WISCONSIN STATUTES

AND

ADMINISTRATIVE CODE

RELATING TO THE PRACTICE OF NURSING HOME ADMINISTRATORS

FEBRUARY 2003

State of Wisconsin
Department of Regulation and Licensing
Nursing Home Administrator Examining Board
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INTRODUCTION

The Nursing Home Administrator Examining Board licenses and regulates nursing home administrators. The Board is composed of professional and public members who are appointed by the Governor and confirmed by the Senate.

The Department of Regulation and Licensing is an umbrella agency providing administrative services to the various professional boards. Within the Department, the Division of Business Licensure and Regulation provides administrative services to the Nursing Home Administrator Examining Board. Requests for information or technical questions may be directed to the Nursing Home Administrator Examining Board, Division of Business Licensure and Regulation, 1400 East Washington Avenue, P.O. Box 8935, Madison WI 53708-8935. Telephone number: (608) 266-5511 or TTY# (608) 267-2416 and TRS# 1-800-947-3529.

This book contains statutes and rules relevant to the regulation and practice of nursing home administrators in Wisconsin. The statutes are the laws granting the Nursing Home Administrator Examining Board authority to promulgate administrative rules outlining procedures for the profession. All administrative rules of the Board and a limited number of related statutes are included in this book.

The development of the law in this area is ongoing. Therefore, these rules and statutes may be revised subsequent to the printing of this book. Most local libraries maintain current sets of Wisconsin Administrative Code and the Wisconsin Statutes. These documents as well as other state publications are available from the Department of Administration, Document Sales Division, PO Box 7840, Madison, WI 53707.

All Wisconsin Statutes and Administrative Codes are available on the Internet at the following addresses:

Statutes: http://www.legis.state.wi.us/rsb/statutes.html

Rules: http://www.legis.state.wi.us/rsb/code/codtoc.html

CHAPTER 15
STRUCTURE OF THE EXECUTIVE BRANCH

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SUBCHAPTER I
GENERAL PROVISIONS

15.001 Declaration of policy. (1) THREE BRANCHES OF GOVERNMENT. The "republican form of government" guaranteed by the U.S. constitution contemplates the separation of powers within state government among the legislative, the executive and the judicial branches of the government. The legislative branch has the broad objective of determining policies and programs and review of program performance for programs previously authorized, the executive branch carries out the programs and policies and the judicial branch has the responsibility for adjudicating any conflicts which might arise from the interpretation or application of the laws. It is a traditional concept of American government that the 3 branches are to function separately, without intermingling of authority, except as specifically provided by law.

(2) GOALS OF EXECUTIVE BRANCH ORGANIZATION. (a) As the chief administrative officer of the state, the governor should be provided with the administrative facilities and the authority to carry out the functions of the governor's office efficiently and effectively within the policy limits established by the legislature.

(b) The administrative agencies which comprise the executive branch should be consolidated into a reasonable number of departments and independent agencies consistent with executive capacity to administer effectively at all levels.

(c) The integration of the agencies in the executive branch should be on a functional basis, so that programs can be coordinated.

(d) Each agency in the executive branch should be assigned a name commensurate with the scope of its program responsibilities, and should be integrated into one of the departments or independent agencies of the executive branch as closely as the conflicting goals of administrative integration and responsiveness to the legislature will permit.

(3) GOALS OF CONTINUING REORGANIZATION. Structural reorganization should be a continuing process through careful executive and legislative appraisal of the placement of proposed new programs and the coordination of existing programs in response to changing emphasis or public needs, and should be consistent with the following goals:

(a) The organization of state government should assure its responsiveness to popular control. It is the goal of reorganization to improve legislative policy–making capability and to improve the administrative capability of the executive to carry out these policies.

(b) The organization of state government should facilitate communication between citizens and government. It is the goal of reorganization through coordination of related programs in function–oriented departments to improve public understanding of govemment programs and policies and to improve the relationships between citizens and administrative agencies.

(c) The organization of state government shall assure efficient and effective administration of the policies established by the legislature. It is the goal of reorganization to promote efficiency by improving the management and coordination of state services and by eliminating overlapping activities.

History: 1991 a. 316.

15.01 Definitions. In this chapter: **(Ig)** "Affiliated credentialing board" means a part–time body that meets all of the following conditions:

(a) **Is** attached to an examining board to regulate a profession that does not practice independently of the profession regulated by the examining board or that practices in collaboration with the profession regulated by the examining board.

(b) With the advice of the examining board to which it is attached, sets standards of professional competence and conduct for the profession under the affiliated credentialing board's supervision, reviews the qualifications of prospective new practitioners, grants credentials, takes disciplinary action against credential holders and performs other functions assigned to it by law.

(Ir) "Board" means a part–time body functioning as the policy–making unit for a department or independent agency or a part–time body with policy–making or quasi–judicial powers.

(2) "Commission" means a 3–member governing body in charge of a department or independent agency or of a division or other subunit within a department, except for the Wisconsin waterways commission which shall consist of **5** members, the parole commission which shall consist of 8 members, and the Fox River management commission which shall consist of 7 members. **A** Wisconsin group created for participation in a continuing interstate body, or the interstate body itself, shall be known as a "commission", but is not a commission for purposes of s. 15.06. The parole commission created under **s.** 15.145 (1) shall be known as a "commission", but is not a commission for purposes of s. 15.06. The sentencing commission created under s. 15.105 (27) shall be known as a "commission" but is not a commission for purposes of **s.** 15.06 (1) to (4m), (7), and (9).

(3) "Committee" means a part–time body appointed to study a specific problem and to recommend a solution or policy alternative with respect to that problem, and intended to terminate on the completion of its assignment. Because of their temporary nature, committees shall be created by session law rather than by statute.

(4) "Council" means a part–time body appointed to function on a continuing basis for the study, and recommendation of solutions and policy alternatives, of the problems arising in a specified functional area of state government, except the Wisconsin land council has the powers specified in s. 16.965 (3) and **(5)** and the powers granted to agencies under ch. 227, the Milwaukee River revitalization council has the powers and duties specified in **s.** 23.18, the council on physical disabilities has the powers and duties specified in **s.** 46.29 (1) and (2), and the state council on alcohol and other drug abuse has the powers and duties specified in **s.** 14.24.

(5) "Department" means the principal administrative agency within the executive branch of Wisconsin state government, but does not include the independent agencies under subch. III.

(6) "Division," "bureau," "section" and "unit" means the subunits of a department or an independent agency, whether specifically created by law or created by the head of the department or the independent agency for the more economic and efficient administration and operation of the programs assigned to the department or independent agency. The office of justice assistance in the department of administration and the office of credit unions in the

department of financial institutions have the meaning of "division" under this subsection. The office of the long– term care ombudsman under the board on aging and long–term care and the office of educational accountability in the department of public instruction have the meaning of "bureau" under this subsection.

(7) "Examining board" means a part–time body which sets standards of professional competence and conduct for the profession under its supervision, prepares, conducts and grades the examinations of prospective new practitioners, grants licenses, investigates complaints of alleged unprofessional conduct and performs other functions assigned to it by law. "Examining board" includes the board of nursing.

(8) "Head", in relation to a department, means the constitutional officer, commission, secretary or board in charge of the department. "Head", in relation to an independent agency, means the commission, commissioner or board in charge of the independent agency.

(9) "Independent agency" means an administrative agency within the executive branch created under subch. III.

History: 1977 c. 29, 274; 1979 c. 34; 1983 a. 27, 189,371,410, 538; 1985 a. 29, 120, 180; 1987 s. 27,342,399; 1989 a. 31, 107,202; 1991 a. 39, 269, 315; 1993 a. 16, 107, 210,215; 1995 a. 27 ss. 74 and 9145 (l); 1995 a. 442,462, 1997 a. 27,237; 2001 a. 16, 105, 109.

15.02 Offices, departments and independent agencies. The constitutional offices, administrative departments and independent agencies which comprise the executive branch of Wisconsin state government are structured as follows:

(1) SEPARATE CONSTITUTIONAL OFFICES. The governor, lieutenant governor, secretary of state and state treasurer each head a staff to be termed the "office" of the respective constitutional officer.

(2) PRINCIPAL ADMINISTRATIVE UNITS. The principal administrative unit of the executive branch is a "department" or an "independent agency". Each such unit shall bear a title beginning with the words "State of Wisconsin" and continuing with "department of...." or with the name of the independent agency. A department may be headed by a constitutional officer, a secretary, a commission or a board. An independent agency may be headed by a commission, a commissioner or a board.

(3) INTERNAL STRUCTURE. (a) The secretary of each department may, subject to sub.(4), establish the internal structure within the office of secretary so as to best suit the purposes of his or her department. No secretary may authorize the designation of "assistant secretary" as the official position title of any employee of his or her department.

(b) For field operations, departments may establish district or area offices which may cut across divisional lines of responsibility.

(c) For their internal structure, all departments shall adhere to the following standard terms, and independent agencies are encouraged to review their internal structure and to adhere as much as possible to the following standard terms:

1. The principal subunit of the department is the "division". Each division shall be headed by an "administrator". The office of justice assistance in the department of administration and the office of credit unions in the department of financial institutions have the meaning of "division" and the executive staff director of the office of justice assistance in the department of administration and the director of credit unions have the meaning of "administrator" under this subdivision.

2. The principal subunit of the division is the "bureau". Each bureau shall be headed by a "director". The office of the long– term care ombudsman under the board on aging and long–term care and the office of educational accountability in the department of public instruction have the meaning of "bureau" under this subdivision.

2m. Notwithstanding subds. 1. and 2., the principal subunit of the department of tourism is the "bureau", which shall be headed by a "director".

3. If further subdivision is necessary, bureaus may be divided into subunits which shall be known as "sections" and which shall be headed by "chiefs" and sections may be divided into subunits which shall be known as ''units'' and which shall be headed by "supervisors".

(4) INTERNAL ORGANIZATION AND ALLOCATION OF FUNCTIONS. The head of each department or independent agency shall, subject to the approval of the governor, establish the internal organization of the department or independent agency and allocate and reallocate duties and functions not assigned by law to an officer or any subunit of the department or independent agency to promote economic and efficient administration and operation of the department or independent agency. The head may delegate and redelegate to any officer or employee of the department or independent agency any function vested by law in the head. The governor may delegate the authority to approve selected organizational changes to the head of any department or independent agency.

History: 1971 c. 261; 1973 c. 12; 1975 c. 39; 1977 c. 29; 1979 c. 221; 1987 a. 27,399; 1993 a. 16, 184,215,491; 1995 a. 27 ss. 75, 76, 76c and 9145 (l); 1997 a. 27.

Limits of internal departmental reorganization discussed. 61 **Atty.** Gen. 306.

15.03 Attachment for limited purposes. Any division, office, commission, council or board attached under this section to a department or independent agency or a specified division thereof shall be a distinct unit of that department, independent agency or specified division. Any division, office, commission, council or board so attached shall exercise its powers, duties and functions prescribed by law, including rule making, licensing and regulation, and operational planning within the area of program responsibility of the division, office, commission, council or board, independently of the head of the department or independent agency, but budgeting, program coordination and related management functions shall be performed under the direction and supervision of the head of the department or independent agency, except that with respect to the office of the commissioner of railroads, all personnel and biennial budget requests by the office of the commissioner of railroads shall be provided to the department of transportation as required under s. 189.02 (7) and shall be processed and properly forwarded by the public service commission without change except as requested and concurred in by the office of the commissioner of railroads.

History: 1981 c. 347; 1983 a. 27; 1993 a. 123; 1999 a. 9.

15.04 Heads of departments and independent agencies; powers and duties. (1) DUTIES. Each head of a department or independent agency shall:

(a) ***Supervision.*** Except as provided in s. 15.03, plan, direct, coordinate and execute the functions vested in the department or independent agency.

(b) ***Budget.*** Biennially compile a comprehensive program budget which reflects all fiscal matters related to the operation of the department or independent agency and each program, subprogram and activity therein.

(c) Advisory bodies. In addition to any councils specifically created by law, create and appoint such councils or committees as the operation of the department or independent agency requires. Members of councils and committees created under this general authority shall serve without compensation, but may be reimbursed for their actual and necessary expenses incurred in the performance of their duties and, if such reimbursement is made, such reimbursement in the case of an officer or employee of this state who represents an agency as a member of such a council or committee shall be paid by the agency which pays the officer's or employee's salary.

(d) ***Biennial report.*** On or before October 15 of each odd–numbered year, submit to the governor and the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2), a report on the performance and operations of the department or independent agency during the preceding biennium, and projecting the goals and objectives of the department or independent agency as developed for the program budget report. The secretary of administration may prescribe the format of the report and may require such other information deemed appropriate. Each department or independent agency shall provide a copy of its biennial report to legislators upon request. Any department or independent agency may issue such additional reports on its findings and recommendations as its operations require. A department or independent agency may, on or before October 15, submit an annual report prepared by it, in place of the biennial report required under this paragraph, if the submission of the annual reports is approved by the secretary of administration.

(e) Seal. Have authority to adopt a seal for the department or independent agency.

(f) ***Bonds.*** Have authority to require that any officer or employee of the department or independent agency give an official bond under ch.

19, if the secretary of administration agrees that the position held by such officer or employee requires bonding.

(g) ***Discrimination review.*** In order to determine whether there is any arbitrary discrimination on the basis of race, religion, national origin, sex, marital status or sexual orientation as defined in s. 111.32 (13m), examine and assess the statutes under which the head has powers or regulatory responsibilities, the procedures by which those statutes are administered and the rules promulgated under those statutes. If the department or agency head finds any such discrimination, he or she shall take remedial action, including making recommendations to the appropriate executive, legislative or administrative authority.

(i) ***Records and forms management program.*** Establish and maintain a records and forms management program.

(j) ***Records and forms officer.*** Appoint a records and forms officer, who shall be responsible for compliance by the department or independent agency with all records and forms management laws and rules and who may prevent any form from being put into use.

(k) ***Form numbering and filing system.*** Establish a numbering and filing system for forms.

(m) ***Notice on forms.*** See that each form used by the department or independent agency to seek information from municipalities, counties or the public contains on the first page of the form, or in the instructions for completing the form, a conspicuous notice of the authorization for the form, whether or not completing the form is voluntary, if it is not voluntary, the penalty for failure to respond and whether or not any personally identifiable information, as defined under s. 19.62 (5), requested in the form is likely to be used for purposes other than for which it is originally being collected. This paragraph does not apply to state tax forms.

(2) DEPUTY. Each secretary of a department or head of an independent agency under s. 230.08 (2) (L) may appoint a deputy who shall serve at the pleasure of the secretary or agency head outside the classified service. The deputy shall exercise the powers, duties and functions of the secretary or head in the absence of the secretary or head, and shall perform such other duties as the secretary or head prescribes. The adjutant general may appoint 2 deputies as provided in s. 21.18 (1). In this subsection "secretary" includes the attorney general and the state superintendent of public instruction.

(3) DEPUTY APPROVALS. Positions for which appointment is made under sub.(2) may be authorized only under s. 16.505.

History: **1971 c. 125; 1975 c.** 94; **1977** c. 196, **273, 418, 447; 1919 c. 221; 1981 c.** 112, **350; 1981 c.** 391 **s. 210;** 1983 **a. 21, 524;** 1985 **a.** 29; 1985 **a. 180 ss. 2 to 4,** 30m; **1985 a. 332; 1987 a.** 147 **s. 25;** 1987 **a.** 186; 1989 **a. 248;** 1991 **a.** 39, **189;** 1995 a. **27; 1991 a.** *13.*

15.05 Secretaries. (1) SELECTION. (a) If a department is under the direction and supervision of a secretary, the secretary shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor.

(b) Except as provided in pars.(c) and (d), if a department is under the direction and supervision of a board, the board shall appoint a secretary to serve at the pleasure of the board outside the classified service. In such departments, the powers and duties of the board shall be regulatory, advisory and policy–making, and not administrative. All of the administrative powers and duties of the department are vested in the secretary, to be administered by him or her under the direction of the board. The secretary, with the approval of the board, shall promulgate rules for administering the department and performing the duties assigned to the department.

(c) The secretary of natural resources shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor.

(d) The secretary of agriculture, trade and consumer protection shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor.

(3) EXECUTIVE ASSISTANT. Each secretary may appoint an executive assistant to serve at his or her pleasure outside the classified service. The executive assistant shall perform duties as the secretary prescribes. In this subsection, "secretary" includes the attorney general, the adjutant general, the director of the technical college system and the state superintendent of public instruction.

(3m) FIELD DISTRICT OR FIELD AREA DIRECTORS. Each secretary may appoint a director under the classified service for each district or area office established in his or her department under s. 15.02 (3) (b).

(4) OFFICIAL OATH. Each secretary shall take and file the official oath prior to assuming office.

(5) EXECUTIVE ASSISTANT APPROVALS. Positions for which appointment is made under sub.(3) may be authorized only under s. 16.505.

History: 1973 c. 90; 1977 **c. 4, 196; 1985 a. 18; 1985 a. 332 s. 251** (3); **1989 a.** 31, 169; 1993 a. 399; 1995 a. 27.

A secretary, appointed by the governor, could be removed only by the governor, even though **the general appointment statute had** been **amended to provide that the secretary is appointed by a board to** serve **at the board's pleasure.** Moses **v. Board** of **Veterans Affairs,** 80 Wis. 2d 411, 259 N.W.2d 102 (1977).

15.06 Commissions and commissioners. (1) SELECTION OF MEMBERS. (a) Except as otherwise provided in this subsection, the members of commissions shall be nominated by the governor, and with the advice and consent of the senate appointed, for staggered 6–year terms expiring on March 1 of the odd–numbered years.

(ag) Members of the Wisconsin waterways commission shall be nominated by the governor, and with the advice and consent of the senate appointed, for staggered 5–year terms.

(ar) The commissioner of railroads shall be nominated by the governor, and with the advice and consent of the senate appointed, for a 6–year term expiring on March 1 of an odd–numbered year.

(b) The commissioner of insurance shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor. The governor may remove from office the commissioner of insurance who was appointed for a fixed term before August 1, 1987.

(d) The members of the personnel commission shall be nominated by the governor, and with the advice and consent of the senate appointed, for 5–year terms, subject to the following conditions:

1. At least one member shall be licensed to practice law in this state.

2. They shall possess some professional experience in the field of personnel or labor relations.

3. No member may hold any other position in state employment.

4. No member, when appointed or for 3 years immediately prior to the date of appointment, may have been an officer of a committee in any political party, partisan political club or partisan political organization or have held or been a candidate for any partisan elective public office. No member may become a candidate for or hold any such office.

5. At no time may more than 2 members be adherents of the same political party.

6. Each member of the commission shall be a U.S. citizen and shall have been a resident of this state for at least 3 years.

(2) SELECTION OF OFFICERS. Each commission may annually elect officers other than a chairperson from among its members as its work requires. Any officer may be reappointed or reelected. At the time of making new nominations to commissions, the governor shall designate a member or nominee of each commission to serve as the commission's chairperson for a 2–year term expiring on March 1 of the odd–numbered year except that:

(a) Commencing March 1, 1979, and thereafter, the labor and industry review commission shall elect one of its members to serve as the commission's chairperson for a 2–year term expiring on March 1 of the odd–numbered year.

(3) FULL-TIME OFFICES. (a) A commissioner may not hold any other office or position of profit or pursue any other business or vocation, but shall devote his or her entire time to the duties of his or her office. This paragraph does not apply to:

1. The commissioner of insurance.

3. The members of the Wisconsin waterways commission.

(b) The commissioner of insurance shall not engage in any other occupation, business or activity that is in any way inconsistent with the performance of the duties of the commissioner of insurance, nor shall the commissioner hold any other public office.

(4) CHAIRPERSON; ADMINISTRATIVE DUTIES. The administrative duties of each commission shall be vested in its chairperson, to be administered by the chairperson under the statutes and rules of the commission and subject to the policies established by the commission.

(4m) EXECUTIVE ASSISTANT. Each commission chairperson under s. 230.08 (2) (m) and each commissioner of the public service commission may appoint an executive assistant to serve at his or her

pleasure outside the classified service. The executive assistant shall perform duties as the chairperson or commissioner prescribes.

(5) **FREQUENCY OF MEETINGS; PLACE.** Every commission shall meet on the call of the chairperson or a majority of its members. Every commission shall maintain its offices in Madison, but may meet or hold hearings at such other locations as will best serve the citizens of this state.

(6) QUORUM. A majority of the membership of a commission constitutes a quorum to do business, except that vacancies shall not prevent a commission from doing business. This subsection does not apply to the parole commission.

(7) REPORTS. Every commission attached to a department shall submit to the head of the department, upon request of that person not more often than annually, a report on the operation of the commission.

(8) OFFICIAL OATH. Every commissioner shall take and file the official oath prior to assuming office.

(9) EXECUTIVE ASSISTANT APPROVALS. Positions for which appointment is made under sub.(4m) may be authorized only under s. 16.505.

History: 1971 c. 193, 307; 1977 c. 29, 196, 274; 1981 c. 347; 1983 a. 27, 371,410, 538; 1985 a. 29; 1987 a. 27,403; 1989 a. 31; 1991 a. 39,269,316; 1993 a. 16, 123; 1995 a. 27; 1997 a. 27; 2001 a. 16.

A single member of the personnel commission is empowered to act as the Commission when 2 of the 3 commission positions are vacant. 68 Atty. Gen. 323.

A commissioner designated as chairperson of the commission under sub.(2) is not appointed to a new position, and Art. IV, s. 26, precludes a salary increase based on that designation. 76 Atty. Gen. 52.

Sub.(3) (a) prohibits a commissioner from pursuing business interests that would prevent properly fulfilling the duties of the office. 77 Atty. Gen. 36.

15.07 Boards. (1) SELECTION OF MEMBERS. (a) If a department or independent agency is under the direction and supervision of a board, the members of the board, other than the members serving on the board because of holding another office or position, shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve for terms prescribed by law, except:

1. Members of the higher educational aids board shall be appointed by the governor without senate confirmation.

2. Members of the elections board shall be appointed as provided in s. 15.61.

3. Members of the employee trust funds board appointed or elected under s. 15.16(1) (a), (b), (d) and (f) shall be appointed or elected as provided in that section.

4. Members of the investment board appointed under s. 15.76 (3) shall be appointed as provided in that section.

5. The members of the educational communications board appointed under s. 15.57 (5) and (7) shall be appointed as provided in that section.

6. Members of the University of Wisconsin Hospitals and Clinics Board appointed under s. 15.96 (8) shall be appointed by the governor without senate confirmation.

(b) For each board not covered under par.(a), the governor shall appoint the members of the board, other than the members serving on the board because of holding another office or position and except as otherwise provided, for terms prescribed by law except that all members of the following boards, or all members of the following boards specified in this paragraph, other than the members serving on a board because of holding another office or position, shall be nominated by the governor, and with the advice and consent of the senate appointed, for terms provided by law:

1. Banking review board.
2. College savings program board.
3. Credit union review board.
5. Savings and loan review board.
8. Real estate board.
9. Board on aging and long-term care.
10. Land and water conservation board.
11. Waste facility siting board.
12. Prison industries board.
14. Deferred compensation board.
15. The 3 members of the lower Wisconsin state riverway board appointed under s. 15.445 (3) (b) 7.
15m. The members of the state fair park board appointed under s. 15.445 (4) (a) 3. to 5.
16. Land information board.

Note: Subd. 16. is repealed eff. 9-1-03 by 1997 Wis. Act 27.

17. Real estate appraisers board.
18. Savings bank review board.
19m. Auctioneer board.
20. The 3 members of the Kickapoo reserve management board appointed under s. 15.445 (2) (b) 3.
22. Private employer health care coverage board.

Note: Subd. 22. is repealed eff. 1-1-10 by 1999 Wis. Act 9.

(c) Except as provided under par.(cm), fixed terms of members of boards shall expire on May 1 and, if the term is for an even number of years, shall expire in an odd-numbered year.

(cm) The term of one member of the ethics board shall expire on each May 1. The terms of 3 members of the development finance board appointed under s. 15.155 (1) (a) 6. shall expire on May 1 of every even-numbered year and the terms of the other 3 members appointed under s. 15.155 (1) (a) 6. shall expire on May 1 of every odd-numbered year. The terms of the 3 members of the land and water conservation board appointed under s. 15.135 (4) (b) 2. shall expire on January 1. The term of the member of the land and water conservation board appointed under s. 15.135 (4) (b) 2m. shall expire on May 1 of an even-numbered year. The terms of members of the real estate board shall expire on July 1. The terms of the appraiser members of the real estate appraisers board and the terms of the auctioneer and auction company representative members of the auctioneer board shall expire on May 1 in an even-numbered year.

