be made available to the public at each of the regional offices of the department. If the department takes enforcement action against a home health agency for a violation of this section or rules promulgated under this section, and the department subsequently conducts an on-site inspection of the home health agency to review the home health agency's action to correct the violation, the department may impose a $200 inspection fee on the home health agency.

(5) APPLICATION FOR REGISTRATION AND LICENSE. (a) Registration shall be in writing in such form and contain such information as the department requires.

(b) The application for a license shall be in writing upon forms provided by the department and shall contain such information as it requires.

(6) ISSUANCE OF LICENSE; INSPECTION AND INVESTIGATION; ANNUAL REPORT; NONTRANSFERABILITY; CONTENT. (a) Except as provided in s. 50.498, the department shall issue a home health agency license if the applicant is fit and qualified, and if the home health agency meets the requirements established by this section. Except as provided in par. (am), the department, or its designated representatives, shall make such inspections and investigations as are necessary to determine the conditions existing in each case and file written reports. Each licensee shall annually file a report with the department.

(am) In lieu of performing its own inspection or investigation under par. (a), the department may recognize as evidence for purposes of licensure accreditation of the home health agency by an organization that is approved by the federal centers for Medicare and Medicaid services and that meets any requirements established by the department. The home health agency shall provide the department with a copy of the report by the accreditation organization of each periodic review the organization conducts of the home health agency for the department's use in tracking compliance, investigating complaints, and conducting further surveys.

(b) A home health agency license is valid until suspended or revoked, except as provided in s. 50.498.

(c) Each license shall be issued only for the home health agency named in the application and is not transferable or assignable. Any license granted shall state such additional information and special limitations as the department, by rule, prescribes.

(d) Every 12 months, on a schedule determined by the department, a licensed home health agency shall submit an annual report in the form and containing the information that the department requires, including payment of the fee required under sub. (2) (b). If a complete annual report is not timely filed, the department shall issue a warning to the licensee. The department may revoke the license for failure to timely and completely report within 60 days after the report date established under the schedule determined by the department.

(6m) EXCEPTIONS. None of the following is required to be licensed as a home health agency under sub. (4), regardless of whether any of the following provides services that are similar to services provided by a home health agency:

(a) A care management organization, as defined in s. 46.2805 (1).

(am) An entity with which a care management organization, as defined in s. 46.2805 (1), contracts for care management ser-

vices under s. 46.284 (4) (d), for purposes of providing the contracted services.

(b) A program specified in s. 46.2805 (1) (a).

(c) A demonstration program specified in s. 46.2805 (1) (b).

(d) A hospital that is providing hospital-associated services in accordance with s. 50.36 (5m).

(7) DENIAL, SUSPENSION OR REVOCATION OF LICENSE; NOTICE. The department after notice to the applicant or licensee is authorized to deny, suspend or revoke a license in any case in which it finds that there has been a substantial failure to comply with the requirements of this section and the rules established hereunder.

(8) FAILURE TO REGISTER OR OPERATING WITHOUT LICENSE; PENALTY. It is unlawful for any person, acting jointly or severally with any other person, to conduct, maintain, operate, or permit to be maintained or operated, or to participate in the conducting, maintenance or operating of a home health agency, unless, it is licensed as a home health agency by the department. Any person who violates this section shall be fined not more than $100 for the first offense and not more than $200 for each subsequent offense, and each day of violation after the first conviction shall constitute a separate offense.

(9) RIGHT OF INJUNCTION. All orders issued by the department under this section shall be enforced by the attorney general. The circuit court of Dane County shall have jurisdiction to enforce such orders by injunctional and other appropriate relief.

(10) PROVISIONAL LICENSES. Except as provided in s. 50.498, a provisional license if approved by the department may be issued to any home health agency, the facilities of which are in use or needed for patients, but which is temporarily unable to conform to all the rules established under this section. A provisional license may not be issued for more than one year.

History: 1981 c. 93 ss. 162 to 166, 184; 1989 a. 31, 316; 1993 a. 27 s. 279; Stats. 1993 s. 50.49; 1993 a. 482; 1995 a. 225; 1997 a. 27, 237; 1999 a. 9, 83; 2005 a. 187; 2007 a. 20; 2009 a. 28; 2011 a. 161; 2017 a. 59; 2021 a. 10.

Cross-reference: See also ch. DHS 133, Wis. adm. code.

50.495 Fees permitted for a workshop or seminar. If the department develops and provides a workshop or seminar relating to the provision of services by hospitals and home health agencies under this subchapter, the department may establish a fee for each workshop or seminar and impose the fee on registrants for the workshop or seminar. A fee so established and imposed shall be in an amount sufficient to reimburse the department for the costs directly associated with developing and providing the workshop or seminar.

History: 1997 a. 27.