(cs) No member of the auctioneer board, real estate appraisers board or real estate board may be an officer, director or employee of a private organization that promotes or furthers any profession or occupation regulated by that board.

(2) SELECTION OF OFFICERS. At its first meeting in each year, every board shall elect a chairperson, vice chairperson and secretary each of whom may be reelected for successive terms, except that:

(a) The chairperson and vice chairperson of the investment board shall be designated biennially by the governor.

(b) The chairperson of the board on health care information shall be designated biennially by the governor.

(d) The officers elected by the board of regents of the University of Wisconsin System and the technical college system board shall be known as a president, vice president and secretary.

(e) The representative of the department of justice shall serve as chairperson of the claims board and the representative of the department of administration shall serve as its secretary.

(f) The state superintendent of public instruction or his or her designated representative shall serve as chairperson of the school district boundary appeal board.

(g) A representative of the department of justice designated by the attorney general shall serve as nonvoting secretary to the law enforcement standards board.

(h) The chairperson of the state fair park board shall be designated annually by the governor from among the members appointed under s. 15.445 (4) (a) 3., 4. and 5.

(j) At its first meeting in each even-numbered year, the state capitol and executive residence board shall elect officers for 2-year terms.

(k) The governor shall serve as chairperson of the governor's work-based learning board.

(L) The governor shall serve as chairperson of the information technology management board and the chief information officer shall serve as secretary of that board.

(3) FREQUENCY OF MEETINGS. (a) If a department or independent agency is under the direction and supervision of a board, the board shall meet quarterly and may meet at other times on the call of the chairperson or a majority of its members. If a department or independent agency is under the direction and supervision of a board, the board shall, in addition, meet no later than August 31 of each even-numbered year to consider and approve a proposed budget of the department or independent agency for the succeeding fiscal biennium.

(b) Except as provided in par.(bm), each board not covered under par.(a) shall meet annually, and may meet at other times on the call of the chairperson or a majority of its members. The auctioneer board, the real estate board and the real estate appraisers board shall also meet on the call of the secretary of regulation and licensing or his or her designee within the department.

(bm) 1. The board on health care information shall meet 4 times each year and may meet at other times on the call of the chairperson or a majority of the board's members.

2. The environmental education board shall meet 4 times each year and may meet at other times on the call of the chairperson.

3. The auctioneer board shall meet at least 4 times each year.

4. The information technology management board shall meet at least 4 times each year and may meet at other times on the call of the chairperson.

(4) QUORUM. A majority of the membership of a board constitutes a quorum to do business and, unless a more restrictive provision is adopted by the board, a majority of a quorum may act in any matter within the jurisdiction of the board. This subsection does not apply to actions of the ethics board or the school district boundary appeal board as provided in ss. 19.47 (4) and 117.05 (2) (a).

(5) REIMBURSEMENT FOR EXPENSES; COMPENSATION. Except as provided in sub.(5m), the members of each board shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties, such reimbursement in the case of an officer or employee of this state who represents an agency as a member of a board to be paid by the agency which pays the member's salary. The members shall receive no compensation for their services, except that the following members of boards, except full–time state officers or employees, also shall be paid the per diem stated below for each day on which they were actually and necessarily engaged in the performance of their duties:

(a) Members of the investment board, $50 per day.

(b) Members of the banking review board, $25 per day but not to exceed $1,500 per year.

(c) Members of the auctioneer board, $25 per day.

(d) Members of the board of agriculture, trade and consumer protection, not exceeding $35 per day as fixed by the board with the approval of the governor, but not to exceed $1,000 per year.

(e) In lieu of a per diem, the members of the technical college system board shall receive $100 annually.

(f) Members of the teachers retirement board, appointive members of the Wisconsin retirement board, appointive members of the group insurance board, members of the deferred compensation board and members of the employee trust funds board, $25 per day.

(g) Members of the savings and loan review board, $10 per day.

(gm) Members of the savings bank review board, $10 per day.

(h) Voting members of the land and water conservation board, $25 per day.

(i) Members of the educational approval board, $25 per day.

(j) Members of the state fair park board, $10 per day but not to exceed $600 per year.

(k) Members of the ethics board, $25 per day.

(L) Members of the school district boundary appeal board, $25 per day.

(n) Members of the elections board, $25 per day.

(o) Members of the burial sites preservation board, $25 per day.

(r) Members of the real estate board, $25 per day.

(s) Members of the credit union review board, $25 per day but not to exceed $1,500 per year.

(t) Members of the waste facility siting board who are town or county officials, $35 per day.

(w) Members of the lower Wisconsin state riverway board, $25 per day.

(x) Members of the real estate appraisers board, $25 per day.

(y) Members of the Kickapoo reserve management board, $25 per day.

(5m) LIMITATIONS ON SALARY AND EXPENSES. (b) ***Lower Wisconsin state riverway board.*** The members, except for the chairperson, of the lower Wisconsin state riverway board shall be reimbursed under sub.(5) for only their necessary and actual travel expenses incurred in the performance of their duties, or shall be paid $25 plus mileage incurred in the performance of their duties, whichever is greater. The chairperson of the lower Wisconsin state riverway board shall be reimbursed for all his or her actual and necessary expenses incurred in the performance of his or her duties. The lower Wisconsin state riverway board shall determine which expenses of the chairperson are actual and necessary before reimbursement.

(6) REPORTS. Every board created in or attached to a department or independent agency shall submit to the head of the department or independent agency, upon request of that person not more often than annually, a report on the operation of the board.

(7) OFFICIAL OATH. Each member of a board shall take and file the official oath prior to assuming office.

History: 1971 c. 100 s. 23; 1971 c. 125, 261, 270, 323; 1973 c. 90, 156, 299, 334; 1975 c. 39, 41, 422; 1977 c. 29 ss. 24, 26, 1650m (3); 1977 c. 203, 277, 418, 427; 1979 c. 34, 110, 221, 346; 1981 c. 20, 62, 94, 96, 156, 314, 346, 374, 391; 1983 a. 27, 282, 403; 1985 a. 20, 29, 316; 1987 a. 27, 119, 142, 354, 399, 403; 1989 a. 31, 102, 114, 219, 299, 340; 1991 a. 25, 39, 116, 221, 269, 316; 1993 a. 16, 75, 102, 184, 349, 399, 490; 1995 a. 27, 216, 247; 1997 a. 27; 1999 a. 9, 44, 181, 197; 2001 a. 16.

"Membership" as used in sub.(4) means the authorized number of positions **and** not the number of positions **that** are currently occupied. 66 Atty. Gen. 192.

15.08 Examining boards and councils. (1) SELECTION OF MEMBERS. All members of examining boards shall be residents of this state and shall, unless otherwise provided by law, be nominated by the governor, and with the advice and consent of the senate appointed. Appointments shall be for the terms provided by law. Terms shall expire on July 1. No member may serve more than 2 consecutive terms. No member of an examining board may be an officer, director or employee of a private organization which promotes or furthers the profession or occupation regulated by that board.

(1m) PUBLIC MEMBERS. (a) Public members appointed under s. 15.405 or 15.407 shall have all the powers and duties of other members except they shall not prepare questions for or grade any licensing examinations.

(am) Public members appointed under s. 15.405 or 15.407 shall not be, nor ever have been, licensed, certified, registered or engaged in any profession or occupation licensed or otherwise regulated by the board, examining board or examining council to which they are appointed, shall not be married to any person so licensed, certified, registered or engaged, and shall not employ, be employed by or be professionally associated with any person so licensed, certified, registered or engaged.

(b) The public members of the chiropractic examining board, the dentistry examining board, the hearing and speech examining board, the medical examining board, perfusionists examining council, respiratory care practitioners examining council and council on physician assistants, the board of nursing, the nursing home administrator examining board, the veterinary examining board, the optometry examining board, the pharmacy examining board, the mamage and family therapy, professional counseling, and social work examining board, and the psychology examining board shall not be engaged in any profession or occupation concerned with the delivery of physical or mental health care.

(c) The membership of each examining board and examining council created in the department of regulation and licensing after June 1, 1975, shall be increased by one member who shall be a public member appointed to serve for the same term served by the other members of such examining board or examining council, unless the act relating to the creation of such examining board or examining council provides that 2 or more public members shall be appointed to such examining board or examining council.

(2) SELECTION OF OFFICERS. At its first meeting in each year, every examining board shall elect from among its members a chairperson, vice chairperson and, unless otherwise provided by law, a secretary. Any officer may be reelected to succeed himself or herself.

(3) FREQUENCY OF MEETINGS. (a) Every examining board shall meet annually and may meet at other times on the call of the chairperson or of a majority of its members.

(b) The medical examining board shall meet at least 12 times annually.

(c) The hearing and speech examining board shall meet at least once every 3 months.

(4) QUORUM. (a) **A** majority of the membership of an examining board constitutes a quorum to do business, and a majority of a quorum may act in any matter within the jurisdiction of the examining board.

(b) Notwithstanding par.(a), no certificate or license which entitles the person certified or licensed to practice a trade or profession shall be suspended or revoked without the affirmative vote of two–thirds of the voting membership of the examining board.

(5) GENERAL POWERS. Each examining board: (a) May compel the attendance of witnesses, administer oaths, take testimony and receive proof concerning all matters within its jurisdiction.

(b) Shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.

(c) May limit, suspend or revoke, or reprimand the holder of, any license, permit or certificate granted by the examining board.

(6) IMPROVEMENT OF THE PROFESSION. In addition to any other duties vested in it by law, each examining board shall foster the standards of education or training pertaining to its own trade or profession, not only in relation of the trade or profession to the interest of the individual or to organized business enterprise, but also in relation to government and to the general welfare. Each examining board shall endeavor, both within and outside its own trade or profession, to bring about a better understanding of the relationship of the particular trade or profession to the general welfare of this state.

(7) COMPENSATION AND REIMBURSEMENT FOR EXPENSES. Each member of an examining board shall, unless the member is a full–time salaried employee of this state, be paid a per diem of $25 for each day on which the member was actually and necessarily engaged in the performance of examining board duties. Each member of an examining board shall be reimbursed for the actual and necessary expenses incurred in the performance of examining board duties.

(8) OFFICIAL OATH. Every member of an examining board shall take and file the official oath prior to assuming office.

(9) ANNUAL REPORTS. Every examining board shall submit to the head of the department in which it is created, upon request of that person not more often than annually, a report on the operation of the examining board.

(10) SEAL. Every examining board may adopt a seal.

History: 1971 c. 40; 1975 c. 86, 199; 1977 c. 418; 1979 c. 32; 1979 c. 34 ss. 32e to 32s, 2102 (45) (a); 1979 c. 221; 1981 c. 94; 1983 a. 403,524; 1985 a. 332,340; 1987 a. 399; 1989 a. 229, 316, 359; 1991 a. 39, 160, 316; 1993 a. 105, 107, 184,490; 1995 a. 245; 1997 a. 175; 1999 a. 180; 2001 a. 80.89, 105.

Selection and terms of officers of regulatory **and licensing boards are discussed.** 75 **Atty.** Gen. 247 (1986).

15.085 Affiliated credentialing boards. (1) SELECTION OF MEMBERS. All members of affiliated credentialing boards shall be residents of this state and shall, unless otherwise provided by law, be nominated by the governor, and with the advice and consent of the senate appointed. Appointments shall be for the terms provided by law. Terms shall expire on July 1. No member may serve more than 2 consecutive terms. No member of an affiliated credentialing board may be an officer, director or employee of a private organization which promotes or furthers the profession or occupation regulated by that board.

(Im) PUBLIC MEMBERS. (a) Public members appointed under s. 15.406 shall have all of the powers and duties of other members except that they shall not prepare questions for or grade any licensing examinations.

(am) Public members appointed under s. 15.406 shall not be, nor ever have been, licensed, certified, registered or engaged in any profession or occupation licensed or otherwise regulated by the affiliated credentialing board to which they are appointed, shall not be married to any person so licensed, certified, registered or engaged, and shall not employ, be employed by or be professionally associated with any person so licensed, certified, registered or engaged.

(b) The public members of the physical therapists affiliated credentialing board, podiatrists affiliated credentialing board or occupational therapists affiliated credentialing board shall not be engaged in any profession or occupation concerned with the delivery of physical or mental health care.

(2) SELECTION OF OFFICERS. At its first meeting in each year, every affiliated credentialing board shall elect from among its members a chairperson, vice chairperson and, unless otherwise provided by law, a secretary. Any officer may be reelected to succeed himself or herself.

(3) FREQUENCY OF MEETINGS. (a) Every affiliated credentialing board shall meet annually and may meet at other times on the call of the chairperson or of a majority of its members.

(b) The chairperson of an affiliated credentialing board shall meet at least once every 6 months with the examining board to which the affiliated credentialing board is attached to consider all matters of joint interest.

(4) QUORUM (a) A majority of the membership of an affiliated credentialing board constitutes a quorum to do business, and a majority of a quorum may act in any matter within the jurisdiction of the affiliated credentialing board.

(b) Notwithstanding par.(a), no certificate or license which entitles the person certified or licensed to practice a trade or profession shall be suspended or revoked without the affirmative vote of two–thirds of the membership of the affiliated credentialing board.

(5) GENERAL POWERS. Each affiliated credentialing board:

(a) May compel the attendance of witnesses, administer oaths, take testimony and receive proof Concerning all matters within its jurisdiction.

(b) Shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession. In addition to any other procedure under ch. 227 relating to the promulgation of rules, when promulgating a rule, other than an emergency rule under s. 227.24, an affiliated credentialing board shall do all of the following:

1. Submit the proposed rule to the examining board to which the affiliated credentialing board is attached. The proposed rule shall be submitted under this subdivision at least 60 days before the proposed rule is submitted to the legislative council staffunder s. 227.15 (1).

2. Consider any comments on a proposed rule made by the examining board to which the affiliated credentialing board is attached, if the examining board submits the comments to the affiliated credentialing board within 30 days after a public hearing on the proposed rule under s. 227.18 or, if no hearing is held, within 30 days after the proposed rule is published under s. 227.16 (2) (e).

3. Include, in the report submitted to the legislature under **s.** 227.19 (2), any comments on the proposed rule submitted by the examining board under subd. 2. and the affiliated credentialing board's responses to those comments.

(c) May limit, suspend or revoke, or reprimand the holder of, any license, permit or certificate granted by the affiliated credentialing board.

(6) IMPROVEMENT OF THE PROFESSION. In addition to any other duties vested in it by law, each affiliated credentialing board shall foster the standards of education or training pertaining to its own trade or profession, not only in relation of the trade or profession to the interest of the individual or to organized business enterprise, but also in relation to government and to the general welfare. Each affiliated credentialing board shall endeavor, both within and outside its own trade or profession, to bring about a better understanding of the relationship of the particular trade or profession to the general welfare of this state.

(7) COMPENSATION AND REIMBURSEMENT FOR EXPENSES. Each member of an affiliated credentialing board shall, unless the member is a full–time salaried employee of this state, be paid a per diem of $25 for each day on which the member was actually and necessarily engaged in the performance of affiliated credentialing board duties. Each member of an affiliated credentialing board shall be reimbursed for the actual and necessary expenses incurred in the performance of affiliated credentialing board duties.

(8) OFFICIAL OATH. Every member of an affiliated credentialing board shall take and file the official oath prior to assuming office.

(9) ANNUAL REPORTS. Every affiliated credentialing board shall submit to the head of the department in which it is created, upon request of that person not more often than annually, a report on the operation of the affiliated credentialing board.

(10) SEAL. Every affiliated credentialing board may adopt a seal.

History: 1993 a. 107; 1997 a. 175; 1999 a. 180.

15.09 Councils. (1) SELECTION OF MEMBERS. (a) Unless otherwise provided by law, the governor shall appoint the members of councils for terms prescribed by law. Except as provided in par.(b), fixed terms shall expire on July 1 and shall, if the term is for an even number of years, expire in an odd–numbered year.

(b) The terms of the members of the council on recycling shall expire as specified under **s.** 15.347 (I 7) (c).

(2) SELECTION OF OFFICERS. Unless otherwise provided by law, at its first meeting in each year every council shall elect a chairperson,

vice chairperson and secretary from among its members. Any officer may be reelected for successive terms. For any council created under the general authority of s. 15.04 (1) (c), the constitutional officer or secretary heading the department or the chief executive officer of the independent agency in which such council is created shall designate an employee of the department or independent agency to serve as secretary of the council and to be a voting member thereof.

(3) LOCATION AND FREQUENCY OF MEETINGS. Unless otherwise provided by law, every council shall meet at least annually and shall also meet on the call of the head of the department or independent agency in which it is created, and may meet at other times on the call of the chairperson or a majority of its members. A council shall meet at such locations as may be determined by it unless the constitutional officer or secretary heading the department or the chief executive officer of the independent agency in which it is created determines a specific meeting place.

(4) QUORUM. Except as otherwise expressly provided, a majority of the membership of a council constitutes a quorum to do business, and a majority of a quorum may act in any matter within the jurisdiction of the council.

(5) POWERS AND DUTIES. Unless otherwise provided by law, a council shall advise the head of the department or independent agency in which it is created and shall function on a continuing basis for the study, and recommendation of solutions and policy alternatives, of the problems arising in a specified functional area of state government.

(6) REIMBURSEMENT FOR EXPENSES. Members of a council shall not be compensated for their services, but members of councils created by statute shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties, such reimbursement in the case of an elective or appointive officer or employee of this state who represents an agency as a member of a council to be paid by the agency which pays his or her salary.

(7) REPORTS. Unless a different provision is made by law for transmittal or publication of a report, every council created in a department or independent agency shall submit to the head of the department or independent agency, upon request of that person not more often than annually, a report on the operation of the council.

(8) OFFICIAL OATH. Each member of a council shall take and file the official oath prior to assuming office.

History: 1971 c. 211; 1977 c. 29; 1977 c. 196s. 131; 1979 c. 34,346; 1983 a. 27,388, 410; 1985 a. 84; 1989 a. 335; 1991 a. 39, 189; 1993 a. 184.

SUBCHAPTER II
DEPARTMENTS

15.40 Department of regulation and licensing; creation. There is created a department of regulation and licensing under the direction and supervision of the secretary of regulation and licensing.

History: 1971 c. 270 s. 104; 1975 c. 39; 1977 c. 29; 1977 c. 196 s. 131; 1977 c. 418 ss. 24 to 27.

15.405 Same; attached boards and examining boards.

(1) ACCOUNTING EXAMINING BOARD. There is created an accounting examining board in the department of regulation and licensing. The examining board shall consist of 7 members, appointed for staggered 4-year terms. Five members shall hold certificates as certified public accountants and be eligible for licensure to practice in this state. Two members shall be public members.

(2) EXAMINING BOARD OF ARCHITECTS, LANDSCAPE ARCHITECTS, PROFESSIONAL ENGINEERS, DESIGNERS AND LAND SURVEYORS. There is created an examining board of architects, landscape architects, professional engineers, designers and land surveyors in the department of regulation and licensing. Any professional member appointed to the examining board shall be registered to practice architecture, landscape architecture, professional engineering, the design of engineering systems or land surveying under ch. 443. The examining board shall consist of the following members appointed for 4-year terms: 3 architects, 3 landscape architects, 3 professional engineers, 3 designers, 3 land surveyors and 10 public members.

(a) In operation, the examining board shall be divided into an architect section, a landscape architect section, an engineer section, a designer section and a land surveyor section. Each section shall consist of the 3 members of the named profession appointed to the examining board and 2 public members appointed to the section. The examining board shall elect its own officers, and shall meet at least twice annually.

(b) All matters pertaining to passing upon the qualifications of applicants for and the granting or revocation of registration, and all other matters of interest to either the architect, landscape architect, engineer, designer or land surveyor section shall be acted upon solely by the interested section.

(c) All matters of joint interest shall be considered by joint meetings of all sections of the examining board or of those sections to which the problem is of interest.

(2m) EXAMINING BOARD OF PROFESSIONAL GEOLOGISTS, HYDROLOGISTS AND SOIL SCIENTISTS. (a) There is created in the department of regulation and licensing an examining board of professional geologists, hydrologists and soil scientists consisting of the following members appointed for 4-year terms:

1. Three members who are professional geologists licensed under ch. 470.
2. Three members who are professional hydrologists licensed under ch. 470.
3. Three members who are professional soil scientists licensed under ch. 470.
4. Three public members.

(b) In operation, the examining board shall be divided into a professional geologist section, a professional hydrologist section and a professional soil scientist section. Each section shall consist of the 3 members of the named profession appointed to the examining board and one public member appointed to the section. The examining board shall elect its own officers, and shall meet at least twice annually.

(c) All matters pertaining to passing upon the qualifications of applicants for and the granting or revocation of licenses, and all other matters of interest to either the professional geologist, hydrologist or soil scientist section shall be acted upon solely by the interested section.

(d) All matters of joint interest shall be considered by joint meetings of all sections of the examining board or of those sections to which the matter is of interest.

(3) AUCTIONEER BOARD. (a) There is created in the department of regulation and licensing an auctioneer board consisting of the following members appointed for 4-year terms:

1. Four members, each of whom is registered under ch. 480 as an auctioneer, or is an auction company representative, as defined in s. 480.01 (3), of an auction company that is registered under ch. 480 as an auction company.
2. Three public members.

(b) No member of the board may serve more than 2 terms.

(5) CHIROPRACTIC EXAMINING BOARD. There is created a chiropractic examining board in the department of regulation and licensing. The chiropractic examining board shall consist of 6 members, appointed for staggered 4-year terms. Four members shall be graduates from a school of chiropractic and licensed to practice chiropractic in this state. Two members shall be public members. No person may be appointed to the examining board who is in any way connected with or has a financial interest in any chiropractic school.

(59) CONTROLLED SUBSTANCES BOARD. There is created in the department of regulation and licensing a controlled substances board consisting of the attorney general, the secretary of health and family services and the secretary of agriculture, trade and consumer protection, or their designees; the chairperson of the pharmacy examining board or a designee; and one psychiatrist and one pharmacologist appointed for 3-year terms.

(6) DENTISTRY EXAMINING BOARD. There is created a dentistry examining board in the department of regulation and licensing consisting of the following members appointed for 4-year terms:

(a) Six dentists who are licensed under ch. 447.

(b) Three dental hygienists who are licensed under ch. 447. Notwithstanding s. 15.08 (1m) (a), the dental hygienist members may participate in the preparation and grading of licensing examinations for dental hygienists.

(c) Two public members.

(6m) HEARING AND SPEECH EXAMINING BOARD. There is created a hearing and speech examining board in the department of regulation and licensing consisting of the following members appointed for 4-year terms:

(a) Three hearing instrument specialists licensed under subch. I of ch. 459.

(b) One otolaryngologist.

(c) 1. One audiologist registered under subch. III of ch. 459. This subdivision applies during the period beginning on December 1, 1990, and ending on June 30, 1993.

2. One audiologist licensed under subch. II of ch. 459. This subdivision applies after June 30, 1993.

(d) 1. One speech–language pathologist registered under subch. III of ch. 459. This subdivision applies during the period beginning on December 1, 1990, and ending on June 30, 1993.

2. One speech–language pathologist licensed under subch. II of ch. 459. This subdivision applies after June 30, 1993.

(e) Two public members. One of the public members shall be a hearing aid user.

(7),MEDICAL EXAMINING BOARD. (a) There is created a medical examining board in the department of regulation and licensing.

(b) The medical examining board shall consist of the following members appointed for staggered 4–year terms:

1. Nine licensed doctors of medicine.

2. One licensed doctor of osteopathy.

3. Three public members.

(c) The chairperson of the patients compensation fund peer review council under s. 655.275 shall serve as a nonvoting member of the medical examining board.

(7c) MARRIAGE AND FAMILY THERAPY, PROFESSJONAL COUNSELING, AND SOCIAL WORK EXAMINING BOARD. (a) There is created a mamage and family therapy, professional counseling, and social work examining board in the department of regulation and licensing consisting of the following members appointed for 4–year terms:

1. Four social worker members who are certified or licensed under ch. 457.

2. Three mamage and family therapist members who are licensed under ch. 457.

3. Three professional counselor members who are licensed under ch. 457.

4. Three public members who represent groups that promote the interests of consumers of services provided by persons who are certified or licensed under ch. 457.