50.498 Denial, nonrenewal and revocation of license, certification or registration based on delinquent taxes or unemployment insurance contributions. (1) Except as provided in sub. (1m), the department shall require each applicant to provide the department with his or her social security number, if the applicant is an individual, or the applicant's federal employer identification number, if the applicant is not an individual, as a condition of issuing any of the following:

(a) A certificate of approval under s. 50.35.

(b) A license under s. 50.49 (6) (a).

(c) A provisional license under s. 50.49 (10).

(1m) If an individual who applies for a certificate of approval, license or provisional license under sub. (1) does not have a social security number, the individual, as a condition of obtaining the certificate of approval, license or provisional license, shall submit a statement made or subscribed under oath or affirmation to the department that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of children and families. A certificate of approval, license or provisional license issued in reliance upon a false statement submitted under this subsection is invalid.

(2) The department may not disclose any information received under sub. (1) to any person except to the department of revenue for the sole purpose of requesting certifications under s. 73.0301 and to the department of workforce development for the sole purpose of requesting certifications under s. 108.227.

(3) Except as provided in sub. (1m), the department shall deny an application for the issuance of a certificate of approval, license or provisional license specified in sub. (1) if the applicant does not provide the information specified in sub. (1).

(4) (a) The department shall deny an application for the issuance of a certificate of approval, license or provisional license specified in sub. (1) or shall revoke a certificate of approval, license or provisional license specified in sub. (1), if the department of revenue certifies under s. 73.0301 that the applicant for or holder of the certificate of approval, license or provisional license is liable for delinquent taxes.

(b) The department shall deny an application for the issuance of a certificate of approval, license or provisional license specified in sub. (1) or shall revoke a certificate of approval, license or provisional license specified in sub. (1), if the department of workforce development certifies under s. 108.227 that the applicant for or holder of the certificate of approval, license or provisional license is liable for delinquent unemployment insurance contributions.

(5) An action taken under sub. (3) or (4) is subject to review only as provided under s. 73.0301 (2) (b) and (5) or s. 108.227 (5) and (6), whichever is applicable.

History: 1997 a. 237; 1999 a. 9; 2007 a. 20; 2013 a. 36.

SUBCHAPTER III

RURAL MEDICAL CENTERS

50.50 Definitions. In this subchapter:

(1) "Ambulatory surgery center" has the meaning given in 42 CFR 416.2.

(1m) "Critical access hospital" has the meaning given in s. 50.33 (1g).

(2) "End-stage renal disease services" has the meaning given under 42 CFR 405.2102.

(3) "Health care services" means any of the following:

(a) Care that is provided in or by any of the following:

1. A hospital.
2. A nursing home.
3. A hospice.
4. A rural health clinic.
5. An ambulatory surgery center.
6. A critical access hospital.

(b) Home health services.

(c) Outpatient physical therapy services.

(cm) Outpatient occupational therapy services.

(d) End-stage renal disease services.

(e) Services that are specified in rules that the department promulgates.

(4) "Home health services" has the meaning given in s. 50.49 (1) (b).

(5) "Hospice" has the meaning given in s. 50.90 (1).

(6) "Hospital" has the meaning given in s. 50.33 (2) (a) or (b), except that "hospital" does not include a critical access hospital.

(7) "Medicare" has the meaning given in s. 49.45 (3) (L) 1. b.

(7m) "Occupational therapy" has the meaning given in s. 448.96 (5).

(8) "Outpatient physical therapy services" has the meaning given under 42 USC 1395x (p).

(9) "Patient" means an individual who receives services from a rural medical center.

(10) "Rural health clinic" has the meaning given under 42 USC 1395x (aa) (2).

(11) "Rural medical center" means an arrangement of facilities, equipment, services and personnel that is all of the following:

(a) Organized under a single governing and corporate structure.

(b) Capable of providing or assuring health care services, including appropriate referral, treatment and follow-up services, at one or more locations in a county, city, town or village that has a population of less than 15,000 and that is in an area that is not an urbanized area, as defined by the federal bureau of the census.

(c) A provider of at least 2 health care services under the arrangement or through a related corporate entity.

History: 1995 a. 98; 1997 a. 237, 252; 1999 a. 180.

50.51 Departmental powers. The department shall do all of the following:

(1) Provide uniform, statewide licensing, inspection and regulation of rural medical centers as specified in this subchapter.

(2) Promulgate rules that establish all of the following:

(a) For the operation of licensed rural medical centers, standards that are designed to protect and promote the health, safety, rights and welfare of patients who receive health care services in rural medical centers.

(b) Minimum requirements for issuance of a provisional license or a regular license to rural medical centers.

(c) Fees for rural medical center provisional licensure and regular licensure. The amounts of the fees shall be based on the health care services provided by the rural medical center.

(d) A procedure and criteria for waiver of or variance from standards under par. (a) or minimum requirements under par. (b).

History: 1995 a. 98; 1997 a. 27.