(am) The 4 members appointed under par.(a) 1. shall consist of the following:

1. One member who is certified under ch. 457 as an advanced practice social worker.

2. One member who is certified under ch. 457 as an independent social worker.

3. One member who is licensed under ch. 457 as a clinical social worker.

4. At least one member who is employed as a social worker by a federal, state or local governmental agency.

(b) In operation, the examining board shall be divided into a social worker section, a mamage and family therapist section and a professional counselor section. The social worker section shall consist of the 4 social worker members of the examining board and one of the public members of the examining board. The marriage and family therapist section shall consist of the 3 marriage and family therapist members of the examining board and one of the public members of the examining board. The professional counselor section shall consist of the 3 professional counselor members of the examining board and one of the public members of the examining board.

(c) All matters pertaining to granting, denying, limiting, suspending, or revoking a certificate or license under ch. 457, and all other matters of interest to either the social worker, marriage and family therapist, or professional counselor section shall be acted upon solely by the interested section of the examining board.

(d) All matters that the examining board determines are of joint interest shall be considered by joint meetings of all sections of the examining board or of those sections to which the problem is of interest.

(e) Notwithstanding **s.** 15.08 (4) (a), at a joint meeting of all sections of the examining board, a majority of the examining board constitutes a quorum to do business only if at least 8 members are present at the meeting. At a meeting of a section of the examining board or a joint meeting of 2 or more of the sections of the examining board, each member who is present has one vote, except as provided in par.(f).

(f) At a joint meeting of the social worker section and one or both of the other sections of the examining board, each member who is present has one vote, except that the social worker members each have three–fourths of a vote if all 4 of those members are present.

(7g) BOARD OF NURSING. There is created a board of nursing in the department of regulation and licensing. The board of nursing shall consist of the following members appointed for staggered 4–year terms: 5 currently licensed registered nurses under ch. 441; 2 currently licensed practical nurses under ch. 441; and 2 public members. Each registered nurse member shall have graduated from a program in professional nursing and each practical nurse member shall have graduated from a program in practical nursing accredited by the state in which the program was conducted.

(7m) NURSING HOME ADMINISTRATOR EXAMINING BOARD There is created a nursing home administrator examining board in the department of regulation and licensing consisting of 9 members appointed for staggered 4–year terms and the secretary of health and family services or a designee, who shall serve as a nonvoting member. Five members shall be nursing home administrators licensed in this state. One member shall be a physician. One member shall be a nurse licensed under ch. 441. Two members shall be public members. No more than 2 members may be officials or full–time employees of this state.

(8) OPTOMETRY EXAMINING BOARD. There is created an optometry examining board in the department of regulation and licensing. The optometry examining board shall consist of **7** members appointed for staggered 4–year terms. Five of the members shall be licensed optometrists in this state. Two members shall be public members.

(9) PHARMACY EXAMINING BOARD. There is created a pharmacy examining board in the department of regulation and licensing. The pharmacy examining board shall consist of 7 members appointed for staggered 4–year terms. Five of the members shall be licensed to practice pharmacy in this state. Two members shall be public members.

(10m) PSYCHOLOGY EXAMINING BOARD. There is created in the department of regulation and licensing a psychology examining board consisting of 6 members appointed for staggered 4–year terms. Four of the members shall be psychologists licensed in this state. Each of the psychologist members shall represent a different specialty area within the field of psychology. Two members shall be public members.

(10r) REAL ESTATE APPRAJSERS BOARD. (a) There is created a real estate appraisers board in the department of regulation and licensing consisting of the following members appointed for 4–year terms:

1. Three appraisers who are certified or licensed under ch. 458.

2. One assessor, as defined in **s.** 458.09 (1).

3. Three public members.

(b) Of the appraiser members of the board, one shall be certified under s. 458.06 as a general appraiser, one shall be certified under **s.** 458.06 as a residential appraiser and one shall be licensed under **s.** 458.08 as an appraiser. No public member of the board may be connected with or have any financial interest in an appraisal business or in any other real estate–related business. Section 15.08 (Im) (am) applies to the public members of the board. No member of the board may serve more than 2 consecutive terms.

(c) Notwithstanding **s.** 15.07 (4), a majority of the board constitutes a quorum to do business only if at least 2 of the members present are appraiser members and at least one of the members present is a public member.

(11) REAL ESTATE BOARD. There is created a real estate board in the department of regulation and licensing. The real estate board shall consist of 7 members appointed to staggered 4–year terms. Four of the members shall be real estate brokers or salespersons licensed in this state. Three members shall be public members. Section 15.08 (Im) (am) applies to the public members of the real estate board. No member may serve more than 2 terms. The real estate board does not have rule–making authority.

(12) VETERINARY EXAMJNING BOARD There is created a veterinary examining board in the department of regulation and licensing. The veterinary examining board shall consist of 8 members appointed for staggered 4–year terms. Five of the members shall be licensed veterinarians in this state. One member shall be a veterinary technician certified in this state. Two members shall be public

members. No member of the examining board may in any way he financially interested in any school having a veterinary department or a course of study in veterinary or animal technology.

(16) FUNERAL DIRECTORS EXAMINING BOARD. There is created a funeral directors examining board in the department of regulation and licensing. The funeral directors examining board shall consist of **6** members appointed for staggered 4–year terms. Four members shall be licensed funeral directors under ch. 445 in this state. Two members shall be public members.

(17) BARBERING AND COSMETOLOGY EXAMINING BOARD. There is created a barbering and cosmetology examining board in the department of regulation and licensing. The barbering and cosmetology examining board shall consist of 9 members appointed for 4–year terms. Four members shall be licensed barbers or cosmetologists, 2 members shall be public members, one member shall be a representative of a private school of barbering or cosmetology, one member shall be a representative of a public school of barbering or cosmetology and one member shall be a licensed electrologist. Except for the 2 members representing schools, no member may be connected with or have any financial interest in a barbering or cosmetology school.

History: 1973 c. 90, 156; 1975 c. 39, 86, 199,200,383,422; 1977 c. 26, 29, 203; 1977 c. 418: 1979 c. 34 ss. 45. 47 to 52: 1979 c. 221. 304; 1981 c. 94 ss. 5. 9: 1981 c. 356; 1983 a. 27,403,485,538; 1985 a. 340; 1987 a. 257 s. 2; 1987 a. 264,265, 316; 1989 a. 316, 340; 1991 a. 39, 78, 160, 189,269; 1993 a. 16, 102, 463, 465, 491; 1995 a. 27 s. 9126 (19); 1995 a. 225; 1995 a. 305 s. 1; 1995 a. 321,417; 1997 a. 96,252,300; 2001 a. 16, 80.

A medical school instructor serving without Compensation is ineligible to serve on the board of medical examiners. *62* **Any. Gen. 193.**

An incumbent real estate examining board member is entitled to hold over in office until a successor is duly appointed and confirmed by the senate. The board was without authority to reimburse the nominee for expenses incurred in attending a meeting during an orientation period prior to confirmation. 63 Atty. Gen. 192.

15.406 Same; attached affiliated credentialing boards.

(1) PHYSICAL THERAPISTS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, a physical therapists affiliated credentialing board consisting of the following members appointed for 4–year terms:

(a) Three physical therapists who are licensed under subch. III of ch. **448.**

(am) One physical therapist assistant licensed under subch. III of ch. 448.

Note: *Par. (am) is created* **eff. 4-1-04 by 2001 Wis. Act 70.**

(b) One public member.

(2) DIETITIANS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, a dietitians affiliated credentialing board consisting of the following members appointed for 4–year terms:

(a) Three dietitians who are certified under subch. **V** of ch. **448.**

(b) One public member.

(3) PODIATRISTS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, a podiatrists affiliated credentialing board consisting of the following members appointed for 4–year terms:

(a) Three podiatrists who are licensed under subch. **IV** of ch. 448.

(b) One public member.

(4) ATHLETIC TRAINERS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, an athletic trainers affiliated credentialing board consisting of the following members appointed for 4–year terms:

(a) Four athletic trainers who are licensed under subch. **VI** of ch. **448** and who have not been issued a credential in athletic training by a governmental authority in a jurisdiction outside this state. One of the athletic trainer members may also be licensed under ch. **446** or 447 **or** subch. II, III or **IV** of ch. **448.**

(b) One member who is licensed to practice medicine and surgery under subch. II of ch. 448 and who has experience with athletic training and sports medicine.

(c) One public member.

(5) OCCUPATIONAL THERAPISTS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, an occupational therapists affiliated credentialing board consisting of the following members appointed for 4–year terms:

(a) Three occupational therapists who are licensed under subch. **VII** of ch. 448.

(b) Two occupational therapy assistants who are licensed under subch. VI of ch. **448.**

(c) Two public members.

History: 1993 a 107,443; 1997 a. 75, 175, 1999 a. 9, 180; 2001 **a. 70**

15.407 Same; councils.

(1m) RESPIRATORY CARE PRACTITIONERS EXAMINING COUNCIL. There is created a respiratory care practitioners examining council in the department of regulation and licensing and serving the medical examining board in an advisory capacity in the formulating of rules to be promulgated by the medical examining board for the regulation of respiratory care practitioners. The respiratory care practitioners examining council shall consist of 3 certified respiratory care practitioners, each of whom shall have engaged in the practice of respiratory care for at least 3 years preceding appointment, one physician and one public member. The respiratory care practitioner and physician members shall be appointed by the medical examining board. The members of the examining council shall serve 3–year terms. Section 15.08 (1) to (4) (a) and **(6)** to (10) shall apply to the respiratory care practitioners examining council.

(2) COUNCIL ON PHYSICIAN ASSISTANTS. There is created a council on physician assistants in the department of regulation and licensing and serving the medical examining board in an advisory capacity. The council's membership shall consist of:

(a) The vice chancellor for health sciences of the University of Wisconsin–Madison or the vice chancellor's designee.

(b) One public member appointed by the governor for a 2–year term.

(c) Three physician assistants selected by the medical examining board for staggered 2–year terms.

(2m) PERFUSIONISTS EXAMINING COUNCIL. There is created a perfusionists examining council in the department of regulation and licensing and serving the medical examining board in an advisory capacity. The council shall consist of the following members appointed for 3–year terms:

(a) Three licensed perfusionists appointed by the medical examining board.

(b) One physician who is a cardiothoracic surgeon or a cardiovascular anesthesiologist and who is appointed by the medical examining board.

(c) One public member appointed by the governor.

(3) EXAMINING COUNCILS; BOARD OF NURSING. The following examining councils are created in the department of regulation and licensing to serve the board of nursing in an advisory capacity. Section 15.08 (1) to (4) (a) and (6) to (10), applies to the examining councils.

(a) Registered nurses. There is created an examining council on registered nurses to consist of 4 registered nurses of not less than 3 years' experience in nursing, appointed by the board of nursing for staggered 4–year terms.

(b) ***Practical nurses.*** There is created an examining council on licensed practical nurses to consist of one registered nurse, 3 licensed practical nurses and one registered nurse who is a faculty member of an accredited school for practical nurses, appointed by the board of nursing for staggered 3–year terms. No member may be a member of the examining council on registered nurses.

(4) COUNCIL ON SPEECH–LANGUAGE PATHOLOGY AND AUDIOLOGY. There is created a council on speech–language pathology and audiology in the department of regulation and licensing and serving the hearing and speech examining board in an advisory capacity. The council shall consist of the following members appointed for 3–year terms:

(a) Three speech–language pathologists licensed under subch. II of ch. 459.

(b) Two audiologists licensed under subch. II of ch. 459.

(5) COUNCIL ON REAL ESTATE CURRICULUM AND EXAMINATIONS. There is created in the department of regulation and licensing a council on real estate curriculum and examinations consisting of **7** members appointed for 4–year terms. Five members shall be real estate brokers or salespersons licensed under ch. 452 and 2 members shall be public members. Of the real estate broker or salesperson members, one member shall be a member of the real estate board appointed by the real estate board, at least 2 members shall be

licensed real estate brokers with at least 5 years of experience as real estate brokers, and at least one member shall be a licensed real estate salesperson with at least 2 years of experience as a real estate salesperson. Of the 2 public members, at least one member shall have at least 2 years of experience in planning or presenting real estate educational programs. No member of the council may serve more than 2 consecutive terms.

(6) PHARMACIST ADVISORY COUNCIL. There is created a pharmacist advisory council in the department of regulation and licensing and serving the pharmacy examining board in an advisory capacity. The council shall consist of the following members appointed for 3–year terms:

(a) Two pharmacists licensed under ch. 450 appointed by the chairperson of the pharmacy examining board.

(b) One physician licensed under subch. II of ch. 448 appointed by the chairperson of the medical examining board.

(c) One nurse licensed under ch. 441 appointed by the chairperson of the board of nursing.

(7) MASSAGE THERAPY AND BODYWORK COUNCIL. (a) There is created a massage therapy and bodywork council in the department of regulation and licensing, serving the department in an advisory capacity. The council shall consist of 7 members, appointed for 4–year terms, who are massage therapists or bodyworkers certified under ch. 460 and who have engaged in the practice of massage therapy or bodywork for at least 2 years preceding appointment.

(b) In appointing members under par.(a), the governor shall ensure, to the maximum extent practicable, that the membership of the council is diverse, based on all of the following factors:

1. Massage or bodywork therapies practiced in this state.

2. Affiliation and nonaffiliation with a professional association for the practice of massage therapy or bodywork.

3. Professional associations with which massage therapists or bodyworkers in this state are affiliated.

4. Practice in urban and rural areas in this state.

Note: Sub. (7) is created eff. 3–1-03 by 2001 Wis. Act 74.

History: 1973 c. 149; 1975 c. 39, 86, 199,383, 422; 1977 c. 418; 1979 c. 34 ss. 46, 53; 1981 c. 390 s. 252; 1985 a. 332 s. 251 (1); 1987 a. 399; 1989 a. 229,316,341,359; 1991 a. 316; 1993 a. 105, 107; 1997 a. 68, 175; 1997 a. 237 s. 727m; 1999 a. 32, 180, 186; 2001 a. 74, 89.

CHAPTER 50
UNIFORM LICENSURE

SUBCHAPTER I
CARE AND SERVICE RESIDENTIAL FACILITIES

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Cross–reference: See s. **46.01** 1 for definitions applicable to chs. **46, 48,** 50, 51, 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:

(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, or, if the residence is licensed as a treatment foster home, care and maintenance are provided to children, the combined total of adults and children so served being no more than 4.

2. The private residence was licensed under s. 48.62 as a foster home or treatment foster 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. "Adult family home" does not include a place that is specified in sub.(1g) (a) to (d), (f) or (g).

(1d) "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.

(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. 46.95 (1) (a), and their children.

(c) **A** shelter facility as defined under s. 16.352 (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.

(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).

(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 nurse who is licensed or has a temporary permit under s. 441.10 or who is licensed as a

licensed practical/vocational nurse in a party state, as defined in s. 441.50 (2) (j).

(2) "Nurse's assistant" 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's assistant" does not mean 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's assistants.

NOTE: Sub. (2) is shown as amended eff. 3–1–03 **by 2001 Wis. Act** 74. **Prior to** 3–1–03 **it reads:**

(2) **"Nurse's assistant" 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's assistant" does not mean a person who is licensed, permitted, certified or registered under subch. XI of ch. 440 or ch.** 441,448,449,450,451,455 **or** 459 **or a person whose duties primarily involve skills that are different than those taught in instructional programs for nurse's assistants.**

(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 (I), 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 nurse who is licensed under s. 441.06 or permitted under s. 441.08 or who is licensed as a registered nurse in a party state, as defined in s. 441.50 (2) (j).

(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.

(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.

Up to 7 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).

The department can constitutionally license and regulate conunurity–based residential facilities operated by religions organizations that are not exempt **under** s. 50.01 (1), 1985 stats. [now 50.01 (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 commerce 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 commerce when developing exemptions relating to physical plant requirements.

(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. 10I.19 (I) (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 the time periods and the methods of providing information specified in ss. 50.033 (2r) and (2s), 50.034 (5m) and (5n), 50.035 (4m) and (4n) and 50.04 (2g) (a) and (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.@), 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.

Cross Reference: See also ch. HFS 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).

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 500,000 or more may, in an effort to assure compliance with this section, establish a program for the inspection of facilities licensed under this section within its jurisdiction. If a county agency deems such action necessary after inspection, the county agency may, after notifying the department, withdraw from the facility any persons receiving county support for care in a facility which fails to comply with the standards established by this section or rules 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 and family 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 and family 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 or applicant for license shall file with the department the name and address of a person authorized to accept service of any notices or other papers which the department may send by registered or certified mail, with a return receipt requested. The person authorized by a nursing home under this paragraph shall be located at the nursing home.

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

(3) APPLICATION FOR REGISTRATION AND LICENSE. (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 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 disburse- ments 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. 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 a biennial report in the form and containing the information that the department requires, including payment of the fees required 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 Iicensure 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, 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, 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 inspect the community–based residential facility and, if the community–based residential facility meets the applicable requirements for licensure, 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. 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 or rule 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 s. 50.03 (11). The department shall remit all forfeitures paid under this subdivision to the state treasurer 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).

(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 residential 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% of the residents, whichever is greater.

6. The department determines that an emergency exists which requires immediate removal of the resident. An emergency is a situation, physical condition or one or more practices, methods or operations which presents imminent danger of death or serious physical or mental harm to a resident of a facility.

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

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

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

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

(f) ***Nonemergency removal procedures.*** In any removal conducted under par.(a) 1. to 5., the department shall provide written notice to the facility and to any resident sought to be 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 facility. The department shall assume this liability, if any. If a resident prevails after hearing, the department shall reimburse the resident for any excess expenses directly caused by the order to remove.

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

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

(b) ***Unlicensed facility.*** Notwithstanding the existence or pursuit of any other remedy, the department may, upon the advice of the attorney general, maintain an action in the name of the state for injunction or other process against any person or agency to restrain or prevent the establishment, management or operation of any facility required to be licensed under this section without a license.

(c) Enforcement by counties maintaining inspection programs. The county board of any county conducting inspections under sub.(2) (b) may, upon notifying the department that a facility is in violation of this subchapter or the rules 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 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 be incompetent.

(d) The department shall notify the facility within 10 days after receiving the preliminary plan under par.(c) 8., if it disapproves the plan. If the department does not notify the facility of disapproval, the plan is deemed approved. If the department disapproves the preliminary plan it shall, within 10 days of notifying the facility, begin working with the facility to modify the disapproved plan. No residents may be relocated until the department approves the preliminary plan or until a modified plan is agreed upon. If a plan is not approved or agreed upon within 30 days of receipt of the notice of relocation, the department may impose a plan that the facility shall carry out. Failure to submit, gain approval for or implement a plan in a timely fashion is not a basis for a facility to declare an emergency under sub.(5m) (a) 6. or to relocate any resident under sub.(5m) (g).

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

History: 1975 c. 413; 1977 E. 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.

The department can constitutionally license and regulate conunmdty-based residential facilities that are operated by religious organizations and that are not exempt convents or similar facilities under s. 50.01 (1) [now 50.01 (1g)] or s. 50.03 (9). 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. 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.

(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 requirements 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.
Cross Reference: See also **ch.** HFS 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. 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 $135. 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).

(2m) REPORTING. Every 24 months, on a schedule determined by the department, a licensed adult family home shall submit a biennial report in the form and containing the information that the department requires, including payment of the fee required 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.

(2r) PROVISION OF INFORMATION REQUIRED. Subject to sub.(2t), an adult family 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 and financial screen to determine the prospective resident's eligibility for the family care benefit under s. 46.286 (1).

(2s) REQUIRED REFERRAL. Subject to sub.(2t), an adult family 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 a physical disability and whose disability or condition is expected to last at least 90 days, unless any of the following applies:

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

(b) The person is entering the adult family home 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 screen under s. 46.283 (4) (g), the referral under this subsection may not include performance of a financial screen under s. 46.283 (4) (g), unless the person is expected to become eligible for medical assistance within 6 months.

(2t) APPLICABILITY. Subsections (2r) and (2s) apply only if the secretary has certified under s. 46.281 (3) that a resource center is available for the adult family home and for specified groups of eligible individuals that include those persons seeking admission to or the residents of the adult family home.

(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).

(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.**
Cross Reference: See **also ch. HFS 88,** Wis. adm. **code.**

50.034 Residential care apartment complexes. ◀▶ **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. 46.27 (11) or 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 apart-ment 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.

(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:

1. For residents for whom services are reimbursable under s. 46.27 (11), by the county department or aging unit designated under s. 46.27 (3) (b) in the county.

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.

(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 the nursing homes operated at the Wisconsin Veterans Home at King or in southeastern Wisconsin by the department of veterans affairs under s. 45.385, 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 (Id) 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. Subject to sub.(5p), a residential care apartment complex 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 and financial screen to determine the prospective resident's eligibility for the family care benefit under s. 46.286 (1).

(5n) REQUIRED REFERRAL. Subject to sub.(5p), a residential care apartment complex 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 a physical disability and whose disability or condition is expected to last at least 90 days, unless any of the following applies:

(a) For a person who has received a screen for functional eligibility under s. 46.286 (1) (a) within the previous 6 months, the referral under this subsection need not include performance *of* an additional functional screen 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 screen under s. 46.283 (4) (g), the referral under this subsection may not include performance of a financial screen under s. 46.283 (4) (g), unless the person is expected to become eligible for medical assistance within 6 months.

(5p) APPLICABILITY. Subsections (5m) and (5n) apply only if the secretary has certified under s. 46.281 (3) that a resource center is available for the residential care apartment complex and for specified groups of eligible individuals that include those persons seeking admission to or the residents of the residential care apartment complex.

(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. 46.27 (11) (c) 7. or 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 state treasurer 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: 1995 a. 27; 1997 a. 13, 252; 1999 a. 9, 63, 185; 2001 a. 16.

Cross Reference: See also ch. HFS 89, Wis. adm. code.

50.035 Special provisions relating to regulation of community–based residential facilities. (1) PERSONNEL TRAINING. 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. In addition, each facility employee 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.

(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 commerce 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 commerce. 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.

(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. Subject to sub.(4p), a community–based residential facility 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 and financial screen to determine the prospective resident's eligibility for the family care benefit under s. 46.286 (1).

(4n) REQUIRED REFERRAL. Subject to sub.(4p), a community–based residential facility 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 a physical disability and whose disability or condition is expected to last at least 90 days, unless any of the following applies:

(a) For a person who has received a screen for functional eligibility under s. 46.286 (1) (a) within the previous 6 months, the referral under this subsection need not include performance of an additional functional screen 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 screen under s. 46.283 (4) (g), the referral under this subsection may not include performance of a financial screen under s. 46.283 (4) (g), unless the person is expected to become eligible for medical assistance within 6 months.

(4p) APPLICABILITY. Subsections (4m) and (4n) apply only if the secretary has certified under s. 46.281 (3) that a resource center is available for the community–based residential facility and for specified groups of eligible individuals that include those persons seeking admission to or the residents of the community–based residential facility.

(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).

(7) STATEMENT OF FINANCIAL CONDITION REQUIRED. (a) No community–based residential facility may initially admit as a resident an individual who applies for admission to the facility and who intends to pay for residence in the facility from private funds, unless the individual provides certain financial information to the community–based residential facility. From this information, the community–based residential facility shall prepare and provide to the individual a statement of financial condition to which all of the following apply:

1. The statement is pertinent to the individual.

2. The statement estimates a date, if any, by which the individual's assets and other private funding sources would be depleted if the individual resides continuously in the community–based residential facility.

3. The statement indicates that public funding may not be available when the individual's assets and other private funding sources, if any, are depleted and specifies options that may be available to the individual at that time.

(b) The individual shall waive his or her right to confidentiality for the information provided under par.(a), to the administrator of the community–based residential facility, to the preparer of the statement of financial condition and, if par.(c) applies, to the county department under s. 46.215 or 46.22.

(c) If the date estimated under par.(a) 2. is less than 24 months after the date of the individual's statement of financial condition, the community–based residential facility shall provide the statement to the county department under s. 46.215 or 46.22 and shall refer the potential resident to the county department to determine whether an assessment under s. 46.27 (6) should be conducted.

(9) NOTIFICATION TO PROSPECTIVE RESIDENTS OF ASSESSMENT REQUIREMENT. Every community–based residential facility shall inform all prospective residents of the assessment requirements under ss. 46.27 (7) (cj) 3. and (11) (c) 5n. and 46.277 (5) (d) 1n. for the receipt of funds under those sections.

(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% 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 state treasurer 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.

Cross Reference: See also **ch.** HFS 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) The biennial fee for a community–based residential facility is $306, plus a biennial fee of $39.60 per resident, based on the number of residents that the facility is licensed to serve.

(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 biennia1 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.

Duty of a private hospital to render emergency treatment. 1974 WLR 279.

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's assistants available for employment by the nursing home exists.

(d) Each nursing home, other than nursing homes that primarily serve the developmentally disabled, shall provide at least the following hours of service by registered nurses, licensed practical nurses or nurse's assistants:

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.

(2g) PROVISION OF INFORMATION REQUIRED. (a) Subject to sub.(2i), 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 and financial screen 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) Subject to sub.(2i), 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 who has received a screen for functional eligibility under s. 46.286 (1) (a) within the previous 6 months, the referral under this paragraph need not include performance of an additional functional screen 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 screen under s. 46.283 (4) (g), the referral under this subsection may not include performance of a financial screen under s. 46.283 (4) (g), unless the person 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.

(2i) APPLICABILITY. Subsections (2g) and (2h) apply only if the secretary has certified under s. 46.281 (3) that a resource center is available for the nursing home and for specified groups of eligible individuals that include those persons seeking admission to or the residents of the nursing home.

(2m) PLAN OF CARE AND ASSESSMENT REQUIRED. (a) Except as provided in par.(b), no nursing home may admit any patient until a physician has completed a plan of care for the patient and the patient is assessed or the patient is exempt from or waives assessment under s. 46.27 (6) (a). Failure to comply with this subsection is a class "C" violation under sub.(4) (b) 3.

(b) Paragraph (a) does not apply to those residents for whom the secretary has certified under s. 46.281 (3) that a resource center is available.

(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 the mentally retarded, 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. 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.

Ig. 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.

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

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

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

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

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

(c) Correction. 1. The situation, condition or practice constituting a class "A" violation shall be abated or eliminated immediately unless a fixed period of time, as determined by the department and specified in the notice of violation, is required for correction. If the class " A violation is not abated or eliminated within the specified time period, the department shall maintain an action in circuit court for injunction or other process against the licensee, owner, operator, administrator or representative of the facility to restrain and enjoin violation of applicable rules, regulations and statutes.

2. At the time of issuance of a notice of a class "B" or "C" violation, the department shall request a plan of correction which is subject *to* the department's approval. The nursing home shall have 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. The nursing home received notices of violation for a class " A violation or 3 or more class **"B"** violations in the previous 12 months. b. The nursing home received notices of violation for a class "A" violation or 3 or more class "B" violations in any 12-month period during the 3 years immediately preceding the period specified in subd. 1. a.

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

(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 10 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).

5m. Beginning on December 8, 1987, the department may consider, for purposes of applying triple forfeitures under subd.5., any notice of violation issued by the department within the 2–year period preceding December 8, 1987, or issued by the department on or after December 8, 1987.

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 applicable statutes and regulation and reasonable diligence in complying with such requirements, prior accomplishments manifesting the licensee's desire to comply with the requirements, efforts to correct and any other mitigating factors in favor of the licensee.

3. Any previous violations committed by the licensee.

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

(c) Assessment of forfeitures; powers and duties of department. The department may directly assess forfeitures provided for under par.(a). If the department determines that a forfeiture should be assessed for a particular violation or for failure to correct it, it shall send a notice of assessment to the nursing home. The notice shall specify the amount of the forfeiture assessed, the violation, the statute or rule alleged to have been violated, and shall inform the licensee of the right to hearing under par.(e).

(d) ***Forfeiture period.*** 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 forfeiture by sending, within 10 days after receipt of notice of a contested action, 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.

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

(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 forfeiture under par.(e) for a class "A" or class "B" violation and pays the forfeiture to the department within 10 days after receipt of the notice of assessment, the department shall reduce the amount of the assessment by 35%.

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

(b) ***Violation correction plan.*** Prior to the issuance of a conditional license, the department shall establish a written plan of correction. The plan shall specify the violations which prevent full Iicensure 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.

(e) 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.

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.

A state nursing home is not subject to the forfeiture provisions of ch. 50. 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 conunencing a hearing is directory, not mandatory. St. Michael's Church v. DOA, 137 Wis. 2d 316,404 N.W.2d I14 (Ct. App. 1987).

The requirement under sub.(2r) that an individual niay not he 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 and Services v. Leean, 122 F.3d 443 (1997).

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% 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 or a rule promulgated under s. 49.498, 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 or a rule promulgated under s. 49.498.

(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 (I). 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 alternative 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 bas 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. 27,224,221; 1997 a. 27, 35; 1999 a. 83; 2001 a. 10.

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 under ch. 880, 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 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. 880.07 and a petition for protective placement of the individual under s. 55.06 (2) are filed prior to the proposed admission.

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

(a) The spouse 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 licensed psychologist, as defined in s. 455.01 (4), 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. 243.07 (1) (a), 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 that an assessment be conducted for the incapacitated individual under the long–term support community options program under s. 46.27 (6) or, if the secretary has certified under s. 46.281 (3) that a resource center is available for the individual, a functional and financial screen 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 screen 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.

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 technician under s. 146.50 if the person is employed, or seeking employment, as an emergency medical technician and does not include a person who is certified as a first

responder under s. 146.50 if the person is employed, or seeking employment, as a first 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 licensed or certified by or registered with the department to provide direct care or treatment services to clients. "Entity" includes a hospital, a personal care worker agency, a supportive home care service agency, 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 s. 50.065 (1) (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.

(d) "Personal care worker agency" has the meaning specified by the department by rule.

(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), 940.22 (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 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), 940.22 (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) if committed in this state.

NOTE. Subd. 1. is shown as amended eff. 2–1–03 by 2001 Wis. **Act 109. Prior to 2–1–03 it reads: 1. "Serious crime" means a violation of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19 (2), (3), (4), (5) or (6), 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 a violation of the law of any other state *or* United States jurisdiction that would be a violation of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19 (2), (3), (4), (5) or (6), 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) 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), 948.05, 948.055, 948.06, 948.07, 948.08, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 (1) or 948.30 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), 948.05, 948.055, 948.06, 948.07, 948.08, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 (1) or 948.30 if committed in this state.

(f) "Supportive home care service agency" has the meaning specified by the department by rule.

(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 regulation and licensing regarding the status of the person's credentials, if applicable.

4. Information maintained by the department regarding any substantiated reports of child abuse or neglect against the person.

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 regulation and licensing regarding the status of the person's credentials, if applicable.

4. Information maintained by the department regarding any substantiated reports of child abuse or neglect against the person.

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 information form under sub.(6) (a) or (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 onviction, 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) or any other information indicates a conviction of a violation of s. 940.19 (1), 940.195, 940.20, 941.30, 942.08, 947.01 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) 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 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.

(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.

(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 required 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 determination has been made under s. 48.981 (3) (c) 4. 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 regulation and licensing, 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 determination has been made under s. 48.981 (3) (c) 4. 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 regulation and licensing, 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) 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) 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.

(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 and family 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.

(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 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). The fee may not exceed the reasonable cost of obtaining the information. No fee may be charged to a nurse's assistant, 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.

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) (a) 1. In this paragraph, "agency" has the meaning given in s. 111.32 (6) (a).

2. Any employee of a state agency who is discharged or otherwise retaliated or discriminated against in violation of sub.(1) (e) or (em) may file a complaint with the personnel commission under s. 230.45 (1) (j).

(b) Any employee of an employer not described in par.(a) 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.(a) or (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.

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 654, 571 N.W.2d 393 (1997).

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 plaintiffs rights under sub.(1) (e). St. Paul Fire and Marine Insurance Co. v. Hausman, 231 Wis. 2d 25, 604 N.W.2d 908 (Ct. App. 1999).

50.09 Rights of residents in certain facilities. (1)

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

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

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

2. Reasonable access to a telephone for private communications.

3. Opportunity for private visits.

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

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

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

(e) Be treated with courtesy, respect and full recognition of the resident's dignity and individuality, by all 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. If both spouses are residents of the same facility, they shall be permitted to share a room unless

medically contraindicated as documented by the resident's physician in the resident's medical record.

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

3. Confidentiality of health and personal records, and the right to approve or refuse their release to any individual outside the facility, except in the case of the resident's transfer to another facility or as required by law or 3rd–party payment contracts and except as provided in s. 146.82 (2) and (3).

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

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

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

(j) Be transferred or discharged, and be given reasonable advance notice of any planned transfer or discharge, and an explanation of the need for and alternatives to 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–basedresidential 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 for a specified and limited period of time and documented in the resident's medical record. Physical restraints may be used in an emergency when necessary to protect the resident from injury to himself or herself or others or to property. However, authorization for continuing use of the physical restraints shall be secured from a physician within 12 hours. Any use of physical restraints shall be noted in the resident's medical records. "Physical restraints" includes, but is not limited to, any article, device or garment which interferes with the free movement of the resident and which the resident is unable to remove easily, and confinement in a locked room.

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

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

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

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

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

(4) Each facility shall make available a copy of the rights and responsibilities established under this section and the facility's rules to each resident and 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.

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

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's assistants 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.

50.097 Registry. Any person may receive, upon specific written request to the department, requested information that is contained in the registry of nurse's assistants and home health aides under s. 146.40 (4g) (a) or that is contained in the registry of hospice aides under s. 146.40 (4g) (a) 1.

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

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 coniniunity–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, ___ Wis. 2d ___, 643 N.W.2d 841.

Wisconsin's private cause of action for nursing home residents. Bertrand. Wis. Law. Sep. 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: 198.5 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 $1 8 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 appropriations under s. 20.435 (4) (gm) and (6) (jm) as specified in those appropriations for licensing, review and certifying activities.

(3) EXEMPTION. The inpatient health care facilities under ss. 45.365, 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.

50.14 Assessments on occupied, licensed beds. (1) In this section: (a) Notwithstanding s. 50.01 (1m), "facility" means a nursing home or an intermediate care facility for the mentally retarded, which is not state–owned or state–operated, federally owned or federally operated or located outside the state.

(b) "Intermediate care facility for the mentally retarded" has the meaning given under 42 USC 1396d (c) and (d).

(2) For the privilege of doing business in this state, there is imposed on all occupied, licensed beds of a facility, except occupied, licensed beds for which payment is made under 42 USC 1395 to 1395ccc, an assessment that shall be deposited in the general fund and that is $100 per calendar month per occupied, licensed bed of an intermediate care facility for the mentally retarded and is $32 per calendar month per occupied, licensed bed of a nursing home. The assessment shall be on the average number of occupied, licensed beds of a facility for the calendar month previous to the month of assessment, based on an average daily midnight census computed and reported by the facility and verified by the department. Charged bed–hold days for any resident of a facility shall be included as one full day in the average daily midnight census. In determining the number of occupied, licensed beds, 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% or more of a whole number, in which case the amount shall be increased to the next whole number.

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

(4) Sections 77.59 (1) to (5), (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.

(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.

Cross **Reference:** See also ch. HFS 15, Wis. adm. code

CHAPTER 440
DEPARTMENT OF REGULATION AND LICENSING

SUBCHAPTER I
GENERAL PROVISIONS

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Cross reference: See also RL, Wis. adm. code.

SUBCHAPTER I
GENERAL PROVISIONS

440.01 Definitions. (1) In chs. 440 to 480, unless the context requires otherwise:

(a) "Department" means the department of regulation and licensing.

(am) "Financial institution" has the meaning given in s. 705.01 (3).

(b) "Grant" means the substantive act of an examining board, section of an examining board, affiliated credentialing board or the department of approving the applicant for credentialing and the preparing, executing, signing or sealing of the credentialing.

(c) "Issue" means the procedural act of the department of transmitting the credential to the person who is credentialed.

(d) "Limit", when used in reference to limiting a credential, means to impose conditions and requirements upon the holder of the credential, and *to* restrict the scope of the holder's practice.

(dm) "Renewal date" means the date on which a credential expires and before which it must be renewed for the holder to maintain without interruption the rights, privileges and authority conferred by the credential.

(e) "Reprimand" means to publicly warn the holder of a credential.

(f) "Revoke", when used in reference to revoking a credential, means to completely and absolutely terminate the credential and all rights, privileges and authority previously conferred by the credential.

(g) "Secretary" means the secretary of regulation and licensing.

(h) "Suspend", when used in reference to suspending a credential, means to completely and absolutely withdraw and withhold for a period of time all rights, privileges and authority previously conferred by the credential.

(2) In this subchapter: (a) "Credential" means a license, permit, or certificate of certification or registration that is issued under chs. 440 to 480.

(b) "Credentialing" means the acts of an examining board, section of an examining board, affiliated credentialing board or the department that relate to granting, issuing, denying, limiting, suspending or revoking a credential.

(bm) "Credentialing board" means an examining board or an affiliated credentialing board in the department.

(c) "Examining board" includes the board of nursing.

(cs) "Minority group member" has the meaning given in **s.** 560.036 (1) (f).

(cv) "Psychotherapy" has the meaning given in **s.** 457.01 (8m).

(d) "Reciprocal credential" means a credential granted by an examining board, section of an examining board, affiliated credentialing board or the department to an applicant who holds a credential issued by a governmental authority in a jurisdiction outside this state authorizing or qualifying the applicant to perform acts that are substantially the same as those acts authorized by the credential granted by the examining board, section of the examining board, affiliated credentialing board or department.

History: 1977 c. 418; 1979 c. 34; 1979 c. 175 **s.** 53; 1979 c. 221 s. 2202 (45); 1991 a. 39; 1993 a. 102, 107; 1995 a. 233, 333; 1997 a. 35 s. 448; 1997 a. 237 ss. 532, 539m; 1999 a. 9 s. 2915; 2001 a. 80.

Procedural due process and the separation of functions in state occupational licensing agencies. 1974 WLR 833.

440.02 Bonds. Members of the staff of the department who are assigned by the secretary to collect moneys shall be bonded in an amount equal to the total receipts of the department for any month.

440.03 General duties and powers of the department.

(1) The department may promulgate rules defining uniform procedures to be used by the department, the real estate board, the real estate appraisers board, and all examining boards and affiliated credentialing boards attached to the department or an examining board, for receiving, filing and investigating complaints, for commencing disciplinary proceedings and for conducting hearings.

(1m) The department may promulgate rules specifying the number of business days within which the department or any examining board or affiliated credentialing board in the department must review and make a determination on an application for a permit, as defined in **s.** 560.41 (2), that is issued under chs. 440 to 480.

(2) The department may provide examination development services, consultation and technical assistance to other state agencies, federal agencies, counties, cities, villages, towns, national or regional organizations of state credentialing agencies, similar credentialing agencies in other states, national or regional accrediting associations, and nonprofit organizations. The department may charge a fee sufficient to reimburse the department for the costs of providing such services. In this subsection, "nonprofit organization" means a nonprofit corporation as defined in s. 181.0103 (17), and an organization exempt from tax under 26 USC 501.

(3) If the secretary reorganizes the department, no modification may be made in the powers and responsibilities of the examining boards or affiliated credentialing boards attached to the department or an examining board under s. 15.405 or 15.406.

(3m) The department may investigate complaints made against a person who has been issued a credential under chs. 440 to 480.

(3q) Notwithstanding sub.(3m), the department of regulation and licensing shall investigate any report that it receives under **s.** 146.40 (4r) (am) **2.** or (em).

(4) The department may issue subpoenas for the attendance of witnesses and the production of documents or other materials prior to the commencement of disciplinary proceedings.

(5) The department may investigate allegations of negligence by physicians licensed to practice medicine and surgery under ch. 448.

(5m) The department shall maintain a toll–free telephone number to receive reports of allegations of unprofessional conduct, negligence or misconduct involving a physician licensed under subch. II of ch. 448. The department shall publicize the toll– free telephone number and the investigative powers and duties of the department and the medical examining board as widely as possible

in the state, including in hospitals, clinics, medical offices and other health care facilities.

(6) The department shall have access to any information contained in the reports filed with the medical examining board, an affiliated credentialing board attached to the medical examining board and the board of nursing under s. 655.045, as created by 1985 Wisconsin Act 29, and s. 655.26.

(7) The department shall establish the style, content and format of all credentials and of all forms for applying for any credential issued or renewed under chs. 440 to 480. All fonns shall include a place for the information required under sub.(11m) (a). Upon request of any person who holds a credential and payment of a $10 fee, the department may issue a wall certificate signed by the governor.

(7m) The department may promulgate rules that establish procedures for submitting an application for a credential or credential renewal by electronic transmission. Any rules promulgated under this subsection shall specify procedures for complying with any requirement that a fee be submitted with the application. The rules may also waive any requirement in chs. 440 to 480 that an application submitted to the department, an examining board or an affiliated credentialing board be executed, verified, signed, sworn or made under oath, notwithstanding ss. 440.26 (2) (b), 440.42 (2) (intro.), 440.91 (2) (intro.), 443.06 (1) (a), 443.10 (2) (a), 445.04 (2), 445.08 (4), 445.095 (I) (a), 448.05 (7), 450.09 (l) (a), 452.10 (I) and 480.08 (2m).

(8) The department may promulgate rules requiring holders of certain credentials to do any of the following:

(a) Display the credential in a conspicuous place in the holder's office or place of practice or business, if the holder is not required by statute to do so.

(b) Post a notice in a conspicuous place in the holder's office or place of practice or business describing the procedures for filing a complaint against the holder.

(9) The department shall include all of the following with each biennial budget request that it makes under s. 16.42:

(a) A recalculation of the administrative and enforcement costs of the department that are attributable to the regulation of each occupation or business under chs. 440 to 480 and that are included in the budget request.

(b) A recommended change to each fee specified under s. 440.05 (1) for an initial credential for which an examination is not required, under s. 440.05 (2) for a reciprocal credential and under s. 440.08 (2) (a) for a credential renewal if the change is necessary to reflect the approximate administrative and enforcement costs of the department that are attributable to the regulation of the particular occupation or business during the period in which the initial or reciprocal credential or credential renewal is in effect and, for purposes of the recommended change *to* each fee specified under s. 440.08 (2) (a) for a credential renewal, to reflect an estimate of any additional moneys available for the department's general program operations, during the budget period to which the biennial budget request applies, as a result of appropriation transfers that have been or are estimated to be made under s. 20.165 (1) (i) prior to and during that budget period.

(11) The department shall cooperate with the department of health and family services to develop a program to use voluntary, uncompensated services of licensed or certified professionals to assist the department of health and family services in the evaluation of community mental health programs in exchange for continuing education credits for the professionals under ss. 448.40 (2) (e) and 455.065 (5).

(11m) (a) Each application form for a credential issued or renewed under chs. 440 to 480 shall provide a space for the department to require each of the following, other than an individual who does not have a social security number and who submits a statement made or subscribed under oath or affirmation as required under par.(am), to provide his or her social security number:

1. An applicant for an initial credential or credential renewal. If the applicant is not an individual, the department shall require the applicant to provide its federal employer identification number.

2. An applicant for reinstatement of an inactive license under s. 452.12 (6) (e).

(am) If an applicant specified in par.(a) 1. or 2. is an individual who does not have a social security number, the applicant shall submit a statement made or subscribed under oath that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of workforce development. A credential or license issued in reliance upon a false statement submitted under this paragraph is invalid.

(b) The department shall deny an application for an initial credential or deny an application for credential renewal or for reinstatement of an inactive license under s. 452.12 (6) (e) if any information required under par.(a) is not included in the application form or, in the case of an applicant who is an individual and who does not have a social security number, if the statement required under par.(am) is not included with the application form.

(c) The department of regulation and licensing may not disclose a social security number obtained under par.(a) to any person except the coordinated licensure information system under s. 441.50 (7); the department of workforce development for purposes of administering s. 49.22; and, for a social security number obtained under par.(a) 1., the department of revenue for the sole purpose of requesting certifications under s. 73.0301.

(12m) The department of regulation and licensing shall cooperate with the departments of justice and health and family services in developing and maintaining a computer linkup to provide access to information regarding the current status of a credential issued to any person by the department of regulation and licensing, including whether that credential has been restricted in any way.

(13) The department may conduct an investigation to determine whether an applicant for a credential issued under chs. 440 to 480 satisfies any of the eligibility requirements specified for the credential, including whether the applicant does not have **an** arrest or conviction record. In conducting an investigation under this subsection, the department may require an applicant to provide any information that is necessary for the investigation or, for the purpose of obtaining information related to **an** arrest or conviction record of an applicant, to complete forms provided by the department of justice or the federal bureau of investigation. The department shall charge the applicant any fees, costs or other expenses incurred in conducting the investigation under this subsection.

(14) (a) 1. The department shall grant a certificate of registration as a music therapist to a person if all of the following apply:

a. The person is certified, registered or accredited as a music therapist by the Certification Board for Music Therapists, National Music Therapy Registry, American Music Therapy Association or by another national organization that certifies, registers or accredits music therapists.

b. The organization that certified. registered or accredited the person under subd. 1. a. is approved by the department.

c. The person pays the fee specified in s. 440.05 (1) and files with the department evidence satisfactory to the department that he or she is certified, registered or accredited as required under subd.1. a.

2. The department shall grant a certificate of registration as an art therapist to a person if all of the following apply:

a. The person is certified, registered or accredited as an art therapist by the Art Therapy Credentials Board or by another national organization that certifies, registers or accredits art therapists.

b. The organization that certified, registered or accredited the person under subd.2. a. is approved by the department.

c. The person pays the fee specified in s. 440.05 (1) and files with the department evidence satisfactory to the department that he or she is certified, registered or accredited as required under subd.2. a.

3. The department shall grant a certificate of registration as a dance therapist to a person if all of the following apply:

a. The person is certified, registered or accredited as a dance therapist by the American Dance Therapy Association or by another national organization that certifies, registers or accredits dance therapists.

b. The organization that certified, registered or accredited the person under subd.3. a. is approved by the department.

c. The person pays the fee specified in s. 440.05 (1) and files with the department evidence satisfactory to the department that

he or she is certified, registered or accredited as required under subd.3. a.

(am) The department may promulgate rules that establish requirements for granting a license to practice psychotherapy to a person who is registered under par.(a). Rules promulgated under this paragraph shall establish requirements for obtaining such a license that are comparable to the requirements for obtaining a clinical social worker, marriage and family therapist, or professional counselor license under ch. 457. If the department promulgates rules under this paragraph, the department shall grant a license under this paragraph to a person registered under par.(a) who pays the fee specified in s. 440.05 (1) and provides evidence satisfactory to the department that he or she satisfies the requirements established in the rules.

(b) A person who is registered under par.(a) shall notify the department in writing within 30 days if an organization specified in par.(a) 1. a., 2. a. or 3. a. revokes the person's certification, registration, or accreditation specified in par.(a) 1. a., 2. a., or 3. a. The department shall revoke a certificate of registration granted under par.(a) if such an organization revokes such a certification, registration, or accreditation. If the department revokes the certificate of registration of a person who also holds a license granted under the rules promulgated under par.(am), the department shall also revoke the license.

(c) The renewal dates for certificates granted under par.(a) and licenses granted under par.(am) are specified in s. 440.08 (2) (a). Renewal applications shall be submitted to the department on a form provided by the department and shall include the renewal fee specified in s. 440.08 (2) (a) and evidence satisfactory to the department that the person's certification, registration, or accreditation specified in par.(a) 1. a., 2. a. or 3. a. has not been revoked.

(d) The department shall promulgate rules that specify the services within the scope of practice of music, art, or dance therapy that a person who is registered under par.(a) is qualified to perform. The rules may not allow a person registered under par.(a) to perform psychotherapy unless the person is granted a license under the rules promulgated under par.(am).

Cross reference: See also **chs. RL** 140, 141, and 142, Wis. adm. **code.**

(e) Subject to the rules promulgated under sub.(1), the department may make investigations and conduct hearings to determine whether a violation of this subsection or any rule promulgated under par.(d) has occurred and may reprimand a person who is registered under par.(a) or holds a license granted under the rules promulgated under par.(am) or may deny, limit, suspend, or revoke a certificate of registration granted under par.(a) or a license granted under the rules promulgated under par.(am) if the department finds that the applicant or certificate or license holder has violated this subsection or any rule promulgated under par.(d).

(f) A person who is registered under par.(a) or holds a license granted under the rules promulgated under par.(am) who violates this subsection or any rule promulgated under par.(d) may be fined not more than $200 or imprisoned for not more than 6 months or both.

(15) The department shall promulgate rules that establish the fees specified in ss. 440.05 (10) and 440.08 (2) (d).