Cross-reference: See also ch. DHS 127, Wis. adm. code.

50.52 Licensing procedure and requirements. (1) No person may be required to obtain licensure as a rural medical center, except that no person may conduct, maintain, operate or permit to be conducted, maintained or operated health care services as a rural medical center unless the rural medical center is licensed by the department.

(2) The department shall issue a provisional license or a regular license as a rural medical center to an applicant if all of the following are first done:

(a) The applicant pays the appropriate license fee, as established under s. 50.51 (2) (c). Fees collected under this paragraph shall be credited to the appropriation under s. 20.435 (6) (jm) for licensing and inspection activities.

(b) Except as provided in par. (c), the department inspects the health care services provided by the applying rural medical center and finds that the applicant is fit and qualified and meets the requirements and standards of this subchapter and the rules promulgated under this subchapter.

(c) In lieu of conducting the inspection under par. (b), the department accepts evidence that an applicant meets one of the following requirements:

1. Has applicable current, valid state licensure or approval as a hospital, a nursing home, a hospice or a home health agency.

2. Has an applicable, current agreement to participate as an eligible provider in medicare.

3. Is a critical access hospital.

4. Satisfies qualifications that are specified by the department by rule.

(3) Each license shall bear the name of the owner of the rural medical center, the name and address of the rural medical center and the health care services that the department licenses the rural medical center to provide.

(4) A regular license issued to a rural medical center is valid until it is suspended or revoked. A provisional license issued to a rural medical center is valid for 6 months from the date of issuance.

(5) Each license shall be issued only for the rural medical center and owner that are named in the license application and may not be transferred or assigned.

History: 1995 a. 98; 1997 a. 27, 237.

50.53 Inspections and investigations. (1) The department may conduct unannounced inspections or investigations of a rural medical center as the department considers necessary.

(2) A rural medical center that is inspected or investigated under this section shall provide the department with access to patient health care records, regardless of the source of patient health care payment, to fulfill the purpose of any inspections or investigations that the department conducts.

History: 1995 a. 98

50.535 Reporting. Every 24 months, on a schedule determined by the department, a licensed rural medical center shall submit a biennial report in the form and containing the information that the department requires, including payment of the fee required under s. 50.51 (2) (c). If a complete annual report is not timely filed, the department shall issue a warning to the licensee. The department may revoke the license for failure to timely and completely report within 60 days after the report date established under the schedule determined by the department.

History: 1997 a. 27.

50.54 Prohibitions. (1) An entity that is not licensed as a rural medical center under this subchapter may not designate itself as a "rural medical center" or use the phrase "rural medical center" to represent or tend to represent the entity as a rural medical center or services provided by the entity as health care services provided by a rural medical center.

(2) No person may do any of the following:

(a) Intentionally prevent, interfere with or impede an investigation by the department of an alleged violation or enforcement by the department of a requirement of this subchapter or the rules promulgated under this subchapter.

(b) Intentionally retaliate or discriminate against a patient or rural medical center employee for doing any of the following:

1. Contacting or providing information to a state agency, as defined in s. 16.004 (12) (a).

2. Initiating, participating in or testifying in an action to enforce any provision of this subchapter or rules promulgated under this subchapter.

(c) Intentionally destroy or modify the original report of an inspection that the department conducts under this subchapter or the rules promulgated under this subchapter.

History: 1995 a. 98

50.55 Penalties and remedies. (1) FORFEITURES. (a) Any person who violates this subchapter or any rule promulgated

under this subchapter, except s. 50.54 (2), may be required to forfeit not less than $100 nor more than $500 for each offense. Each day of continued violation constitutes a separate offense.

(b) 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 department shall consider all of the following factors:

1. The gravity of the violation.
2. Good faith exercised by the licensee.
3. Any previous violations committed by the licensee.
4. The financial benefit to the rural medical center of committing or continuing to commit the violation.

(c) 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, the department shall send a notice of assessment to the rural medical center. The notice shall specify the amount of the forfeiture assessed, the violation, and the statute or rule alleged to have been violated, and shall inform the licensee of the right to a hearing under par. (d).

(d) A rural medical center may contest an assessment of forfeiture by sending, within 10 days after receipt of notice under par. (c), a written request for hearing under s. 227.44 to the division of hearings and appeals under s. 15.103 (1). The division shall commence the hearing within 30 days after 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.

(e) All forfeitures shall be paid to the department within 10 days after receipt of notice of assessment or, if the forfeiture is contested under par. (d), within 10 days after receipt of the final decision, unless the final decision is appealed and the decision is in favor of the appellant. The department shall remit all forfeitures paid to the secretary of administration for deposit in the school fund.

(2) OTHER PENALTY. Whoever violates s. 50.54 (2) may be fined not more than $1,000 or imprisoned for not more than 6 months or both.