(16) Annually, the department shall distribute the form developed by the medical and optometry examining boards under 2001 Wisconsin Act 16, section 9143 (3c), to all school districts and charter schools that offer kindergarten, to be used by pupils to provide evidence of eye examinations under s. 118.135.

History: 1977 c. 418 ss. 24, 792; 1979 *c.* 34, 221, 337; 1981 *c.* 94; 1985 a. 29, 340; 1989 a. 31, 340; 1991 a. 39; 1993 a. 16, 102, 107, 443, 445, 490, 491; 1995 a. 27 ss. 6472g, 6472j, 9126 (19): 1995 a. 233; 1997 a. 27, 75, 79; 1997 a. 191 ss. 312, 313, 318; 1997 a. 231, 237; 1997 a. **261** ss. 1 to 4, 7, 10, 13; 1997 a. 311; 1999 a. 9, 32; 2001 a. 16, 66, 80.

Cross reference: See also RL, Wis. adm. code.

440.035 General duties of examining boards and affiliated credentialing boards. Each examining board or affiliated credentialing board attached to the department or an examining board shall:

(1) Independently exercise its powers, duties and functions prescribed by law with regard to rule–making, credentialing and regulation.

(2) Be the supervising authority of all personnel, other than shared personnel, engaged in the review, investigation or handling of information regarding qualifications of applicants for credentials, examination questions and answers, accreditation, related investigations and disciplinary matters affecting persons who are credentialed by the examining board or affiliated credentialing board, or in the establishing of regulatory policy or the exercise of administrative discretion with regard to the qualifications or discipline of applicants or persons who are credentialed by the examining board, affiliated credentialing board or accreditation.

(3) Maintain, in conjunction with their operations, in central locations designated by the department, all records pertaining to the functions independently retained by them.

(4) Compile and keep current a register of the names and addresses of all persons who are credentialed to be retained by the department and which shall be available for public inspection during the times specified in s. 230.35 (4) (a). The department may also make the register available to the public by electronic transmission.

History: 1977 c. 418 ss. 25, 793, 929 (41); 1979 *c.* 32 s. 92 (I); 1979 *c.* 34; 1989 a. 56 s. 259; 1991 a. 39; 1993 a. 107; 1997 a. 27, 191, 237.

440.04 Duties *of* the secretary. The secretary shall: **(1)** Centralize, at the capital and in such district offices as the operations of the department and the attached examining boards and affiliated credentialing boards require, the routine housekeeping functions required by the department, the examining boards and the affiliated credentialing boards.

(2) Provide the bookkeeping, payroll, accounting and personnel advisory services required by the department and the legal services, except for representation in court proceedings and the preparation of formal legal opinions, required by the attached examining boards and affiliated credentialing boards.

(5) With the advice of the examining boards or affiliated credentialing boards:

(a) Provide the department with such supplies, equipment, office space and meeting facilities as are required for the efficient operation of the department.

(b) Make all arrangements for meetings, hearings and examinations.

(c) Provide such other services as the examining boards or affiliated credentialing boards request.

(6) ,Appoint outside the classified service an administrator for any division established in the department and a director for any bureau established in the department as authorized in s. 230.08 (2). The secretary may assign any bureau director appointed in accordance with this subsection to serve concurrently as a bureau director and a division administrator.

(7) Unless otherwise specified in chs. 440 to 480, provide examination development, administration, research and evaluation services as required.

(8) Collect data related to the registration of speech–language pathologists and audiologists under subch. III of ch. 459 and, on January 15, 1993, report the data and recommendations on whether the licensure of speech–language pathologists and audiologists under subch. II of ch. 459 is appropriate to the chief clerk of each house of the legislature for distribution in the manner provided under s. 13.172 (2).

(9) Annually prepare and submit a report to the legislature under s. 13.172 (2) on the number of minority group members who applied for licensure as a certified public accountant under ch. 442, the number who passed the examination required for licensure as a certified public accountant and the number who were issued a certified public accountant license under ch. 442, during the preceding year.

History: 1977 c. 418 s. 26; 1979 *c.* 34; 1981 *c.* 20; 1985 a. 29; 1987 a. 27; 1989 a. 316; 1991 a. 39; 1993 a. 102, 107; 1995 a. 333.

440.042 Advisory committees. (1) The secretary may appoint persons or advisory committees to advise the department and the boards, examining boards and affiliated credentialing boards in the department on matters relating to the regulation of credential holders. The secretary shall appoint an advisory committee to advise the department on matters relating to carrying out the duties specified in s. 440.982 and making investigations, conducting hearings and taking disciplinary action under s. 440.986. A person or an advisory committee member appointed under this subsection shall serve without compensation, but may be reimbursed for his

or her actual and necessary expenses incurred in the performance of his or her duties.

(2) Any person who in good faith testifies before the department or any examining board, affiliated credentialing board or board in the department or otherwise provides the department or any examining board, affiliated credentialing board or board in the department with advice or information on a matter relating to the regulation of a person holding a credential is immune from civil liability for his or her acts or omissions in testifying or otherwise providing such advice or information. The good faith of any person specified in this subsection shall be presumed in any civil action and an allegation that such a person has not acted in good faith must be proven by clear and convincing evidence.

History: 1993 a. 16 ss. 3269, 3299; 1993 a. 107; 1997 a. 156; **1999 a. 32.**

440.045 Disputes. Any dispute between an examining board or an affiliated credentialing board and the secretary shall be arbitrated by the governor or the governor's designee after consultation with the disputants.

History: 1977 c. 418 s. 27; 1979 c. 34: 1993 a. 107.

The relationship between the department, cosmetology examining hoard, and governor is discussed. 70 Atty. Gen. 172.

440.05 Standard fees. The following standard fees apply to all initial credentials, except as provided in ss. 440.42, 440.43, 440.44, 440.51, 444.03, 444.05, 444.11, 447.04 (2) (c) **2.,** 449.17, 449.18 and 459.46:

(1) (a) Initial credential: $53. Each applicant for an initial credential shall pay the initial credential fee to the department when the application materials for the initial credential are submitted to the department.

(b) Examination: If an examination is required, the applicant shall pay an examination fee to the department. If the department prepares, administers, or grades the examination, the fee to the department shall be an amount equal to the department's best estimate of the actual cost of preparing, administering, or grading the examination. If the department approves an examination prepared, administered, and graded by a test service provider, the fee to the department shall be an amount equal to the department's best estimate of the actual cost of approving the examination, including selecting, evaluating, and reviewing the examination.

(2) Reciprocal credential, including any credential described in s. 440.01 (2) (d) and any credential that permits temporary practice in this state in whole or in part because the person holds a credential in another jurisdiction: The applicable credential renewal fee under s. 440.08 (2) (a) and, if an examination is required, an examination fee under sub.(1).

(6) Apprentice, journeyman, student or other temporary credential, granted pending completion of education, apprenticeship or examination requirements: $10.

(7) Replacement of lost credential, name or address change on credential, issuance of duplicate credential or transfer of credential: $10.

(9) Endorsement of persons who are credentialed to other states: $10.

(10) Expedited service: If an applicant for a credential requests that the department process an application on an expedited basis, the applicant shall pay a service fee that is equal to the department's best estimate of the cost of processing the application on an expedited basis, including the cost of providing counter or other special handling services.

History: 1977 c. 29.418: 1979 c. 34: 1979 c. 175 s. 53: 1979 c. 221 s. 2202 (45); 1983 a. f7; 1985 a. 29; 1987 a. 264,265, 329, 399, 403; 1989 a. 31, 229, 307,316, 336,340,341,359; 1991 a. 39, 269, 278, 315; **1993 a. 16;** 1995 **a. 27; 1997 a.** 27, 96; **1999 a. 9: 2001 a. 16.**

Cross reference: See also ch. RL **4, Wis. adm. code.**

440.055 Credit card payments. (2) If the department permits the payment of a fee with use of a credit card, the department shall charge a credit card service charge for each transaction. The credit card service charge shall be in addition to the fee that is being paid with the credit card and shall be sufficient to pay the costs to the department for providing this service to persons who request it, including the cost of any services for which the department contracts under sub.(3).

(3) The department may contract for services relating to the payment of fees by credit card under this section.

History: 1995 a. 27; 1999 a. 9.

440.06 Refunds and reexaminations. The secretary may establish uniform procedures for refunds of fees paid under s. 440.05 or 440.08 and uniform procedures and fees for reexaminations under chs. 440 to 480.

History: 1977 c. 418; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45); **1991 a. 39: 1993 a. 102.**

Cross reference: See also ch. RL **4,** Wis. **adm. code.**

440.07 Examination standards and services. (1) In addition to the standards specified in chs. 440 to 480, examinations for credentials shall reasonably relate to the skills likely to be needed for an applicant to practice in this state at the time of examination and shall seek to determine the applicant's preparedness to exercise the skills.

(2) The department, examining board or affiliated credentialing board having authority to credential applicants may do any of the following:

(a) Prepare, administer and grade examinations.

(b) Approve, in whole or in part, an examination prepared, administered and graded by a test service provider.

(3) The department may charge a fee to an applicant for a credential who fails an examination required for the credential and requests a review of his or her examination results. The fee shall be based on the cost of the review. No fee may be charged for the review unless the amount of the fee or the procedure for determining the amount of the fee is specified in rules promulgated by the department.

History: 1987 a. 27; 1991 a. 39; 1993 a. 102, 107.

Cross reference: See also ch. RL 4, Wis. adm. **code. Department** of **Regulation and Licensing test scores were subject to disclosure under the open records law.** Munroe **v.** Braatz, **201 Wis. 2d 442,549** N.W.2d **452** (Ct. **App. 1996).**

440.08 Credential renewal. (1) NOTICE OF RENEWAL. The department shall give a notice of renewal to each holder of a credential at least 30 days prior to the renewal date of the credential. Notice may be mailed to the last address provided to the department by the credential holder or may be given by electronic transmission. Failure to receive a notice of renewal is not a defense in any disciplinary proceeding against the holder or in any proceeding against the holder for practicing without a credential. Failure to receive a notice of renewal does not relieve the holder from the obligation to pay a penalty for late renewal under sub.(3).

(2) RENEWAL DATES, FEES AND APPLICATIONS. (a) Except as provided in par.(b) and in ss. 440.51, 442.04, 444.03, 444.05, 444.11, 448.065, 447.04 (2) (c) 2., 449.17, 449.18 and 459.46, the renewal dates and renewal fees for credentials are as follows:

1. Accountant, certified public: January 1 of each even–numbered year; $59.

3. Accounting corporation or partnership: January 1 of each even–numbered year; $56.

4. Acupuncturist: July 1 of each odd–numbered year; $70.

4m. Advanced practice nurse prescriber: October 1 of each even–numbered year; $73.

5. Aesthetician: July 1 of each odd–numbered year; $87.

6. Aesthetics establishment: July 1 of each odd–numbered year; $70.

7. Aesthetics instructor: July 1 of each odd–numbered year; $70.

8. Aesthetics school: July 1 of each odd–numbered year; $115.

9. Aesthetics specialty school: July 1 of each odd–numbered year; $53.

11. Appraiser, real estate, certified general: January 1 of each even–numbered year; $162.

Ilm. Appraiser, real estate, certified residential: January 1 of each even–numbered year; $167.

12. Appraiser, real estate, licensed: January 1 of each even–numbered year; $1 85.

13. Architect: August 1 of each even–numbered year; $60.

14. Architectural or engineering firm, partnership or corporation: February 1 of each even–numbered year; $70.

14f. Athletic trainer: July 1 of each even–numbered year; $53.

14g. Auction company: January 1 of each odd–numbered year; $56.

14r. Auctioneer: January 1 of each odd–numbered year; $174.

15. Audiologist: February 1 of each odd–numbered year; $106.

16. Barbering or cosmetology establishment: July 1 of each odd–numbered year; $56.

17. Barbering or cosmetology instructor: July 1 of each odd–numbered year; $91.
IS. Barbering or cosmetology manager: July I of each odd–numbered year; $71.
19. Barbering or cosmetology school: July 1 of each odd–numbered year; $138.
20. Barber or cosmetologist: July 1 of each odd–numbered year; $63.
21. Cemetery authority: January 1 of each odd–numbered year; $343.
22. Cemetery preneed seller: January 1 of each odd–numbered year; $61.
23. Cemetery salesperson: January 1 of each odd–numbered year; $90.
23m. Charitable organization: August I of each year: $I5
24. Chiropractor: January 1 of each odd–numbered year, $1 68
25. Dental hygienist: October I of each odd–numbered year; $57.
26. Dentist: October 1 of each odd–numbered year, $131.
26m. Dentist, faculty member: October 1 of each odd–numbered year; $131.
27. Designer of engineering systems: February 1 of each even–numbered year; $58.
27m. Dietitian: November 1 of each even–numbered year; $56.
28. Drug distributor: June 1 of each even–numbered year; $70.
29. Drug manufacturer: June 1 of each even–numbered year; $70.
30. Electrologist: July 1 of each odd–numbered year, $76.
31. Electrology establishment: July 1 of each odd–numbered year; $56.
32. Electrology instructor: July 1 of each odd–numbered year; $86.
33. Electrology school: July 1 of each odd–numbered year; $71.
34. Electrology specialty school: July 1 of each odd–numbered year; $53.
35. Engineer, professional: August 1 of each even–numbered year; $58.
35m. Fund–raising counsel: September 1 of each even–numbered year; $53.
36. Funeral director: January 1 of each even–numbered year; $135.
37. Funeral establishment: June 1 of each odd–numbered year; $56.
38. Hearing instrument specialist: February 1 of each odd–numbered year; $106.
38g. Home inspector: January I of each odd–numbered year; $53.
38m. Landscape architect: August I of each even–numbered year; $56.
39. Land surveyor: February 1 of each even–numbered year; $77.
42. Manicuring establishment: July 1 of each odd–numbered year; $53.
43. Manicuring instructor: July 1 of each odd–numbered year; $53.
44. Manicuring school: July 1 of each odd–numbered year; $118.
45. Manicuring specialty school: July 1 of each odd–numbered year; $53.
46. Manicurist: July 1 of each odd–numbered year; $133.
46m. Marriage and family therapist: July 1 of each odd–numbered year; $84.
46r. Massage therapist or bodyworker: March 1 of each odd–numbered year; $53.

NOTE: Subd. 46r. is created eff. 3–1-03 by 2001 Wis. Act 74.

48. Nurse, licensed practical: May 1 of each odd–numbered year; $69.
49. Nurse, registered: March 1 of each even–numbered year; $66.
50. Nurse–midwife: March 1 of each even–numbered year; $70.
51. Nursing home administrator: July 1 of each even–numbered year; $120.
52. Occupational therapist: November 1 of each odd–numbered year; $59.
53. Occupational therapy assistant: November 1 of each odd–numbered year; $62.
54. Optometrist: January 1 of each even–numbered year; $65.
54m. Perfusionist: November 1 of each odd–numbered year; $56.
55. Pharmacist: June 1 of each even–numbered year; $97.
56. Pharmacy: June 1 of each even–numbered year; $56.
57. Physical therapist: November 1 of each odd–numbered year; $62.
57m. Physical therapist assistant: November I of each odd–numbered year; $44.

NOTE: Subd. 57m. is created eff. 4–1-04 by 2001 Wis. Act 70.

58. Physician: November 1 of each odd–numbered year; $106.
59. Physician assistant: November 1 of each odd–numbered year; $72.
60, Podiatrist: November 1 of each odd–numbered year; $150.
61. Private detective: September 1 of each even–numbered year; $101.
62. Private detective agency: September 1 of each even–numbered year; $53.
63. Private practice school psychologist: October 1 of each odd–numbered year; $103.
63g. Private security person: September 1 of each even–numbered year; $53.
63m. Professional counselor: July 1 of each odd–numbered year; $76.
63t. Professional fund–raiser: September 1 of each even–numbered year; $93.
63u. Professional geologist: August I of each even–numbered year; $59.
63v. Professional geology, hydrology or soil science firm, partnership or corporation: August 1 of each even–numbered year; $53.
63w. Professional hydrologist: August I of each even–numbered year; $53.
63x. Professional soil scientist: August 1 of each even–numbered year; $53.
64. Psychologist: October 1 of each odd–numbered year; $157.
65. Real estate broker: January 1 of each odd–numbered year; $128.
66. Real estate business entity: January 1 of each odd–numbered year; $56.
67. Real estate salesperson: January 1 of each odd–numbered year; $83.
67m. Registered interior designer: August 1 of each even–numbered year; $56.
67q. Registered massage therapist or bodyworker: March 1 of each odd–numbered year; $53.

NOTE: Subd. 67q. is repealed eff. 3–1-03 by 2001 Wis. Act 74.

67v. Registered music, art or dance therapist: October 1 of each odd–numbered year; $53.
67x. Registered music, art, or dance therapist with psychotherapy license: October 1 of each odd–numbered year; $53.
68. Respiratory care practitioner: November I of each odd–numbered year; $65.
68d. Social worker: July 1 of each odd–numbered year; $63.
68h. Social worker, advanced practice: July 1 of each odd–numbered year; $70.
68p. Social worker, independent: July 1 of each odd–numbered year; $58.
68t. Social worker, independent clinical: July 1 of each odd–numbered year; $73.
68v. Speech–language pathologist: February 1 of each odd–numbered year; $63.
69. Time–share salesperson: January 1 of each odd–numbered year; $1 19.
70. Veterinarian: January 1 of each even–numbered year; $105.
71. Veterinary technician: January 1 of each even–numbered year; $58.

(b) The renewal fee for an apprentice, journeyman, student or temporary credential is $10. The renewal dates specified in par.(a) do not apply to apprentice, journeyman, student or temporary credentials.

(c) Except as provided in sub.(3), renewal applications shall include the applicable renewal fee specified in pars.(a) and (b).

(d) If an applicant for credential renewal requests that the department process an application on an expedited basis, the

applicant shall pay a service fee that is equal to the department's best estimate of the cost of processing the application on an expedited basis, including the cost of providing counter or other special handling services.

(3) LATE RENEWAL.(a) Except as provided in rules promulgated under par.(b), if the department does not receive an application to renew a credential before its renewal date, the holder of the credential may restore the credential by payment of the applicable renewal fee specified in sub.(2) (a) and by payment of a late renewal fee of $25.

(b) The department or the interested examining board or affiliated credentialing board, as appropriate, may promulgate rules requiring the holder of a credential who fails to renew the credential within 5 years after its renewal date to complete requirements in order to restore the credential, in addition to the applicable requirements for renewal established under chs. 440 to 480, that the department, examining board or affiliated credentialing board determines is necessary to protect the public health, safety or welfare. The rules may not require the holder to complete educational requirements or pass examinations that are more extensive than the educational or examination requirements that must be completed in order to obtain an initial credential from the department, the examining board or the affiliated credentialing board.

(4) DENIAL OF CREDENTIAL RENEWAL.(a) ***Generally.*** If the department or the interested examining board or affiliated credentialing board, as appropriate, determines that an applicant for renewal has failed to comply with sub.(2) (c) or (3) or with any other applicable requirement for renewal established under chs. 440 to 480 or that the denial of an application for renewal of a credential is necessary to protect the public health, safety or welfare, the department, examining board or affiliated credentialing board may summarily deny the application for renewal by mailing to the holder of the credential a notice of denial that includes a statement of the facts or conduct that warrant the denial and a notice that the holder may, within 30 days after the date on which the notice of denial is mailed, file a written request with the department to have the denial reviewed at a hearing before the department, if the department issued the credential, or before the examining board or affiliated credentialing board that issued the credential.

(b) ***Applicability.*** This subsection does not apply to a denial of a credential renewal under s. 440.12 or 440.13 (2) (b).

History: 1991 a. 39 ss. 3305, 3313; 1991 a. 78, 160, 167,269, 278, 315; 1993 a. 3, 16, 102, 105, 107, 443, 463, 465; 1993 a. 490 ss. 228 *to* 230, 274, 275; 1995 a. 27, 233, 321, 322, 461; 1997 a. 27, 75, 81, 96, 156, 191, 231, 261, 300; 1999 a. *9,* 32: 2001 a. 16, 70, 74, 80, 89.

440.11 Change of name or address. (1) An applicant for or recipient of a credential who changes his or her name or moves from the last address provided to the department shall notify the department of his or her new name or address within 30 days of the change in writing or in accordance with other notification procedures approved by the department.

(2) The department or any examining board, affiliated credentialing board or board in the department may serve any process, notice or demand on the holder of any credential by mailing it to the last–known address of the holder as indicated in the records of the department, examining board, affiliated credentialing board or board.

(3) Any person who fails to comply with sub.(1) shall be subject to a forfeiture of $50.

History: 1987 a. 27; 1991 a. 39; 1993 a. 107; 1997 a. 27.

440.12 Credential denial, nonrenewal and revocation based on tax delinquency. Notwithstanding any other provision of chs. 440 to 480 relating to issuance or renewal of a credential, the department shall deny an application for an initial credential or credential renewal or revoke a credential if the department of revenue certifies under s. 73.0301 that the applicant or credential holder is liable for delinquent taxes, as defined in s. 73.0301 (1) (c).

History: 1997 a. 237.

Cross reference: *See* also ch. RL 9, Wis. adm. code.

440.13 Delinquency in support payments; failure to comply with subpoena or warrant. (1) In this section:

(b) "Memorandum of understanding" means a memorandum of understanding entered into by the department of regulation and licensing and the department of workforce development under s. 49.857.

(c) "Support" has the meaning given in s. 49.857 (1) (g).

(2) Notwithstanding any other provision of chs. 440 to 480 relating to issuance of an initial credential or credential renewal, as provided in the memorandum of understanding:

(a) With respect to a credential granted by the department, the department shall restrict, limit or suspend a credential or deny an application for an initial credential or for reinstatement of an inactive license under s. 452.12 (6) (e) if the credential holder or applicant is delinquent in paying support or fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 (5) and related to support or paternity proceedings.

(b) With respect to credential renewal, the department shall deny an application for renewal if the applicant is delinquent in paying support or fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 (5) and related to support or paternity proceedings.

(c) With respect to a credential granted by a credentialing board, a credentialing board shall restrict, limit or suspend a credential held by a person or deny an application for an initial credential when directed to do so by the department.

History: 1997 a. 191, 237.

440.14 Nondisclosure of certain personal information.

(1) In this section: (a) "List" means information compiled or maintained by the department or a credentialing board that contains the personal identifiers of 10 or more individuals.

(b) "Persona1 identifier" means a name, social security number, telephone number, street address, post–office box number or 9–digit extended zip code.

(2) If a form that the department or a credentialing board requires an individual to complete in order to apply for a credential or credential renewal or to obtain a product or service from the department or the credentialing board requires the individual to provide any of the individual's personal identifiers, the form shall include a place for the individual to declare that the individual's personal identifiers obtained by the department or the credentialing board from the information on the form may not be disclosed on any list that the department or the credentialing board furnishes to another person.

(3) If the department or a credentialing board requires an individual to provide, by telephone or other electronic means, any of the individual's personal identifiers in order to apply for a credential or credential renewal or to obtain a product or service from the department or a credentialing board, the department or the credentialing board shall ask the individual at the time that the individual provides the information if the individual wants to declare that the individual's personal identifiers obtained by telephone or other electronic means may not be disclosed on any list that the department or the credentialing board furnishes to another person.

(4) The department or a credentialing board shall provide to an individual upon request a form that includes a place for the individual to declare that the individual's personal identifiers obtained by the department or credentialing board may not be disclosed on any list that the department or credentialing board furnishes to another person.

(5)(a) The department or a credentialing board may not disclose on any list that it furnishes to another person a personal identifier of any individual who has made a declaration under sub.(2), (3) or (4).

(b) Paragraph (a) does not apply to a list that the department or a credentialing board furnishes to another state agency, a law enforcement agency or a federal governmental agency. In addition, par.(a) does not apply to a list that the department or the board of nursing furnishes to the coordinated licensure information system under s. 441.50 (7). A state agency that receives a list from the department or a credentialing board containing a personal identifier of any individual who has made a declaration under sub.(2), (3) or (4) may not disclose the personal

identifier to any person other than a state agency, a law enforcement agency or a federal governmental agency.

History: 1999 **a.** 88; 2001 **a.** 66.

440.142 Reporting potential causes of public health emergency. (1) A pharmacist or pharmacy shall report to the department of health and family services all of the following:

(a) An unusual increase in the number of prescriptions dispensed or nonprescription drug products sold for the treatment of medical conditions specified by the department of health and family services by rule under s. 252.02 (7).

(b) An unusual increase in the number of prescriptions dispensed that are antibiotic drugs.

(c) The dispensing of a prescription for treatment of a disease that is relatively uncommon or may be associated with bioterrorism, as defined in s. 166.02 (lr).

(2) (a) Except as provided in par.(b), a pharmacist or pharmacy may not report personally identifying information concerning an individual who is dispensed a prescription or who purchases a nonprescription drug product as specified in sub.(1) (a), (b), or (c).

(b) Upon request by the department of health and family services, a pharmacist or pharmacy shall report to that department personally identifying information other than a social security number concerning an individual who is dispensed a prescription or who purchases a nonprescription drug product as specified in sub.(1) (a), (b), or (c).

History: 2001 **a.** 109.

440.20 Disciplinary proceedings. (I) Any person may file a complaint before the department or any examining board, affiliated credentialing board or board in the department and request the department, examining board, affiliated credentialing board or board to commence disciplinary proceedings against any holder of a credential.

(3) The burden of proof in disciplinary proceedings before the department or any examining board, affiliated credentialing board or board in the department is a preponderance of the evidence.

(4) In addition to any grounds for discipline specified in chs. **440** to 480, the department or appropriate examining board, affiliated credentialing board or board in the department may reprimand the holder of a credential or deny, limit, suspend or revoke the credential of any person who intentionally violates s. 252.14 (2) or intentionally discloses the results of a blood test in violation of s. 252.15 (5) (a) or (5m).

History: 1977 **c.** 418; 1979 **c.** 34; 1985 **a.** 29; 1989 **a.** 31,201; 1991 **a.** 39; 1993 **a. 16,** 27, 102, 107,490.

The constitutionality of sub.(3) **is upheld. Gandhi v. Medical Examining** Board, 168 Wis. 2d 299, 483 N.W.2d 295 (Ct. App. 1992).

A hearing is not required for a complaint **filed under this section.** 68 Atty. **Gen.** 30.

The "preponderance of the evidence" burden of proof under sub.(3) **does not violate the due process rights of a licensee. 75 Atty. Gen.** 76.

440.205 Administrative warnings. If the department or a board, examining board or affiliated credentialing board in the department determines during an investigation that there is evidence of misconduct by a credential holder, the department, board, examining board or affiliated credentialing board may close the investigation by issuing an administrative warning to the credential holder. The department or a board, examining board or affiliated credentialing board may issue an administrative warning under this section only if the department or board, examining board or affiliated credentialing board determines that no further action is warranted because the complaint involves a first occurrence of a minor violation and the issuance of an administrative warning adequately protects the public by putting the credential holder on notice that any subsequent violation may result in disciplinary action. If an administrative waming is issued, the credential holder may obtain a review of the administrative waming through a personal appearance before the department, board, examining board or affiliated credentialing board that issued the administrative warning. Administrative warnings do not constitute an adjudication of guilt or the imposition of discipline and may not be used as evidence that the credential holder is guilty of the alleged misconduct. However, if a subsequent allegation of misconduct by the credential holder is received by the department or a board, examining board or affiliated credentialing board in the department, the matter relating to the issuance of the administrative waming may be reopened and disciplinary proceedings may be commenced on the matter, or the administrative warning may be used in any subsequent disciplinary proceeding as evidence that the credential holder had actual knowledge that the misconduct that was the basis for the administrative warning was contrary to law. The record that an administrative warning was issued shall be a public record. The contents of the administrative waming shall be private and confidential. The department shall promulgate rules establishing uniform procedures for the issuance and use of administrative warnings.

History: 1997 a. 139.

Cross reference: See also ch. RL 8, Wis. **adm code.**

440.21 Enforcement of laws requiring credential. (I) The department may conduct investigations, hold hearings and make findings as to whether a person has engaged in a practice or used a title without a credential required under chs. 440 to **480.**

(2) If, after holding a public hearing, the department determines that a person has engaged in a practice or used a title without a credential required under chs. 440 to 480, the department may issue a special order enjoining the person from the continuation of the practice or use of the title.

(3) In lieu of holding a public hearing, if the department has reason to believe that a person has engaged in a practice or used a title without a credential required under chs. 440 to **480,** the department may petition the circuit court for a temporary restraining order or an injunction as provided in ch. 813.

(4) (a) Any person who violates a special order issued under sub.(2) may be required to forfeit not more than $10,000 for each offense. Each day of continued violation constitutes a separate offense. The attorney general or any district attorney may commence an action in the name of the state to recover a forfeiture under this paragraph.

(b) Any person who violates a temporary restraining order or an injunction issued by a court upon a petition under sub.(3) may be fined not less than $25 nor more than $5,000 or imprisoned for not more than one year in the county jail or both.

History: 1991 **a.** 39; 1993 **a.** 102.

Cross reference: See also ch. RL 3, Wis. adm. **code.**

440.22 Assessment of costs. (I) In this section, "costs of the proceeding" means the compensation and reasonable expenses of hearing examiners and of prosecuting attorneys for the department, examining board or affiliated credentialing board, a reasonable disbursement for the service of process or other papers, amounts actually paid out for certified copies of records in any public office, postage, telephoning, adverse examinations and depositions and copies, expert witness fees, witness fees and expenses, compensation and reasonable expenses of experts and investigators, and compensation and expenses of a reporter for recording and transcribing testimony.

(2) In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder. Costs assessed under this subsection are payable to the department. Interest shall accrue on costs assessed under this subsection at a rate of **12%** per year beginning on the date that payment of the costs are due as ordered by the department, examining board, affiliated credentialing board or board. Upon the request of the department of regulation and licensing, the department of justice may commence an action to recover costs assessed under this subsection and any accrued interest.

(3) In addition to any other discipline imposed, if the department, examining board, affiliated credentialing board or board assesses costs of the proceeding to the holder of the credential under sub.(2), the department, examining board, affiliated credentialing board or board may not restore, renew or otherwise issue any credential to the holder until the holder has made payment to the department under sub.(2) in the full amount assessed, together with any accrued interest.

History: 1987 **a.** 27; 1991 **a.** 39; 1993 **a.** 107; 1997 **a.** 27.

The collection of costs assessed under this section may not be pursued in an independent action for **a money judgment. The costs may be collected only as a**

condition of reinstatement of the disciline practitioner's credentials. State v. Dunn. 213 Wis. 2d 363, 570 N.W.2d 674 (Ct. App. 1997).

440.23 Cancellation of credential; reinstatement. (1) If the holder of a credential pays a fee required under s. 440.05 (1) or (6), 440.08, 444.03, 444.05, 444.11 or 459.46 (2) (b) by check or debit or credit card and the check is not paid by the financial institution upon which the check is drawn or if the demand for payment under the debit or credit card transaction is not paid by the financial institution upon which demand is made, the department may cancel the credential on or after the 60th day after the department receives the notice from the financial institution, subject to sub.(2).

(2) At least 20 days before canceling a credential, the department shall mail a notice to the holder of the credential that informs the holder that the check or demand for payment under the debit or credit card transaction was not paid by the financial institution and that the holder's credential may be canceled on the date determined under sub.(1) unless the holder does all of the following before that date:

(a) Pays the fee for which the unpaid check or demand for payment under the credit or debit card transaction was issued.

(b) If the fee paid under par.(a) is for renewal and the credential has expired, pays the applicable penalty for late renewal specified in s. 440.08 (3).

(c) Pays the charge for an unpaid draft established by the depository selection board under s. 20.905 (2).

(3) Nothing in sub.(1) or (2) prohibits the department from extending the date for cancellation to allow the holder additional time to comply with sub.(2) (a) to (c).

(4) A cancellation of a credential under this section completely terminates the credential and all rights, privileges and authority previously conferred by the credential.

(5) The department may reinstate a credential that has been canceled under this section only if the previous holder complies with sub.(2) (a) to (c) and pays a $30 reinstatement fee.

History: 1989 a. 31; 1991 a. 39, 189, 269, 278, 315; 1993 a. 16; 1995 a. 27; 1999 a. 9.

440.25 Judicial review. The department may seek judicial review under ch. 227 of any final disciplinary decision of the medical examining board or affiliated credentialing board attached to the medical examining board. The department shall be represented in such review proceedings by an attorney within the department. Upon request of the medical examining board or the interested affiliated credentialing board, the attorney general may represent the board. If the attorney general declines to represent the board, the board may retain special counsel which shall be paid for out of the appropriation under s. 20.165 (1) (g).

History: 1985 a. 340; 1993 a. 107.

CHAPTER 456

NURSING HOME ADMINISTRATOR EXAMINING BOARD

456.01 Definitions.
456.02 Duties.
456.03 Licenses.
456.04 Examination requirements.
456.05 Examinations.
456.07 Regstration.
456.08 Reciprocity
456.09 Penalties.
456.10 Suspension and revocation.
456.11 Restoration of licenses and registrations.

Cross–reference: See definitions in s. 440.01.
Cross Reference: See also **NHA.** Wis. adm. code.

456.01 Definitions. In this chapter:

(1) "Examining board" means the nursing home administrator examining board.

(2) "Nursing home" has the meaning provided in s. 50.01 (3), plus includes all public medical institutions under ss. 49.70, 49.71 and 49.72.

(3) "Nursing home administrator" means any individual responsible for planning, organizing, directing and controlling the operation of a nursing home, or who in fact performs such functions, whether or not such functions are shared by one or more other persons.

(4) "Practice of nursing home administration" means the planning, organizing, directing and control of the operation of a nursing home.

(5) "Provisional license" is a temporary license issued to a provisional nursing home administrator under this chapter.

(6) "Provisional nursing home administrator" means an individual who has been licensed as such under this chapter.

History: 1975 c. 413 s. **IS;** 1979 c. 32 s. 92 (1); 1979 c. 124; 1983 a. 189; 1995 a. 27.

456.02 Duties. The examining board shall:

(1) Develop, impose and enforce standards which must be met by individuals in order to receive a license as a nursing home administrator, which standards shall be designed to insure that nursing home administrators will be individuals who are of good character and are otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators;

(2) Develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets such standards;

(3) Issue licenses to individuals determined, after the application of such tcchniqucs, to meet such standards, and revoke or suspend licenses previously granted by the examining board in any case where the individual holding any such license is determined substantially to have failed to conform to the requirements of such standards;

(4) Establish and carry out procedures designed to insure that individuals licensed as nursing home administrators will, during any period that they serve as such, comply with the requirements of such standards:

(5) Subject to the rules promulgated under s. 440.03 (1), receive, investigate, and take appropriate action with respect to, any charge or complaint filed with the examining board to the effect that any individual licensed as a nursing home administrator has failed to comply with the requirements of such standards;

(6) In cooperation with other agencies and appropriate organizations, conduct a continuing study of the practice of nursing home administration within the state with a view to the improvement of the standards imposed for the licensing of such administrators and of proccdurcs and methods for the enforcement of such standards with respect to administrators of nursing homes who have been liccnscd as such;

(7) Develop and enforce standards for the supervised practical experience to be required for licensure; and

(8) Appoint such advisory councils as are necessary for the proper and efficient administration of this chapter.

History: 1977 c. 418.
Cross Referenee: See also **NHA,** Wis. adrn. code.

456.03 Licenses. An applicant for a license as a nursing home administrator who has successfully complied with the requirements for licensure under this chapter and passed the examination shall be granted a license by the examining board, certifying that the applicant has met the requirements of the laws and rules entitling the applicant to serve, act, practice and otherwise hold himself or herself out as a duly licensed nursing home administrator.

History: 1975 c. 198; 1979 c. 162; 1991 a. 39.
Cross Reference: See also ch. **NHA** 4, Wis. adm. code.

456.04 Examination requirements. The examining board shall allow any person to take the examination for licensure as a nursing home administrator who satisfies all of the following requirements:

(1) Pays the fee under s. 440.05 (1).

(2) Subject to ss. 111.321, 111.322 and 111.335, does not have an arrest or conviction record.

(3) Is 18 years of age.

(4) Completes a regular course of study or equivalent specialized courses or a program of study which the examining board considers adequate academic preparation for nursing home administration.

History: 1971 c. 213 s. 5; 1975 c. 198; 1977 c. 29, 333; 1979 c. 337; 1981 c. 380; 1981 c. 391 s. 211.
Cross Reference: See also chs. **NHA** 2 and 3 and s. **NHA** 1.02, Wis. adm. code.

456.05 Examinations. The examining board shall determine the subjects of examination for applicants for licensure as nursing home administrators. and the scope, content and format of such examinations. The examinations shall include examination of the applicant's knowledge of:

(1) The laws governing the operation of long–term care facilities and the protection of the interests, safety and well–being of the residents therein; and

(2) The elements of proper and effective administration of long–term care facilities; and

(3) The psychological, physical, medical and social needs of persons served in such facilities.

Cross Reference: See also chs. NHA **2** and **3.** Wis. adrn. code.

456.07 Regstration. **(1)** Every individual who holds a license as a nursing home administrator issued by the department shall biennially apply to the examining board for a new certificate of registration and report any facts requested by the examining board on forms provided for such purpose.

(2) The application for a new certificate of registration shall include the applicable renewal fee specified under s. 440.08 **(2)** (a)

and evidence satisfactory to the examining board that during the biennial period immediately preceding application for registration the applicant has attended a continuation education program or course of study. During the time between initial licensure and commencement of a full 2 year licensurc period new licensees shall not be required to meet continuing education requirements. All registration fees are payable on or before the applicable renewal date specified under s. 440.08 *(2)* (a).

(3) Upon approval of an application for registration the examining board shall issue a certificate of registration to the nursing home administrator.

(4) The license of a nursing homc administrator who fails to comply with this section, and who continues to act as a nursing home administrator, may be suspended or revoked by the examining board.

(5) Only an individual who has qualified as a licensed and registered nursing home administrator under this chapter and who holds a valid current registration certificate under this section for the current registration period may use the title "Nursing Home Administrator", and the abbreviation "N.H.A." after the person's name. No other person may use or be designated by such title or such abbresiation or any other words, letters, sign, card or device tending to or intended to indicate that the person is a licensed and registered nursing home administrator.

History: 1977 c. 29; 1979 c. **162;** 1991 **a.39.**

456.08 Reciprocity. The examining board may grant a nursing home administrator license under this chapter to a person who holds a nursing home administrator license issued by the proper authorities of any other state, upon payment of the fee specified in s. 440.05 (2) and upon submission of satisfactory evidence of the person's qualifications.

History: 1977 c. 29; 1991 a. 39.

456.09 Penalties. (1) No person may:

(a) Sell or fraudulently obtain or furnish any license or aid or abet therein; or

(b) Practice as a nursing home administrator, under cover of any license or registration illegally or fraudulently obtained or unlawfully issued; or

(c) Practice as a nursing home administrator or use in connection with his or her name any designation tending to imply that the person is a nursing home administrator unless duly licensed and registered to so practice under this chapter; or

(d) Practice as a nursing home administrator during the time his or her license or registration issued under this chapter is suspended or revoked; or

(e) Otherwise violate this chapter.

(2) Any person who violates sub. (1) may be fined not more than $1,000 or imprisoned for not more than one year in the county jail or both.

History: 1979c. 162ss. 35. 38(7); 1981 c. 314.

456.10 Suspension and revocation. (1) Subject to the rules promulgated under s. 440.03 (1), the examining board may, under sub. (2), revoke, limit or suspend the license or registration of any person practicing or offering to practice nursing home administration or may reprimand, censure or otherwise discipline a licensee under this section if any of the following is applicable:

(a) Proof is submitted that the licensee is unfit or incompetent by reason of negligence, habits or other causes.

(b) Proof is submitted that the licensee has willfully or repeatedly violated this chapter or the rules enacted in accordance with this chapter.

(bm) Proof is submitted that the licensee has willfully or repeatedly acted in a manner inconsistent with the health and safety of the patients of the home in which the licensee is the administrator.

(c) Proof is submitted that the licensee is guilty of fraud or deceit in his or her admission to the practice of nursing home administration.

(d) Proof is submitted that while the licensee was the administrator of a nursing home, that nursing home engaged in conduct that constituted a pattern of serious violations of federal or state statutes, rules or regulations.

(2) The examining board shall have jurisdiction to hear all charges brought under this section against persons licensed and registered as nursing homc administrators or licensed as provisional nursing home administrators and upon such hearings shall determine such charges upon their merits. If the examining board determines that such person is guilty of the charges, the license or registration may be revokcd or suspended or the licensee may be reprimanded, censured or disciplined.

History: 1977 *c.* 418; 1979 c. 355; 1997 a. 237; 1999 a. 85.

Cross Reference: ***See*** also ch. **NHA** 5, Wis. adm. code.

456.11 Restoration of licenses and registrations. (1) The examining board may reinstate a license or registration to any person whose license or registration has been revoked. This subsection does not apply to a license or registration that is revoked under s. 440.12.

(2) Application for the reinstatement of a license or registration shall not be made prior to one year after revocation and shall be made in such manner as the examining board directs. This subsection does not apply to a license or registration that is revoked under s. 440.12.

History: 1997 a. 237.

Chapter NHA 1

AUTHORITY AND DEFINITIONS

NHA 1.01 Authority NHA 1.02 Definitions

Note: Chapter NHA 1 as it existed on June 30, 1980, was repealed and a new chapter NHA 1 was created effective July 1, 1980.

NHA 1.01 Authority. The rules in chs. NHA 1 to 5 are adopted pursuant to ss. 15.08 (5) (b), 227.11 (2) and 456.02, Stats.

History: Cr. Register, June, 1980. No. 294, eff. 7–1–80; correction made under s. 13.93(2m) (b) 7., Stats., Register, May, 1986, No. 365; correction made under s. 13.93(2m) (b) 7., Stats., Register. September, 1989. No. 405; am. Register, September, 1997, No. 501, eff. 10–1–97.

NHA 1.02 Definitions. As used in ch. 456, Stats., and in chs. NHA 1 to 5:

(1) "Accredited college or university" means an educational institution that is accredited by a regional or national accrediting agency recognized by the U.S. department of education.

(2) "Experience in the field of institutional administration" means work experience acquired in any consecutive 36–month penod within the 5–year period immediately preceding the date of application for licensure, as an employee, student, trainee or intern in the total operation and activities of a nursing home under the supervision of persons licensed under ch. 456, Stats., or holding the equivalent license in another state recognized by the board, and exposure to and knowledge of each of the following:

(a) Fiscal management, including, but not limited to:

1. Financial planning, forecasting and budgeting,
2. Accounting practices and principles,
3. Fiscal intermediaries,
4. Public finance programs, and
5. Management of residents' funds.

(b) Environmental services, including, but not limited to:

1. Preventive maintenance programs for buildings and equipment;
2. Sanitation procedures, practices and policies;
3. Design needs of the disabled;
4. Environmental safety practices, policies and procedures and accident prevention;
5. Maintenance, housekeeping, laundry and security functions;
6. Relationship between health facility management; and
7. Government environmental service providers.

(c) Resident services, including, but not limited to:

1. Therapy services,
2. Physician services,
3. Social services,
4. Resident food services,
5. Resident activities,
6. Patient care,
7. Drug handling and control,
8. Nursing services, and
9. Rehabilitative and restorative.

(d) Personnel management, including, but not limited to:

1. Recruiting, interviewing, hiring, training,
2. Reviewing, disciplining, supervising of employees,
3. Record–keeping,
4. Preparation of statistical reports,
5. Wage and salary administration,
6. Health care staffing patterns,
7. Human relations,
8. Administering fringe benefit programs, and
9. State and federal employment regulations.

(e) State and federal inspections for compliance with applicable nursing home laws: rules and regulations.

(2n) '"Inspection" means any type of inspection conducted by the Wisconsin department of health and family services pursuant to s. 50.04, Stats., or 42 CFR Part 488.

(3) "NAB" means the national association of boards of examiners of long term care administrators.

(3m) "Nursing home" has the meaning given under s. 456.01 (2), Stats.

(4) "One contact hour" means a period of attendance in a continuing education program of at least 50 minutes.

(5) "One credit hour" means a period of at least 50 minutes of instruction for a term of not less than 16 sessions.

(5m) "Pattern of serious violations of federal or state statutes, rules or regulations" means the occurrence of any of the following:

(a) One or more class A violations, as defined in s. 50.04 (4) (b) 1., Stats., in each of at least 2 inspections within any consecutive 36–month period.

(b) One or more deficiencies related to participation requirements under 42 CFR sections 483.13, 483.15 or 483.25, which constitute immediate jeopardy to a resident's health or safety, in each of at least 2 inspections within any consecutive 36–month period.

(c) One or more deficiencies related to participation requirements under 42 CFR sections 483.13, 483.15 or 483.25, which constitute a pattern of actual harm, but which does not constitute immediate jeopardy to a resident's health or safety, in each of at least 2 inspections within any consecutive 36–month period.

(d) One or more deficiencies related to participation requirements under 42 CFR sections 483.13, 483.15 or 483.25, which constitute widespread actual harm, but which does not constitute immediate jeopardy to a resident's health or safety, in each of at least 2 inspections within any consecutive 34–month period.

(e) One class A violation, as defined in s. 50.04 (4) (b) I., Stats., and one deficiency of any type specified in par. (b), (c) or (d), within 36 months of each other, but resulting from different inspections.

(f) At least 2 or more deficiencies in any combination of single deficiencies of the types specified in par. (b), (c) or (d), within 36 months of each other, but resulting from different inspections.

(6) "Program of study" means a prescribed sequence of courses offered by a university or college, accredited by a regional or national accrediting agency recognized by the U.S. department of education, which consists of at least one course of 3 credit hours in each of the following:

(a) Laws governing the operation of licensed nursing homes;

(b) Elements of proper and effective administration of licensed nursing homes;

(c) Protection of the interests, safety and well–being of residents: and

(d) Psychological, physical, medical and social needs of residents.

(7) "Regular course of study" means a prescribed program of courses offcrcd by a university or college, accredited by a regional or national accrediting agency recognized by the U.S. department of education, which leads to an associate, baccalaureate, master or doctoral degree and which includes a program of study and a supervised clinical practicum.

(8) "Specialized courses" means individual courses offered by one or more educational institutions or course providers which lead to adequate preparation in each of the following general subject areas in nursing home administration:

(a) Administration of a nursing home.

(b) Long–term patient care.

(c) Organizations of health–care systems.

(9) "Supcrviscd clinical practicum" means work experience acquired in a nursing home in conjunction with a regular course of study.

History: Cr. Register; June, 1980, No. 294, eff. 7–1–80; am. (6) (intro.), Register. May, 1986, No. 365, **eff.** 6–1–86: am. (4) (a) and (b). (6) (intro.), cr. (6) (e), Register, September. 1989, No. 405, eff. 10–1–89; renum. (1) to (6) to be (5), (4), (7), (6), (8) and (1) and am. (1) (intro.), cr. (2) and (3), Register, June. 1991, No. 426, eff. 7–1–91: reprinted to correct printing error, Register, July, 1992, No. 439; corrections made in (1) under s. 13.03 (2m) (b) 1., Stats., Register, October, 1993. No. 454; am. (intro.), (1) (intro.), (b) (intro.), 7. and (c) (intro.), 9., (d) (intro.), (6) (intro.) and (7), r. and recr. (1) (c) 2.. rcnum. 12) and (8) to be (3m) and (8) (intro.) and am.. cr. (8) (a). (b), (c) and (Y). Register. September. 1997. No. 501. eff. 10–1–97; renum. (1) to be (2), cr. (1), Register, January, 2000, No. 529, eff. 2–1–00; **CR 01–101: am. (intro.)** and **(3), cr. (2n)** and **(5m), Register February 2002 No. 554, eff. 3–1-02.**

Chapter NHA 2

REQUIREMENTS FOR EXAMINATION

NHA 2.01 Examinations.
NHA 2.02 Application for examination
NHA 2.03 Examination requirements.
NHA 2.04 Passing grades.
NHA 2.05 Rules of conduct

Note: Chapter NHA 2 as it existed on June 30. 1980, was repealed and a new chapter NHA 2 was created effective July 1, 1980.

NHA 2.01 Examinations. (1) The board shall determine the subjects for examination of applicants for license as a nursing home administrator. The scope, content, form and character of the examinations shall be the same for all candidates.

(2) Examinations shall be held at a time and place designated by the board.

(3) The examination shall consist of the following:

(a) Part I – the national examination prepared by NAB, and

(b) Part II – the state law examination prepared by the board.