(3) INJUNCTION. The department may, upon the advice of the attorney general, who shall represent the department in all proceedings under this subsection, institute an action in the name of the state in the circuit court for Dane County for injunctive relief or other process against any licensee, owner, operator, administrator or representative of any owner of a rural medical center for the violation of any of the provisions of this subchapter or rules promulgated under this subchapter if the department determines that the violation seriously affects the care, treatment, health, safety, rights, welfare or comfort of patients.

History: 1995 a. 98; 2003 a. 33.

50.56 Applicability. (1) Any of the following facilities or entities is not required to obtain licensure or a certificate of approval under the following statutes or to pay license fees under the following statutes if all of the services of the facility or entity are provided as a part of a rural medical center that holds a valid license under this subchapter:

(a) A hospital, under ss. 50.135 (2) (a) and (b) and 50.35.

(b) A nursing home, under ss. 50.03 (1) and 50.135 (2) (a) and (b).

(c) A hospice, under ss. 50.92 (1) and 50.93 (1) (c).

(d) A home health agency, under s. 50.49 (2) (b) and (8).

(2) Subsection (1) may not be construed to apply to limit the authority of the department to develop, establish or enforce any statutes and rules for the care, treatment, health, safety, rights, welfare and comfort of patients or residents of facilities or entities that are specified in sub. (1) (a) to (d) and for the construction, general hygiene, maintenance or operation of those facilities or entities.

(3) Notwithstanding sub. (2), insofar as a conflict exists between this subchapter, or the rules promulgated under this subchapter, and subch. I, II or VI, or the rules promulgated under subch. I, II or VI, the provisions of this subchapter and the rules promulgated under this subchapter control.

(4) This subchapter may not be construed to limit a health care service that is included in a rural medical center from any tax-exempt financing or reimbursement, insurance, payment for services or other advantage for which a health care service that is not included in a rural medical center is eligible.

History: 1995 a. 98; 1997 a. 27, 237; 2015 a. 265.

50.57 Fees permitted for a workshop or seminar. If the department develops and provides a workshop or seminar relating to the provision of services by rural medical centers under this subchapter, the department may establish a fee for each workshop or seminar and impose the fee on registrants for the workshop or seminar. A fee so established and imposed shall be in an amount sufficient to reimburse the department for the costs directly associated with developing and providing the workshop or seminar.

History: 1997 a. 27.

SUBCHAPTER V

CLINICS

50.60 Definitions; clinics. In this subchapter:

(1) "Health care provider" has the meaning given in s. 146.81 (1) (a) to (hp).

(2) "Interventional pain medicine" means the branch of medicine and surgery devoted to the diagnosis and treatment of pain syndromes through the use of invasive techniques.

(3) "Pain clinic" means any of the following:

(a) A privately owned facility where a majority of the health care providers, practicing within the scope of their licenses, devotes a majority of their practices to the treatment of pain syndromes through the practice of pain medicine or interventional pain medicine.

(b) A privately owned facility that advertises or otherwise holds itself out as providing pain medicine or interventional pain medicine services and that has one or more employees or contractors who prescribe opioids or opiates, benzodiazepines, barbiturates, or carisoprodol as chronic therapy for pain syndromes.

(4) "Pain medicine" means the branch of medicine devoted to the diagnosis and treatment of pain syndromes through treatments, including prescription of a monitored prescription drug, as defined in s. 961.385 (1) (ag).

(5) "Pain syndrome" means any of the following:

(a) Pain that is reasonably anticipated to persist, or has persisted, beyond the time frame for normal healing.

(b) Pain that is reasonably anticipated to persist, or has persisted, for more than 3 months.

History: 2015 a. 265.

50.65 Pain clinics. (1) CERTIFICATION REQUIRED. (a) Except as provided under par. (g), no pain clinic may operate unless it holds a certificate to operate issued by the department.

(b) A pain clinic shall submit to the department an application, on a form prescribed by the department, for a certificate. A business entity that owns more than one pain clinic may apply for a single certificate for all pain clinics it owns, but the business entity assuming responsibility for the pain clinics shall submit with

the application a listing of each pain clinic site, the number of days each week each pain clinic site operates, and the health care providers who are working on each day of operation at each site. The department may charge an applicant a fee for applying for a certificate.

(c) A certified pain clinic that undergoes a change of majority ownership shall submit a new application for a certificate.

(d) A pain clinic shall have a medical director who is a physician that practices in this state. In the event that the medical director no longer meets the requirements of holding the position of medical director, the pain clinic shall notify the department within 10 business days of the identity of a physician who meets the requirements of medical director and who acts as medical director at that pain clinic. Failure to notify the department of an acting medical director within 10 days of the departure of the previous medical director may be a basis for the department to suspend the pain clinic's certification.

(e) The department shall issue a certificate of operation to a pain clinic if the department finds that the pain clinic meets the requirements of this section, has paid any application fee required by the department, and meets any requirements established by the department. The department may not issue a certificate of operation to a pain clinic if the owner has been convicted of a felony or found guilty of a misdemeanor related to the distribution of an illegal prescription drug or controlled substance.

(f) Subject to sub. (2), a certificate issued under this subsection is valid for 3 years and may be renewed.

(g) A pain clinic at which health care providers do not regularly prescribe monitored prescription drugs, as defined in s. 961.385 (1) (ag), to a patient for more than 90 days in a 12-month period is not required to obtain a certificate to operate under this subsection.

(2) PENALTY FOR VIOLATION. (a) If the department finds that a pain clinic which was issued a certificate under this section no longer meets any requirement of this section or rules promulgated under this section or of requirements established by the department, the department may do any of the following:

1. Suspend the certificate of the pain clinic until the department determines that the pain clinic demonstrates compliance.

2. Revoke the certificate of the pain clinic.

3. Impose a forfeiture of up to $1,000 per day for each day of continued violation.

(b) A pain clinic subject to a penalty under par. (a) is entitled to an appeal and a hearing under ch. 227.

(3) PAYMENT METHOD. (a) In this subsection, "traceable" means capable of allowing a person to ascertain, retain, and verify personally identifiable information, including, at a minimum, the first and last name, home address, and date of birth, of a payer in connection with a payment.

(b) A pain clinic may only accept payment by insurance coverage, credit, a credit card, a check, a draft, or another form of payment that is traceable to the individual seeking treatment at the pain clinic and shall retain records of payment. An individual seeking treatment for which a claim is submitted to an insurance company may pay to the pain clinic any insurance copayment, coinsurance, or deductible with cash or another payment method that is not traceable.

(4) DIRECT DISPENSING. A pain clinic may not directly dispense, as defined in s. 450.01 (7), a monitored prescription drug, as defined in s. 961.385 (1) (ag), that is administered orally, unless any of the following are true:

(a) The pain clinic is licensed as a pharmacy under s. 450.06.

(b) The pain clinic is treating an individual under ch. 102 for a condition or complaint reasonably related to a condition for which the individual claims worker's compensation under ch. 102.

(5) APPLICABILITY. This section does not apply to any of the following:

(a) A medical or dental school, nursing school, physician assistant training program, or outpatient clinic associated with any of the schools or training programs specified in this paragraph.

(b) A hospital, as defined in s. 50.33 (2).

(c) Hospice, as defined in s. 50.90 (1).

(d) A nursing home, as defined in s. 50.01 (3).

(6) RULES. The department, after consulting with the medical examining board, may promulgate rules to govern the operation of pain clinics as the department finds necessary to provide safety to the public. The department may promulgate other rules it determines are necessary to implement this section.

(7) REGULATION OF PROFESSIONS. Nothing in this section confers authority on the department of health services to regulate the profession or practice of a health care provider whose profession is regulated by the department of safety and professional services or an examining board attached to the department of safety and professional services.

History: 2015 a. 265.

SUBCHAPTER VI

HOSPICES

50.90 Definitions. In this subchapter:

(1) "Hospice" means any of the following:

(a) An organization that primarily provides palliative care and supportive care to an individual with terminal illness where he or she lives or stays and, if necessary to meet the needs of an individual with terminal illness, arranges for or provides short-term inpatient care and treatment or provides respite care.

(b) A program, within an organization, that primarily provides palliative care and supportive care to an individual with terminal illness where he or she lives or stays, that uses designated staff time and facility services, that is distinct from other programs of care provided, and, if necessary to meet the needs of an individual with terminal illness, that arranges for or provides short-term inpatient care and treatment or respite care.

(c) A place, including a freestanding structure or a separate part of a structure in which other services are provided, that primarily provides palliative and supportive care and a place of residence to individuals with terminal illness and provides or arranges for short-term inpatient care as needed.

(1m) "Managing employee" means a general manager, business manager, administrator, director or other individual who exercises operational or managerial control over, or who directly or indirectly conducts, the operation of the hospice.

(2) "Organization" means a public agency, as defined in s. 46.856 (1) (b), a nonprofit corporation, a for-profit stock corporation, a cooperative, an unincorporated cooperative association, a partnership, a limited liability company or a sole proprietorship.

(3) "Palliative care" means management and support provided for the reduction or abatement of pain, for other physical symptoms and for psychosocial or spiritual needs of individuals with terminal illness and includes physician services, skilled nursing care, medical social services, services of volunteers and bereavement services. "Palliative care" does not mean treatment provided in order to cure a medical condition or disease or to artificially prolong life.

(3g) "Respite care" means care provided to a terminally ill in-

dividual in order to provide temporary relief to the primary caregiver.

(3m) "Short-term care" means care provided to a terminally ill individual in an inpatient setting for brief periods of time for the purpose of pain control or acute or chronic symptom management.