History: Cr. Register, June. 1980, No. 294, eff. 7–1–80; cr. (3), Register, February, 1995, No. 470, eff. 3–1–95.

NHA 2.02 Application for examination. An applicant for examination for a license as a nursing home administrator shall apply on a form provided by the board. An applicant shall also submit to the board:

(1) Evidence satisfactory to the board of having completed any one of the following:

(a) A regular course of study.

(b) A program of study.

(c) Specialized courses.

(2) The fees authorized by s. 440.05 (1), Stats.

(3) A statement relating to any pending criminal charge or conviction record, subject to ss. 111.321, 111.322 and 111.335, Stats. An applicant who has a pending criminal charge or has a conviction record shall provide the board with all related information necessary for the board to determine whether the circumstances of the pending charge or conviction substantially relate to the practice of nursing home administration.

(4) A qualified applicant with a disability shall be provided with reasonable accommodations requested in connection with the completion of an application for examination submitted under this section, or relating to the administration of an examination required under s. NHA 2.03.

Note: Application forms are available on request to the board office at 1400 East Washington Avenue, P. O. Box 8935. Madison, Wisconsin 53708.

Note: A list of all current examination fees may be obtained at no charge from the Office of Examinations. Department of Regulation and Licensing, 1400 East Washington Avenue, P. O. Box 8935, Madison, Wisconsin 53708.

History: Cr. Register. June. 1980, No. 294, eff. 7–1–80; r. and recr. Register. May, 1986, No. 365. eff. 6-1–86; am. (1) (c) 1. to 3., Register. June, 1991, No. 426, eff. 7–1–91; cr. (1) (d), Register, February, 1995, No. 470, eff. 3–1–95; r. and recr. Register. September. 1997, No. 501, eff. 10–1–97; **CR 01–101: am. (intro.), Register February 2002 No. 554, eff. 3–1–02**.

NHA 2.03 Examination requirements. An applicant for a license as a nursing home administrator after meeting the requirements for qualification for examination shall pass the examination under s. NHA 2.01 (3).

History: Cr. Register. June, 1980. No. 294. eff. 7–1–80; am. (1), Register, June, 1991, No. 426, eff. 7–1–91; renum. (intro.) to be NHA 2.03, r. (1), (2) and (3), Register, September, 1997, No. 501, eff. 10–1–97.

NHA 2.04 Passing grades. (1) NATIONAL. To pass the national examination, each applicant shall receive a grade determined by the board to represent minimum competence to practice. The board may adopt the passing grade recommended by the examination provider.

(2) STATE. To pass the state law examination, each applicant shall receive a grade determined by the board to represent minimum competence to practice. The board shall determine the passing grade after consultation with subject matter experts who have reviewed a representative sample of the examination questions and available candidate performance statistics.

History: Cr. Register, September, 1997, No. 501, eff. 10–1–97.

NHA 2.05 Rules of conduct. The board may deny the application for licensure of any applicant who violates the rules of conduct of the examination.

History: Cr. Register, September. 1997, No. 501, eff. 10–1–97.

Chapter NHA 3

EDUCATIONAL PROGRAMS MEETING LICENSING AND CONTINUING EDUCATIONAL REQUIREMENTS

NHA 3.01 Board approval
NHA 3.02 Continuing education
NHA 3.03 Approval of continuing education programs

Note: Chapter NHA 3 as it existed on June 30, 1980 was repealed and a new chapter NHA 3 was created effective July 1, 1980

NHA 3.01 Board approval. (1) All regular courses of study, programs of study and specialized courses shall be approved by the board.

Note: A list of approved regular courses of study, programs of study and specialized courses is available upon request to the board office at 1400 East Washington Avenue. P. O. Box 8935. Madison. Wisconsin 53708.

(2) An application for approval of a regular course of study shall include a current copy of the college or university catalog which contains a summary of the requirements for completion of the degree program, including a list of the required courses and a description of the supervised clinical practicum.

(3) An application for approval of a program of study shall include a current copy of the college or university catalog which contains a summary of the requirements for completion of the program of study, including a list and description of the required courses and the number of credits approved for each course.

(4) An application for approval of a specialized course shall include a current copy of the course syllabus, a description of the course and the number of proposed credits.

History: Cr. Register, June, 1980, No. 294, eff. 7–1–80; renum. NHA 3.01 lo be NHA 3.01 (1), cr. (2), (3) and (4). *Register.* September. 1997, No. 501, eff. 10–1–97.

NHA 3.02 Continuing education. (1) Every nursing home administrator shall complete at least 24 contact hours in approved continuing cducation programs in each biennial renewal period.

(1m) Except as provided in s. NHA 3.03 (4), continuing education programs must be approved by NAB.

Note: A list of approved programs is available upon request to the hoard office at 1400 East Washington Avenue. P. O. Box 8935, Madison, Wisconsin 53708.

(2) Continuing education contact hours may apply only to the biennial renewal period in which the contact hours are acquired.

(3) If audited, a nursing homu administrator shall submit to the board a certificate of attendance issued by the provider or other evidence of attendance satisfactory to the board.

(4) To audit for compliance the board may require any nursing home administrator to submit cvidcncc of completion of 24 hours of continuing education for the biennium preceding the renewal.

(5) Every nursing home administrator shall maintain records of continuing education hours for at least 5 years for auditing purposes.

History: Cr. Register. June. 1980. No. 294. eff. 7- 1-80: am. (3), cr. (4) and (5), Register, June, 1991, No. 426, eff. 7–1–91: cr. (1m), Register, September. 1997, No. 501, eff. 10–1–97; **CR 01–101:** am. **(5), Register February 2002 No. 554, eff. 3–1–02.**

NHA 3.03 Approval of continuing education programs. (1) An application for a continuing education program shall be approved by NAB according to the following criteria established by the board if all of the following are satisfied:

(a) The program relates to one or more of the following general subject areas:

1. General administration of a nursing home.
2. Long–term patient care.
3. Organization of healtit–care systems.

(b) The program is available to all nursing home administrators regardless of membership in any organization.

(c) The provider of the continuing education program agrees to monitor the attendance, furnish to each participant evidence of having completed the program, and maintain records verifying attendance for 5 years.

Note: To obtain an application for approval of a continuing education program, contact NAB at 1444 I Street, N.W., #700, Washington, D.C.. 20006–2210.

(2) A separate application must be submitted for each continuing education program.

(3) In–service programs sponsored by nursing homes are not eligible for approval unless the programs are available to all nursing home adminishators.

(4) Any continuing education program submitted to NAB in a timely manner according to NAB procedures which is not approved may be submitted to the board for consideration. The request must be submitted on forms provided by the board at least 20 days prior to the date the program will be offered, and shall include the written notification from NAB stating the reasons the program was not approved, an outline of the program, a general description of the subject matter, the time and location, and the name and title of the instructor of the program.

Note: Correspondence to the Nursing Home Administrator Examining Board should be mailed to P. O. Box 8935. Madison. Wisconsin 53708.

History: Cr. Register. June, 1980, No. 294, eff. 7–1–80; r. (1), (4) and (5), renum. (2), (3) and (6) to be (1) to (3) and am. (1) (intro.), (a), (c) and (3), cr. (4), Register, June, 1991, No. 426, eff. 7–1–91: am. (1) (a) 1., (3) and (4), Register, September. 1997, No. 501, eff. 10–1–97.

Chapter NHA 4

LICENSURE

NHA 4.01 Licensure.
NHA 4.02 Biennial renewal.
NHA 4.03 Reciprocity
NHA 4.04 Accommodations relating to a disability.
NHA 4.05 Display of license and current registration certificate

Note: Chapter NHA 4 as it existed on June 30. 1980 was repealed and a **new** chapter NHA 4 was created effective July 1, 1980.

NHA 4.01 Licensure. (1) APPLICATION. An applicant for licensure shall:

(a) Submit an application for licensure on a form approved by the board.

(b) Satisfy the examination requirements specified in s. NHA 2.01 (3).

(c) If the applicant has not completed a regular course of study, submit evidence of successful completion of one year of experience in the field of institutional administration.

Note: Application fonns for licensure are available on request to the board office located at 1400 East Washington Avenue, P.O. Box 8935. Madison, Wisconsin 53708.

(d) Satisfy the educational requirements specified in s. NHA 2.02 (1).

(e) Provide a statement relating to any pending criminal charge or conviction record, subject to ss. 111.321, 111.322 and 111.335, Stats. An applicant who has a pending criminal charge or has a conviction record shall provide the board with all related information necessary for the board to detcrminc whether the circumstances of the pending charge or conviction substantially relate to the practice of nursing home administration.

(2) REAPPLICATION. An applicant who fails to satisfy all requirements for licensure within 2 years after filing an application for licensure shall file a new application, retake the state law examination and resubmit verification of successful completion of the NAB examination.

(3) REGISTRATION. Every person granted a license as a nursing home administrator shall be deemed registered for the current registration period. Registrants must qualify biennially for certificates of renewal.

History: Cr. Register, June, 1980, No. 294, eff. 7–1–80; r. and recr. Register, February. 1995, No. 470, eff. 3–1–95; am. (1) (b), r. and recr. (1) (c), cr. (1) (d) and (e), Register, September, 1997, No. 501, eff. 10–1–97: am. (1) (c), Register. January, 2000, No. 529, eff. 2–1–00; **CR 01–101: am. (1) (d), Register February 2002 No. 554, eff. 3–1–02.**

NHA 4.02 Biennial renewal. (1) REQUIREMENTS FOR RENEWAL. To renew and obtain a new certificate of registration a licensee must, by July 1 of the even–numbered year following initial licensure and every 2 years thereafter, file with the board:

(a) An application for renewal on a form prescribed by the board;

(b) Evidence that the licensee has, during the biennial period immediately preceding application, completed the continuing education requirements specified in s. **NH.4** 3.02;

(c) A fee in the amount required under s. 440.08 (2) (a) 51., Stats.

(2) FAILURE TO RENEW. A licensee who fails to meet the requirements of sub. (1) by the renewal date shall cease and desist from acting as a nursing home administrator. **A** licensee who has failed to meet the requirements under sub. (1) may renew and obtain a new certificate of registration by satisfying the following requirements:

(a) If applying less than 5 years after the renewal date, submitting to the board:

1. An application for renewal on a form prescribed by the board;

2. An affidavit that the licensee has not acted as a nursing home administrator after July 1 of the biennial period for which the licensee was last currently registered;

3. Evidence that the licensee has. within the 24 months immediately preceding application, completed 24 contact hours in approved continuing education programs as required under s. NHA 3.02; and,

4. The renewal fees specified in s. 440.08 (2) (a) 51. and (3), Stats.

(b) If applying 5 years or more after the renewal date, satisfying the requirements in par. (a) and submitting proof of:

1. Successful completion of educational coursework required by the board to ensure protection of the public health, safety and welfare; and,

2. Successful completion of an examination rcquired by the board to ensure protection of the public health, safety and welfare.

History: Cr. Register, June, 1980, No. 294, eff. 7–1–80; correction in (2) (intro.) made under s. 13.93 (2m) (b) 4.. Stats., Register, Septemb 1, 1989, No. 405; am. (3) (c), Register, June, 1991, No. 426, eff. 7–1–91; am. (1) (c), r. and recr. (2). r. (3), renum. (4) to be (3), Register, October, 1993, No. 454, eff. 11–1–93: renum. (3) to he NIfA 4.05, Register, September, 1997, No. 501, eff. 10–1–97.

NHA 4.03 Reciprocity. The board at its discretion and otherwise subject to laws pertaining to licensure of nursing home administrators may grant a license as a nursing home administrator to an applicant who holds a current license issued by the proper authorities in any other jurisdiction, which has not been revoked or suspended, upon payment of the fee required under s. 440.05 (2), Stats., and submission of evidence satisfactory to the board that the applicant has satisfied all of the following:

(1) Has a bachelor's degree in any field that was obtained from an accredited college or university or holds a current certification as a nursing home administrator granted by the American college of health care administrators.

Note: The American College of Health Care Administrators may bc contacted at 1800 Diagonal Road, Suite 355, Alexandria, VA 22314.

(2) Has practiced as a nursing home administrator for at least 2,000 hours in any consecutive 3–year period within the 5–year period immediately preceding the date of application for licensure.

(3) Has passed the state law examination required for licensure under s. NHA 2.01 (3) (b).

(4) Does not have an arrest or conviction record, subject to ss. 111.321, 111.322 and 111.335, Stats. An applicant who has a pending criminal charge or has a conviction record shall provide the board with all related information necessary for the board to determine whether the circumstances of the pending charge or conviction substantially relate to the practice of nursing home administration.

History: Cr. Register, June, 1980, No. 294, eff. 7 1 80; am. (intro.). (1) and (3), r. and recr. (2), Register, May, 1986, No. 365. eff. 6–1–86; am. (3), Register. June. 1991. No. 426. eff. 7–1–91; am. (intro.), (2) and (3), cr. (4), Register, September, 1997, No. 501, eff. 10–1–97; am. (intro.) and (2) to (4), r. and recr. (1), Register, January, 2000. No. 529, eff. 2–1–00.

NHA 4.04 Accommodations relating to a disability. A qualified applicant with a disability shall be provided with reasonable accommodations requested in connection with the

completion of an application for licensure submitted under s. NHA 4.01 or 4.03.

History: Cr. Register. June, 1980, No. 394, eff. 7-1-80; r. and recr., Register, September, 1997, No. 501, eff. 10-1-97.

NHA 4.05 Display of license and current registration certificate. The license and certificate of biennial registration shall be displayed in a prominent place by every person licensed and currently registered by the board.

History: Renum. from NHA 4.02 (3), Register, September, 1997, No. 501, eff. 10-1-97.

Chapter NHA 5

STANDARDS OF CONDUCT

NHA 5.02 Unprofessional conduct.

Note: Chapter NHA 5 as it existed on June 30, 1980 was repealed and a new chapter NHA 5 was created effective July 1, 1980.

NHA 5.02 Unprofessional conduct. The following conduct, without limitation because of enumeration, constihites unfitness to practice as a nursing home administrator:

(1) Violating in a negligent manner, by an act or acts of omission or commission, or aiding or abetting the violation of any law substantially relating to the practice of nursing home administration;

(2) Practicing in a manner which substantially departs from the standard of care ordinarily exercised by a nursing home administrator which harms or could have hanned a patient;

(3) Practicing while impaired by physical, mental or emotional disorder or drug or alcohol abuse;

(4) Intentionally falsifying patient records;

(5) Failing to report to the board any practice by a licensee that constitutes a consistent danger to the health, welfare, or safety of patient or public;

(6) Engaging in any practice as a nursing home administrator which constihites a substantial danger to the health, welfare, or safety of patient or public;

(7) Refusing to render services to a person because of race, color, sex, religion, or age;

(8) Obtaining or attempting to obtain any compensation by fraud;

(9) Impersonating another nursing home administrator;

(10) Advertising in a manner which is false, deceptive, or misleading;

(11) Exercising undue influence on or taking unfair advantage of a patient;

(12) Committing or aiding or abetting the commission of rebate or fee–splitting arrangements with health care providers;

(13) Having one's license revoked or suspended in another state or United States jurisdiction; or,

(14) Violating or attempting to violate any formal disciplinary order of the board.

(15) Intentionally providing false information to the board in connection with an application for a license or for renewal of a license.

History: Cr. Register, June, 1980, No. 294, eff. 7–1–80 am. (3) and (12), Register, September. 1997, No. 501, eff. 10–1–97; **CR 01–101: cr. (15), Register February 2002 No.** 554, **eff. 3–1-02.**

Chapter RL 1

PROCEDURES TO REVIEW DENIAL OF AN APPLICATION

RL 1.01	Authority and scope.	RL 1.08	Procedure.
RL 1.03	Definitions.	RL 1.09	Conduct ofhearing.
RL 1.04	Examination failure: retake and hearing.	RL 1.10	Service.
RL 1.05	Notice of intent to deny and notice of denial	RL 1.11	Failure to appear.
RL 1.06	Parties to a denial review proceeding.	RL 1.12	Withdrawal ofrcquest
RL 1.07	Request for hearing.	RL 1.13	Transcription fees.

RL 1.01 Authority and scope. Rules in this chapter are adopted under authority in s. 440.03 (1), Stats., for the purpose of governing review of a decision to deny an application. Rules in this chapter do not apply to denial of an application for renewal of a credential. Rules in this chapter shall apply to applications received on or after July 1, 1996.

Note: Procedures used for denial of an application for renewal of a credential are found in Ch. RL 2, Wis. Admin. Code and s. 227.01 (3) (b). Slats.

History: Cr. Register, October, 1985, No. 358, eff. 11–1–85: am., **Register. July, 1996, No. 487, eff. 8–1–96.**

RL 1.02 Scope. History: Cr. Register. October, 1985, No. 358, **eff.** 11–1–85; **r., Register, July, 1996, No. 487, eff. 8–1–96.**

RL 1.03 Definitions. In this chapter:

(1) "Applicant" means any person who applies for a credential from the applicable credentialing authority. "Person" in this subsection includes a business entity.

(2) "Credential" means a license, permit, or certificate of certification or registration that is issued under chs. 440 to 480, Stats.

(3) "Credentialing authority" means the department or an attached examining board, affiliated credentialing board or board having authority to issue or deny a credential.

(4) "Denial review proceeding" means a class 1 proceeding as defined in s. 227.01 (3) (a), Stats., in which a credentialing authority reviews a decision to deny a completed application for a credential.

(5) "Department" means the department of regulation and licensing.

(6) "Division" means the division of enforcement in the department.

History: Cr. Register, October. 1985, No. 358, eff. 11–1–85; correction in **(4)** made under s. 13.93(2m) (b) 7., Stats., Register, May. 1988, No. 389; am. **(1), (4), r. (2), renum. (3) to be (5). cr. (2), (3), (6). Register, July, 1996, No. 487, eff. 8–1–96.**

RL 1.04 Examination failure: retake and hearing. (1) An applicant may request a hearing to challenge the validity, scoring or administration of an examination if the applicant has exhausted other available administrative remedies, including, but not limited to, internal examination review and regrading, and if either:

(a) The applicant is no longer eligible to retake a qualifying examination.

(b) Reexamination is not available within 6 months from the date of the applicant's last examination.

(2) A failing score on an examination does not give rise to the right to a hearing if the applicant is eligible to retake the examination and reexamination is available within 6 months from the date of the applicant's last examination.

Note: An applicant is not eligible for a license until his or her application is complete. An application is not complete until an applicant has submitted proof of having successfully passed any required qualifying examination. If an applicant fails the qualifying examination, but has the right to retake it within 6 months, the applicant is not entitled to a hearing under this chapter.

History: Cr., Register. July, 1996, No. 487, cff. 8–1–96.

RL 1.05 Request for hearing. History: Cr. Register, October, 1985, No. 355, eff. 11–1–85; corrections in (2) (a) and (b) made under s. 13.93 (2m) **(b) 7.,** Stats., Register. May, 1988, No. 389; **r. Register. July, 1996, No. 487, eff. 8–1–96.**

RL 1.05 Notice of intent to deny and notice of denial. (1) NOTICE OF INTENT TO DENY. (a) A notice of intent to deny may be issued upon an initial determination that the applicant does not meet the eligibility requirements for a credential. A notice of intent to deny shall contain a short statement in plain language of the basis for the anticipated dcnial, specify the statute, rule or other standard upon which the denial will be based and state that the application shall be denied unless, within 45 calendar days from the date of the mailing of the notice, the credentialing authority receives additional information which shows that the applicant meets the requirements for a credential. The notice shall be substantially in the form shown in Appendix I.

(b) If the credentialing authority does not receive additional information within the 45 day period, the notice of intent to deny shall operate as a notice of denial and the 45 day period for requesting a hearing described in s. RL 1.07 shall commence on the date of mailing of the notice of intent to deny.

(c) If the credentialing authority receives additional information within the 45 day period which fails to show that the applicant meets the requirements for a credential, a notice of denial shall be issued under sub. (2).

(2) NOTICE OF DENIAL. If the credentialing authority determines that an applicant does not meet the requirements for a credential, the credentialing authority shall issue a notice of denial in the form shown in Appendix II. The notice shall contain a short statement in plain language of the basis for denial, specify the statute, rule or other standard upon which the denial is based, and be substantially in the form shown in Appendix II.

History: Cr., Register, July, 1996, eff. 8–1–96.

RL 1.06 Parties to a denial review proceeding. Parties to a denial review proceeding are the applicant, the credentialing authority and any person admitted to appear under s. 227.44 (2m), Stats.

History: Cr. Register, October, 1985, No. 358. eff. 11–1–85; renum. from RL **1.04** and am., **Register, July, 1996, No. 487, eff. 8–1–96.**

RL 1.07 Request for hearing. An applicant may request a hearing within 45 calendar days after the mailing of a notice of denial by the credentialing authority. The request shall be in writing and set forth all of the following:

(1) The applicant's name and address.

(2) The type of credential for which the applicant has applied.

(3) A specific description of the mistake in fact or law which constitutes reasonable grounds for reversing the decision to deny the application for a credential. If the applicant asserts that a mistake in fact was made, the request shall include a concise statement of the essential facts which the applicant intends to prove at the hearing. If the applicant asserts a mistake in law was made, the request shall include a statement of the law upon which the applicant relies.

History: Cr., Register, July, 1996, No. 487, eff. 8–1–96.

RL 1.08 Procedure. The procedures for a denial review proceeding are:

(1) REVIEW OF REQUEST FOR HEARING. Within 45 calendar days of receipt of a request for hearing, the credentialing authority or its designee shall grant or deny the request for a hearing on a denial of a credential. A request shall be granted if requirements in s. RL 1.07 are met. and the credentialing authority or its designee shall

notify the applicant of the time, place and nature of the hearing. If the requirements in s. RL 1.07 are not met, a hearing shall be denied, and the credentialing authority or its designee shall inform the applicant in writing of the reason for denial. For purposes of a petition for review under s. 227.52, Stats.. a request is denied if a response to a request for hearing is not issued within 45 calendar days of its receipt by the credentialing authority.

(2) DESIGNATION OF PRESIDING OFFICER. An administrative law judge employed by the department shall preside over denial hearings, unless the credentialing authority designates otherwise. The administrative law judge shall be an attorney in the department designated by the department general counsel. an employe borrowed from another agency pursuant to s. 20.901, Stats., or 8 person employed as a special project or limited term employe by the department, except that the administrative law judge may not be an employe in the division.

(3) DISCOVERY. Unless the parties otherwise agree, no discovery is permitted, except for the taking and preservation of evidence as provided in ch. 804, Stats., with respect to witnesses described in **s.** 227.45 (7) (a) to (d), Stats. An applicant may inspect records under s. 19.35, Stats., the public records law.

(4) BURDEN OF PROOF. The applicant has the burden of proof to show by evidence satisfactory to the credentialing authority that the applicant meets the eligibility requirements set by law for the credential.

History: Cr., Register, July, 1996, No. 487, eff. 8–1–96.

RL **1.09 Conduct of hearing. (I)** RECORD. **A** stenographic, electronic or other record shall be made of all hearings in which the testimony of witnesses is offered as evidence, and of other oral proceedings when requested by a party.

(2) ADJOURNMENTS. The presiding officer may, for good cause, grant continuances, adjournments and extensions of time.

(3) SUBPOENAS. (a) Subpoenas for the attendance of any witness at a hearing in the proceeding may be issued in accordance with **s.** 227.45 (6m), Stats.

(b) A presiding officer may issue protective orders according to the provisions of s. 805.07, Stats.

(4) MOTIONS. **All** motions, except those made at hearing, shall be in writing, filed with the presiding officer and a copy served upon the opposing party not later than 5 days before the time specified for hearing the motion.

(5) EVIDENCE. The credentialing authority and the applicant shall have the right to appear in person or by counsel. to call. examine and cross–examine witnesses and to introduce evidence into the record. If the applicant submits evidence of eligibility for a credential which was not submitted to the credentialing authority prior to denial of the application, the presiding officer may request the credentialing authority to reconsider the application and the evidence of eligibility not previously considered.

(6) BRIEFS. The presiding officer may require the filing of briefs.

(7) LOCATION OF HEARING. **All** hearings shall be held at the offices of the department in Madison unless the presiding officer determines that the health or safety of a witness or of a party or an emergency requires that a hearing be held elsewhere.

History: Cr., Register, July, 1996, No. 487, eff. 8–1–96.

RL **1.10 Service.** Service of any document on an applicant may be made by mail addressed to the applicant at the last address filed in writing by the applicant with the credentialing authority. Service by mail is complete on the date of mailing.