(4) "Supportive care" means services provided during the final stages of an individual's terminal illness and dying and after the individual's death to meet the psychosocial, social and spiritual needs of family members of the terminally ill individual and other individuals caring for the terminally ill individual. "Supportive care" includes personal adjustment counseling, financial counseling, respite services, bereavement counseling and follow-up services provided by volunteers or other persons.

(5) "Terminal illness" means a medical prognosis that an individual's life expectancy is less than 12 months.

History: 1989 a. 199; 1993 a. 112; 2003 a. 33; 2005 a. 441.

50.91 Departmental powers and duties. The department shall provide uniform, statewide licensing, inspection and regulation of hospices as specified in this subchapter.

History: 1989 a. 199.

50.92 Licensing requirements. (1) No person may conduct, maintain, operate or otherwise participate in conducting, maintaining or operating a hospice unless the hospice is licensed by the department.

(2) The department shall issue a license if the department finds that the applicant is fit and qualified and that the hospice meets the requirements of this subchapter and the rules promulgated under this subchapter.

(3) The department or the department's designated representative shall inspect or investigate a hospice prior to issuance of a license for the hospice except as provided in sub. (4) and may inspect or investigate a hospice as the department deems necessary, including conducting home visits or a review of health care records of any individuals with terminal illness served by the hospice, to determine if any person is in violation of this subchapter.

(3m) The department may conduct plan reviews of all capital construction and remodeling of structures that are owned or leased for operation of a hospice. The department shall promulgate rules that establish a fee schedule for its services in conducting the plan reviews under this subsection.

(4) (a) In lieu of inspecting or investigating a hospice under sub. (3) prior to issuance of a license, the department may accept evidence that a hospice applying for licensure under s. 50.93 has been inspected under and is currently certified as meeting the conditions for medicare participation under 42 USC 1395 to 1395ccc. If a hospice fails to meet the conditions for medicare participation under 42 USC 1395 to 1395ccc, the department shall inspect or investigate the hospice under sub. (3) before initially issuing a license for the hospice.

(b) In lieu of inspecting or investigating a hospice under sub. (3) prior to issuance of a license, the department may accept evidence that a hospice applying for licensure under s. 50.93 has accreditation as a hospice from an organization that is approved by the federal centers for Medicare and Medicaid services and that meets any requirements established by the department. A hospice shall provide the department with a copy of the report by the accreditation organization of each periodic review the organization conducts of the hospice.

(5) The past record of violations of applicable laws or regulations of the United States or of state statutes or rules of this or any other state, in the operation of any health-related organization, by an operator, managing employee or direct or indirect owner of a hospice or of an interest of a hospice is relevant to the issue of the fitness of an applicant for a license. The department or the department's designated representative shall inspect and investigate as necessary to determine the conditions existing in each case under this subsection and shall prepare and maintain a written report concerning the investigation and inspection.

History: 1989 a. 199; 1997 a. 27; 2015 a. 55; 2017 a. 59.

50.925 Use of name or advertising prohibited. No entity that is not a hospice licensed under this subchapter or an applicant for a license or a provisional license under this subchapter may designate itself as a "hospice" or use the word "hospice" to represent or tend to represent the entity as a hospice or services provided by the entity as services provided by a hospice.

History: 1989 a. 199.

50.93 Licensing procedure. (1) APPLICATION. The application for a license or for a provisional license shall:

(a) Be in writing on a form provided by the department.

(b) Contain such information as the department requires.

(c) Include licensing fee payment, unless the licensing fee is waived by the department on a case-by-case basis under criteria for determining financial hardship established in rules promulgated by the department. An initial licensing fee is $300, except that, for a hospice that is a nonprofit corporation and that is served entirely by uncompensated volunteers or employs persons in not more than 1.5 positions at 40 hours of employment per week, the initial licensing fee is $25. The annual fee thereafter is an amount equal to 0.15 percent of the net annual income of the hospice, based on the most recent annual report of the hospice under sub. (3m), or $200, whichever is greater, and if the amount equal to 0.15 percent of the net annual income of the hospice is greater than $1,000, the fee is $1,000, except that for a hospice that is a nonprofit corporation and that is served entirely by uncompensated volunteers or employs persons in not more than 1.5 positions at 40 hours of employment per week the annual fee is $10. The amount of the provisional licensing fee shall be established under s. 50.95 (2). The initial licensing fee for a hospice, including the initial licensing fee for a hospice that is a nonprofit corporation and that is served entirely by uncompensated volunteers or employs persons in not more than 1.5 positions at 40 hours of employment per week, issued after September 1 may be prorated.

(2) ISSUANCE OF LICENSE. (a) A hospice license is valid until suspended or revoked.

(c) Each license shall be issued only for the applicant named in the application and may not be transferred or assigned.

(d) Any license granted under special limitations prescribed by the department shall state the limitations.

(3) PROVISIONAL LICENSE. If the applicant has not been previously licensed under this subchapter or if the hospice is not in operation at the time that application is made, the department may issue a provisional license. Unless sooner suspended or revoked under sub. (4), a provisional license shall be valid for 24 months from the date of issuance. Within 30 days prior to the termination of a provisional license, the department shall fully and completely inspect the hospice and, if the hospice meets the applicable requirements for licensure, shall issue a regular license under sub. (2). If the department finds that the hospice does not meet the requirements for licensure, the department may not issue a regular license under sub. (2).

(3m) REPORTING. Every 12 months, on a schedule determined by the department, a licensed hospice shall submit an annual report in the form and containing the information that the department requires, including payment of the fee required under sub. (1) (c), evidence of current certification as meeting the conditions for medicare participation under 42 USC 1395 to 1395ccc

and evidence of current compliance with the hospice requirements of the joint commission for the accreditation of health organizations. If a complete annual report is not timely filed, the department shall issue a warning to the licensee. The department may revoke the license for failure to timely and completely report within 60 days after the report date established under the schedule determined by the department.

(4) SUSPENSION AND REVOCATION. (a) The department, after notice to the applicant or licensee, may suspend or revoke 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 or the rules promulgated under this subchapter. No state or federal funds passing through the state treasury may be paid to a hospice not having a valid license issued under this section.

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

(c) If a hospice desires to contest the revocation of a license, the hospice shall, within 10 days after receipt of notice under par. (b), notify the department in writing of its request for a hearing under s. 227.44.

(d) 1. Subject to s. 227.51 (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 ch. 227, whichever is later.

3. The department may extend the effective date of license revocation in any case in order to permit orderly removal and relocation of individuals served by the hospice.

(5) INSPECTION FEE. If the department takes enforcement action against a hospice for a violation of this subchapter or rules promulgated under this subchapter, and the department subsequently conducts an on-site inspection of the hospice to review the hospice's action to correct the violation, the department may impose a $200 inspection fee on the hospice.

History: 1989 a. 199; 1991 a. 39; 1997 a. 27; 2009 a. 28.

50.94 Admission to and care in a hospice for certain incapacitated persons.

(1) In this section:

(a) "Hospice care" means palliative care, respite care, short-term care or supportive care.

(b) "Incapacitated" means unable to receive and evaluate information effectively or to communicate decisions to such an extent that a person lacks the capacity to manage his or her health care decisions.

(c) "Physician" means a person licensed to practice medicine and surgery under ch. 448.

(d) "Terminal condition" means an incurable condition caused by injury, disease or illness that according to reasonable medical judgment will produce death within 6 months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care.

(2) A person who is determined to be incapacitated under the requirements of sub. (8), does not have a valid living will or valid power of attorney for health care, and has not been adjudicated incompetent in this state may be admitted to a hospice under this section only if all of the following requirements are met:

(a) An individual who is specified in sub. (3) signs all of the following:

1. On behalf of the person who is incapacitated, an informed consent for the receipt of hospice care by the person who is incapacitated.

2. A statement certifying that it is his or her belief, to the best of his or her knowledge, that, if able to do so, the person who is incapacitated would have selected hospice care.

(b) A physician certifies that the person who is incapacitated has a terminal condition and that the physician believes that the individual under par. (a) is acting in accordance with the views or beliefs of the person who is incapacitated.

(3) The following individuals, in the following order of priority, may act under sub. (2) (a):

(a) The spouse or domestic partner under ch. 770 of the person who is incapacitated.

(b) An adult child of the person who is incapacitated.

(c) A parent of the person who is incapacitated.

(d) An adult sibling of the person who is incapacitated.

(e) A close friend or a relative of the person who is incapacitated, other than as specified in pars. (a) to (d), to whom all of the following apply:

1. The close friend or other relative is aged at least 18 and has maintained sufficient regular contact with the person who is incapacitated to be familiar with the person's activities, health and beliefs.

2. The close friend or other relative has exhibited special care and concern for the incapacitated person.

(4) The individual who acts under sub. (2) (a) may make all health care decisions related to receipt of hospice care by the person who is incapacitated.

(5) The person who is incapacitated or the individual under sub. (4) may object to or revoke the election of hospice care at any time.

(6) A person who disagrees with a hospice decision made under this section may apply under s. 54.50 for temporary guardianship of the person who is incapacitated. In applying for the temporary guardianship, such a person has the burden of proving that the person who is incapacitated would not have consented to admission to a hospice or hospice care.

(7) The individual who acts under sub. (2) (a) shall, if feasible, provide to all other individuals listed under sub. (3) notice of the proposed admission of the person who is incapacitated to a hospice and of the right to apply for temporary guardianship under sub. (6). If it is not feasible for the individual to provide this notice before admission of the person who is incapacitated to a hospice, the individual who acts under sub. (2) (a) shall exercise reasonable diligence in providing the notice within 48 hours after the admission.

(8) A determination that a person is incapacitated may be made only by 2 physicians or by one physician and one licensed advanced practice clinician, as defined in s. 155.01 (1g), who personally examine the person and sign a statement specifying that the person is incapacitated. Mere old age, eccentricity or physical disabilities, singly or together, are insufficient to determine that a person is incapacitated. Whoever determines that the person is incapacitated may not be a relative, as defined in s. 242.01 (11), of the person or have knowledge that he or she is entitled to or has claim on any portion of the person's estate. A copy of the statement shall be included in the records of the incapacitated person in the hospice to which he or she is admitted.

History: 1999 a. 9; 2005 a. 387; 2009 a. 28; 2019 a. 90.

50.942 Accompaniment or visitation.

If a hospice has a policy on who may accompany or visit a patient, the hospice shall extend the same right of accompaniment or visitation to a patient's domestic partner under ch. 770 as is accorded the spouse of a patient under the policy.

History: 2009 a. 28.

50.95 Rule-making authority. The department shall promulgate all of the following rules:

(1) Except as provided in s. 50.942, standards for the care, treatment, health, safety, rights, welfare and comfort of individuals with terminal illness, their families and other individuals who receive palliative care or supportive care from a hospice and the maintenance, general hygiene and operation of a hospice, which will permit the use of advancing knowledge to promote safe and adequate care and treatment for these individuals. These standards shall permit provision of services directly, as required under 42 CFR 418.56, or by contract under which overall coordination of hospice services is maintained by hospice staff members and the hospice retains the responsibility for planning and coordination of hospice services and care on behalf of a hospice client and his or her family, if any.

(2) Provisional hospice licensure fees or the methods of computation of those fees.

(3) Inspection or investigation procedures that the department or the department's designated representative may use to assure the provision of care and treatment that is commensurate with the standards established under sub. (1).

(4) Criteria for determining financial hardship for the waiver of licensing fees.

(5) Criteria for determining that the applicant for licensure is fit and qualified.

(6) A procedure for waiver of and variance from standards under sub. (1) or criteria under sub. (5). The department may limit the duration of the waiver or variance.

History: 1989 a. 199; 1997 a. 27; 2009 a. 28.
Cross-reference: See also ch. DHS 131, Wis. adm. code.

50.97 Right of injunction. The department may, upon the advice of the attorney general, who shall represent the department in all proceedings under this section, institute an action in the name of the state in the circuit court for Dane County for injunctive relief or other process against any licensee, owner, operator, administrator or representative of any owner of a hospice for the violation of any of the provisions of this subchapter or rules promulgated under this subchapter if the violation affects the health, safety or welfare of individuals with terminal illness.

History: 1989 a. 199.

50.98 Forfeitures. (1) Any person who violates this subchapter or rules promulgated under this subchapter may be required to forfeit not more than $100 for the first violation and may be required to forfeit not more than $200 for the 2nd or any later violation within a year. The period shall be measured using the dates of issuance of citations of the violations. Each day of violation constitutes a separate violation.

(2) 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:

(a) 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 rules were violated.

(b) 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.

(c) Any previous violations committed by the licensee.

(d) The financial benefit to the hospice of committing or continuing the violation.

(3) The department may directly assess forfeitures provided for under sub. (1). 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 hospice. The notice shall specify the amount of the forfeiture assessed, the violation, and the statute or rule alleged to have been violated, and shall inform the licensee of the right to a hearing under sub. (4).

(4) A hospice may contest an assessment of forfeiture, by sending, within 10 days after receipt of notice under sub. (3), a written request for hearing under s. 227.44 to the division of hearings and appeals created under s. 15.103 (1). The administrator of the division may designate a hearing examiner to preside over the case and recommend a decision to the administrator under s. 227.46. The decision of the administrator of the division shall be the final administrative decision. The division shall commence the hearing within 30 days after receipt of the request for hearing and shall issue a final decision within 15 days after the close of the hearing. Proceedings before the division are governed by ch. 227. In any petition for judicial review of a decision by the division, the party, other than the petitioner, who was in the proceeding before the division shall be the named respondent.

(5) All forfeitures shall be paid to the department within 10 days after receipt of notice of assessment or, if the forfeiture is contested under sub. (4), within 10 days after 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 the same terms and conditions as found in s. 50.03 (11). The department shall remit all forfeitures paid to the secretary of administration for deposit in the school fund.

(6) 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.

History: 1989 a. 199; 2003 a. 33.

50.981 Fees permitted for a workshop or seminar. If the department develops and provides a workshop or seminar relating to the provision of services by hospices under this subchapter, the department may establish a fee for each workshop or seminar and impose the fee on registrants for the workshop or seminar. A fee so established and imposed shall be in an amount sufficient to reimburse the department for the costs directly associated with developing and providing the workshop or seminar.

History: 1997 a. 27.