History: Cr. Register, October, 1985, No. 358, eff. 11–1–85; **renum. from RL 1.06 and am., Register, July, 1996, No. 487, eff. 8–1–96.**

RL **1.11 Failure to appear.** In the event that neither the applicant nor his or her representative appears at the time and place designated for the hearing, the credentialing authority may take action based upon the record as submitted. By failing to appear, an applicant waives any right to appeal before the credentialing authority which denied the license.

History: Cr. Register, October, 1985. No. 358, eff. 11–1–85; **renum. from RL 1.07 and am., Register, July, 1996, No. 487, eff. 8–1–96.**

RL **1.12 Withdrawal of request. A** request for hearing may be withdrawn at any time. Upon receipt of a request for withdrawal, the credentialing authority shall issue an order affirming the withdrawal of a request for hearing on the denial.

History: Cr., Register, July, 1996, No. 487, eff. 8–1–96.

RL **1.13 Transcription fees. (1)** The fee charged for a transcript of a proceeding under this chapter shall be computed by the person or reporting service preparing the transcript on the following basis:

(a) If the transcript is prepared by a reporting service. the fee charged for an original transcription and for copies shall be the amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.

(b) If a transcript is prepared by the department, the department shall charge a transcription fee of $1.75 per page and a copying charge of S.25 per page. If 2 or more persons request a transcript, the department shall charge each requester a copying fee of S.25 per page, but may divide the transcript fee equitably among the requesters. If the department has prepared a written transcript for its own use prior to the time a request is made, the department shall assume the transcription fee, but shall charge a copying fee of $.25 per page.

(2) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall be furnished with a transcript without charge upon the filing of a petition of indigency signed under oath. For purposes of this section, a determination of indigency shall be based on the standards used for making a determination of indigency under s. 977.07, Stats.

History: Cr., Register, July, 1996, No. 487, eff. 8–1–96.

Chapter RL 1

APPENDIX I

NOTICE OF INTENT TO DENY

[DATE]
[NAME and
ADDRESS OF APPLICANT]

Re: Application for [TYPE OF CREDENTIAL]; Notice of Intent to Deny

Dear [APPLICANT]:

PLEASE TAKE NOTICE that the state of Wisconsin [CREDENTIALING AUTHORITY] has reviewed your application for a [TYPE OF CREDENTIAL]. On the basis of the application submitted, the [CREDENTIALINC AUTHORITY] intends to deny your application for reasons identified below unless, within 45 calendar days from the date of the mailing of this notice, the [CREDENTIALING AUTHORITY] receives additional information which shows that you meet the requirements for a credential.

[STATEMENT OF REASONS FOR DENIAL]

The legal basis for this decision is:

[SPECIFY THE STATUTE, RULE OR OTHER STANDARD UPON
WHICH THE DENIAL WILL BE BASED]

If the [CREDENTIALING AUTHORITY] does not receive additional information within the 45 day period, this notice of intent to deny shall operate as a notice of denial and the 45 day period you have for requesting a hearing shall commence on the date of mailing of this notice of intent to deny.

_____
[Designated Representative of Credentialing Authority]

PLEASE NOTE that you have a right to a hearing on the denial of your application if you file a request for hearing in accordance with the provisions of Ch. RL 1 of the Wisconsin Administrative Code. If you do not submit additional information in support of your application, you may request a hearing within 45 calendar days after the mailing of this notice. Your request must be submitted in writing to the [CREDENTIALING AUTHORITY] at:

Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison. WI 53708–8935

The request must contain your name and address, the type of credential for which you have applied, a specific description of the mistake in fact or law that you assert was made in the denial of your credential, and a concise statement of the essential facts which you intend to prove at the hearing. You will be notified in writing of the [CREDENTIALING AUTHORITY'S'] decision. Under s. RL 1.08 of the Wisconsin Administrative Code, a request for a hearing is denied if a response to a request for a hearing is not issued with 45 days of its receipt by the [CREDENTIALING AUTHORITY]. Time periods for a petition for review begin to run 45 days after the [CREDENTIALING AUTHORITY] has received a request for a hearing and has not responded.

Chapter RL 1

APPENDIX II

NOTICE OF DENIAL

[DATE]
[NAME and
ADDRESS OF APPLICANT]

Re: Application for [TYPE OF CREDENTIAL]; Notice of Denial

Dear [APPLICANT]:

PLEASE TAKE NOTICE that the state of Wisconsin [CREDENTIALING AUTHORITY] has reviewed your application for a [TYPE OF CREDENTIAL] and denies the application for the following reasons:

[STATEMENT OF REASONS FOR DENIAL]

The legal basis for this decision is:

[SPECIFY THE STATUTE, RULE OR OTHER STANDARD UPON
WHICH THE DENIAL WILL BE BASED]

_____
[Designated Representative of Credentialing Authority]

PLEASE NOTE that you have a right to a hearing on the denial of your application if you file a request for hearing in accordance with the provisions of Ch. RL 1 of the Wisconsin Administrative Code. You may request a hearing within 45 calendar days after the mailing of this notice of denial. Your request must be submitted in writing to the [CREDENTIALING AUTHORITY] at:

Department of Regulation and Licensing
1400 East Washington Avenue
P.O. **Box** 8935
Madison, WI 53708–8935

The request must contain your name and address, the type of credential for which you have applied, a specific description of the mistake in fact or law that you assert was made in the denial of your credential, and a concise statement of the essential facts which you intend to prove at the hearing. You will be notified in writing of the [CREDENTIALING AUTHORITY'S] decision. Under s. RL 1.08 of the Wisconsin Administrative Code, a request for a hearing is denied if a response to a request for a hearing is not issued within 45 days of its receipt by the [CREDENTIALING AUTHORITY]. Time periods for a petition for review begin to run 45 days after the [CREDENTIALING AUTHORITY] has received a request for a hearing and has not responded.

Chapter RL 2

PROCEDURES FOR PLEADING AND HEARINGS

RL 2.01 Authority.
RL 2 02 Scope; kinds ofproceedings.
RL 2 03 Definitions.
RL 2 035 Receiving informal complaints.
RL 2 036 Procedure for settlement conferences.
RL 2 037 Parties to a disciplinary proceeding.
RL 2 04 Commencement of disciplinary proceedings.
RL 2 05 Pleadings to be captioned.
RL 2 06 Complaint.
RL 2 07 Notice of hearing.
RL 2 08 Service and filing of complaint, notice of hearing and other papers.
RL 3.09 Answer.
RL 2.10 Administrative law judge.
RL 2.11 Prehearing conference.
RL2.12 Settlements.
RL 2.13 Discovery.
RL 2.14 Default.
RL2.15 Conduct of hearing.
RL2.16 Witness fees and costs.
RL 2.17 Transcription fees.
RL 2.18 Assessment of costs.

RL 2.01 Authority. The rules in ch. RL 2 are adopted pursuant to authority in s. 440.03 (I), Stats., and procedures in ch. 227, Stats.

History: Cr. Register. October. 1978, No. 274, eff. 11–1–78; am. Register, May, 1982, No. 317, eff. 6 1 82.

RL 2.02 Scope; kinds of proceedings. The rules in this chapter govern procedures in class 2 proceedings, as defined in **s.** 227.01 (3)(b), Stats., against licensees before the department and all disciplinary authorities attached to the department, except that **s.** RL 2.17 applies also to class 1 proceedings, as defined in **s.** 227.01 (3) (a). Stats.

History: Cr. Register. October, 1978, No. 374, eff. 11–1–78; am. Register, **May,** 1982, No. 317, eff. 6–1–83; corrections made under s. 13.93 (2m) (b) 7., Stats., Register. May, 1988, No, 389; **am.** Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.03 Definitions. In this chapter:

(1) "Complainant" means the person who signs a complaint.

(2) "Complaint" means a document which meets the requirements of ss. RL 2.05 and 2.06.

(3) "Department" means the department of regulation and licensing.

(4) "Disciplinary authority" means the department or the attached examining board or board having authority to revoke the license of the holder whose conduct is under investigation.

(5) "Disciplinary proceeding" means a proceeding against one or more licensees in which a disciplinary authority may determine to revoke or suspend a license, to reprimand a licensee, to limit a license, to impose a forfeiture, or to refuse to renew a license because of a violation of law.

(6) "Division" means the division of enforcement in the department.

(7) "Informal complaint" means any written information submitted to the division or any disciplinary authority by any person which requests that a disciplinary proceeding be commenced against a licensee or which alleges facts, which if true, warrant discipline.

(8) "Licensee" means a person, partnership, corporation or association holding any license, permit, certificate or registration granted by a disciplinary authority or having any right to renew a license, permit. certificate or registration granted by a disciplinary authority.

(9) "Respondent" means the person against whom a disciplinary proceeding has been commenced and who is named as respondent in a complaint.

(10) "Settlement conference" means a proceeding before a disciplinary authority or its designee conducted according to s. RL 2.036. in which a conference with one or more licensee is held to attempt to reach a fair disposition of an informal complaint prior to the commencement of a disciplinary proceeding.

History: Cr. Register. October. 1978, No. 274, eff. 11–1–78; **am.** (1) and (6), renum. (7) and (8) to be (8) and (9), cr. (7), Register, May, 1982, No. 317, eff. 6–1–82; r. (1), renum. (2) to (4) to be (1) to (3), cr. (4) and (10), **am.** (5), (7) and (8), Register. June, 1992, No. 438. eff. 7–1–97.

RL 2.035 Receiving informal complaints. All informal complaints received shall be referred to the division for filing, screening and, if necessary, investigation. Screening shall be done by the disciplinary authority, or, if the disciplinary authority directs, by a disciplinary authority member or the division. In this section, screening is a preliminary review of complaints to determine whether an investigation is necessary. Considerations in screening include, but arc *not* limited to:

(1) Whether the person complained against is licensed;

(2) Whether the violation alleged is a fee dispute;

(3) Whether the matter alleged, if taken as a whole, is trivial; and

(4) Whether the matter alleged is a violation of any statute, rule or standard of practice.

History: Cr. Register, May, 1982, No. 317, eff. 61 – 82; am. (intro.) **and** (3), Register. June. 1992. No. 438, eff. 7–1–92.

RL 2.036 Procedure for settlement conferences. At the discretion of the disciplinary authority, a settlement conference may be held prior to the commencement of a disciplinary proceeding, pursuant to the following procedures:

(1) SELECTION OF INFORMAL COMPLAINTS. The disciplinary authority or its designee may determine that a settlement conference is appropriate during an investigation of an informal complaint if the information gathered during the investigation presents reasonable grounds to believe that a violation of the laws enforced by the disciplinary authority has occurred. Considerations in making the determination may include, but are not limited to:

(a) Whether the issues arising out of the investigation **of** the informal cornplaint are clear, discrete and sufficiently limited to allow for resolution in the informal setting of a settlement conference; and

(b) Whether the facts of the informal complaint are undisputed or clearly ascertainable from the documents received during investigation by the division.

(2) PROCEDURES. When the disciplinary authority or its designee has selected an informal complaint for a possible settlement conference, the licensee shall be contacted by the division to determine whether the licensee desires to participate in a settlement conference. A notice of settlement conference and a description of settlement conference procedures, prepared on forms prescribed by the department, shall be sent to all participants in ad-

vance of any settlement confcrence. A settlement conference shall not be held without the consent of the licensee. No agreement reached between the licensee and the disciplinary authority or its designee at a settlement conference which imposes discipline upon the licensee shall be binding until the agreement is reduced to writing, signed by the licensee, and accepted by the disciplinary authority.

(3) ORAL STATEMENTS AT SETTLEMENT CONFERENCE. Oral statements made during a settlement conference shall not be introduced into or made part of the record in a disciplinary proceeding.

History: Cr. Register, June. 1992, No. 438, eff. 7–1–92

RL 2.037 Parties to a disciplinary proceeding. Parties to a disciplinary proceeding are the respondent, the division and the disciplinary authority before which the disciplinary proceeding is heard.

History: Cr. Register. May, 1982, No. 317, eff. 6–1–82; renum. from RL 2.036 and am., Register. June, 1992, No. 438, eff. 7–1–92.

RL 2.04 Commencement of disciplinary proceedings. Disciplinary proceedings are commenced when a notice of hearing is filed in the disciplinary authority office or with a designated administrative law judge.

History: Cr. Register, February, 1979, No. 278, eff. 3–1–79; am. Register. June. 1992, No. 438. eff. 7–1–92.

RL 2.05 Pleadings to be captioned. All pleadings, notices, orders, and other papers filed in disciplinary proceedings shall be captioned: "REFORETHE _____" and shall be entitled: "IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST _____, RESPONDENT."

History: Cr. Register, October. 1978, No. 274, eff. 11–1–78.

RL 2.06 Complaint. A complaint may be made on information and bclicf and shall contain:

(1) The name and address of the licensee complained against and the name and address of the complainant;

(2) A short statement in plain language of the cause for disciplinary action identifying with reasonable particularity the transaction, occurrence or event out of which the cause arises and specifying the statute, rule or other standard alleged to have been violated;

(3) A request in essentially the following form: "Wherefore, the complainant demands that the disciplinary authority hear evidence relevant to matters alleged in this complaint, determine and impose the discipline warranted, and assess the costs of the proceeding against the respondent;" and,

(4) The signature of the complainant.

History: Cr. Register, October: 1978, No. 274. eff. 11–1–78; am. (intro.), (3) and (4), Register, June, 1992. No. 438. eff. 7–1–92.

RL 2.07 Notice of hearing. (1) A notice ofhearing shall be sent to the respondent at least 10 days prior to the hearing, unless for good cause such notice is impossible or impractical, in which case shorter notice may be given, but in no case may the notice be provided less than 48 hours in advance of the hearing.

(2) A notice ofhearing to the respondent shall be substantially in the form shown in Appendix I and signed by a disciplinary authority member or an attorney in the division.

History: Cr. Register, October. 1978, No. 274, eff. 11–1–78; am. (2) (intro.), Register, February, 1979, No. 278, eff. 3–1–79; r. and recr. Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.08 Service and filing of complaint, notice of hearing and other papers. (1) The complaint, notice of hearing, all orders and other papers required to be served on a respondent may be served by mailing a copy of the paper to the respondent at the last known address of the respondent or by any procedure described in s. 801.14 (2), Stats. Service by mail is complete upon mailing.

(2) Any paper required to be filed with a disciplinary authority may be mailed to the disciplinary authority office or, if an administrative lawjudge has been designated to preside in the matter, to the administrative law judge and shall be deemed filed on receipt at the disciplinary authority office or by the administrative law judge. An answer under s. RL 2.09; and motions under s. RL 2.15 may be filed and served by facsimile transmission. A document filed by facsimile transmission under this section shall also be mailed to the disciplinary authority. An answer or motion filed by facsimile transmission shall be deemed filed on the first business day after receipt by the disciplinary authority.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78: am. (2), Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.09 Answer. (1) An answer to a complaint shall state in short and plain terms the defenses to each cause asserted and shall admit or deny the allegations upon which the complainant relies. If the respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation, the respondent shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the allegations denied. The respondent shall make denials as specific denials of designated allegations or paragraphs but if the respondent intends in good faith to deny only a part or a qualification of an allegation, the respondent shall specify so much of it as true and material and shall deny only the remainder.

(2) The respondent shall set forth affirmatively in the answer any matter constituting an affirmative defense.

(3) Allegations in a complaint are admitted when not denied in the answer.

(4) An answer to a complaint shall be filed within 20 days from the date of service of the complaint.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. (4), Register, February, 1979, No. 278, eff. 3–1–79; am. (1), (3) and (4), Register. June. 1992, No. 438, eff. 7–1–92.

RL 2.10 Administrative law judge. (1) DESIGNATION. Disciplinary hearings shall be presided over by an administrative law judge employed by the department unless the disciplinary authority designates otherwise. The administrative law judge shall be an attorney in the department designated by the department general counsel, an employe borrowed from another agency pursuant to s. 20.901, Stats., or a person employed as a special project or limited term employe by the department, except that the administrative law judge may not be an employe in the division.

(2) AUTHORITY. An administrative law judge designated under this section to preside over any disciplinary proceeding has the authority described in s. 227.46 (1), Stats. Unless otherwise directed by a disciplinary authority pursuant to s. 227.46 (3), Stats., an administrative lawjudge presiding over a disciplinary proceeding shall prepare a proposed decision, including findings of fact, conclusions of law, order and opinion, in a form that may be adopted as the final decision in the case.

(3) SERVICE OF PROPOSED DECISION. Unless otherwise directed by a disciplinary authority, the proposed decision shall be served by the administrative lawjudge on all parties with a notice providing each party adversely affected by the proposed decision with an opportunity to file with the disciplinary authority objections and written argument with respect to the objections. A party adversely affected by a proposed decision shall have at least 10 days from the date of service of the proposed decision to file objections and argument.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; r. and recr. (1), Register, November. 1986, No. 371. eff. 12–1–86; correction in (2) made under s. 13.93 (2m) (b) 7., Stats.. Register, May, 1988, No 389; am. Register. June, 1992, No. 438, eff. 7–1–92.

RL 2.11 Prehearing conference. In any matter pending before the disciplinary authority the cornplainant and the respondent, or their attorneys, may be directed by the disciplinary authority or administrative law judge to appear at a conference or to participate in a telephone confcrence to consider the simplifica-

tion of issues, the necessity or desirability of amendments to the pleadings, the admission of facts or documents which will avoid unnecessary proof and such other matters as may aid in the disposition of the matter.

History: Cr. Register, October, 1978, No. 274, eft: 11–1–78; am. Register. June, 1992, No. 438, eff. 1992.

RL 2.12 Settlements. No stipulation or settlement agreement disposing of a complaint or informal complaint shall be effective or binding in any respect until reduced to writing, signed by the respondent and approved by the disciplinary authority.

History: Cr. Register. October, 1978. No. 274, eff. 11–1–78: am. Register, June, 1992, No. 438. eff. 7–1–92.

RL 2.13 Discovery. The person prosecuting the complaint and the respondent may, prior to the date set for hearing, obtain discovery by use of the methods described in ch. 804, Stats., for the purposes set forth therein. Protective orders, including orders to terminate or limit examinations, orders compelling discovery, sanctions provided in s. 804.12, Stats. or other remedies as are appropriate for failure to comply with such orders may be made by the presiding officer.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78.

RL 2.14 Default. If the respondent fails to answer as required by s. RL 2.09 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence. The disciplinary authority may, for good cause, relieve the respondent from the effect of such findings and permit the respondent to answer and defend at any time before the disciplinary authority enters an order or within a reasonable time thereafter.

History: Cr. Register. October, 1978. No. 274, eff. 11 1–78; am. Register, June, 1992, No. 438. eff. 7–1–92.

RL 2.15 Conduct of hearing. (1) PRESIDING OFFICER. The hearing shall be presided over by a member of the disciplinary authority or an administrative law judge designated pursuant to s. RL 2.10.

(2) RECORD. **A** stenographic, electronic or other record shall be made of all hearings in which the testimony of witnesses is offered as evidence.

(3) EVIDENCE. The complainant and the respondent shall have the right to appear in person or by counsel, to call, examine, and cross–examine witnesses and to introduce evidence into the record.

(4) BRIEFS. The presiding officer may require the filing of briefs.

(5) MOTIONS. All motions, cxccpt those made at hearing, shall be in writing, filed with the presiding officer and a copy served upon the opposing party not later than 5 days before the time specified for hearing the motion.

(6) ADJOURNMENTS. The presiding officer may, for good cause, grant continuances, adjournments and extensions of time.

(7) SUBPOENAS. (a) Subpoenas for the attendance of any witness at a hearing in the proceeding may be issued in accordance with s. 885.01, Stats. Service shall be made in the manner provided in s. 805.07 (5), Stats. A subpoena may command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein.

(b) **A** presiding officer may issue protective orders according to the provision the provisions of s. 805.07, Stats.

(8) LOCATION OF HEARING. All hearings shall be held at the offices of the department ofregulation and licensing in Madison unless the presiding officer determines that the health or safety of a witness or of a party or an emergency requires that a hearing be held elsewhere.

History: Cr. Register, October, 1975, No. 274, eff. 11–1–78; am. (1), (5) **and** (6). cr. (8), Register, June, 1992, No. 438. eff. 7–1–92.

RL 2.16 Witness fees and costs. Witnesses subpoenaed at the request of the division or the disciplinary authority shall be entitled to compensation from the state for attendance and travel as provided in ch. 885. Stats.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78: am. Register, June. 1992, No. 438, eff. 7–1–92.

RL 2.17 Transcription fees. (1) The fee charged for a transcript of a proceeding under this chapter shall be computed by the person or reporting service preparing the transcript on the following basis:

(a) If the transcript is prepared by a reporting service, the fee charged for an original transcription and for copies shall be the amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.

(b) If a transcript is prepared by the department, the department shall charge a transcription fee of $1.75 per page and a copying charge of S.25 per page. If 2 or more persons request a transcript, the department shall charge each requester a copying fee of $.25 per page, but may divide the transcript fee equitably among the requesters. If the department has prepared a written transcript for its own use prior to the time a request is made, the department shall assume the transcription fee, but shall charge a copying fee of S.25 per page.

(2) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall be furnished with a transcript without charge upon the filing of a petition of indigency **signed** under oath.

History: Cr. Register, October, 1978, No. 274. eff. 11–1–78; am. (1) Register, May, 1982, No. 317, eff. 6–1–82; r. and recr. Register. June, 1992, No. 438, eff. 7–1–92; **am.** (1) (b), Register, August, 1993, No. 452, eff. 9–1–93.

RL 2.18 Assessment of costs. (1) The proposed decision of an administrative law judge following hearing shall include a recommendation whether all or part of the costs of the proceeding shall be assessed against the respondent.

(2) If a respondent objects to the recommendation of an administrative law judge that costs be assessed, objections to the assessment of costs shall be filed, along with any other objections to the proposed decision, within the time established for filing of objections.

(3) The disciplinary authority's final decision and order imposing discipline in a disciplinary proceeding shall include a determination whether all or part of the costs of the proceeding shall be assessed against the respondent.

(4) When costs are imposed, the division and the administrative law judge shall file supporting affidavits showing costs incurred within 15 days of the date of the final decision and order. The respondent shall file any objection to the affidavits within 30 days of the date of the final decision and order. The disciplinary authority shall review any objections, along with the affidavits, and affirm or modify its order without a hearing.

History: Cr. Register, June, 1992, No. 438. eff. 7–1–92.

Chapter RL 2
APPENDIX I
NOTICE OF HEARING

THE STATE OF WISCONSIN

To each person named above as a respondent:

You are hereby notified that disciplinary proceedings have been commenced against you before the (#1). The Complaint, which is attached to this Notice, states the nature and basis of the proceeding. This proceeding may result in disciplinary action taken against you by the (#2). This proceeding is a class 2 proceeding as defined in s. 227.01 (3) (b), Wis. Stats.

Within 20 days from the date of service of the complaint, you must respond with a written Answer to the allegations of the Complaint. You may have an attorney help or represent you. The Answer shall follow the general rules of pleading contained in s. RL. 2.09. If you do not provide a proper Answer within 20 days, you will be found to be in default, and a default judgment may be entered against you on the bais of the complaint and other evidence and the (#3) may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing.

The original of your Answer should be filed with the Administrative Law Judge who has been designated to preside over this matter pursuant to s. RL 2.10, who is:

(#4)
Department of Regulation and Licensing
Office of Board Legal Services
P. O. Box 8935
Madison, Wisconsin 53708

You should also file a copy of your Answer with the complainant's attorney, who is:

(#5)
Department of Regulation and Licensing
Division of Enforcement
P. O. Box 8935
Madison, Wisconsin 53708

A hearing on the matters contained in the Complaint will be held at the time and location indicated below:

Hearing Date, **Time** and Location

Date: (#6)
Time: (#7)
Location: Room(#8)
1400 East Washington Ave
Madison, Wisconsin

or as soon thereafter as the matter may be heard. The questions to be determined at this hearing are whether the license previously issued to you should be revoked or suspended, whether such license should be limited, whether you should be reprimanded, whether, if authorized by law, a forfeiture should be imposed, or whether any other discipline should be imposed on you. You may be represented by an attorney at the hearing. The legal authority and procedures under which the hearing is to be held is set forth in s. 227.44, Stats., s. (#9), Stats., ch. RL 2, and s. (#10).

If you do not appear for hearing at the time and location set forth above, you will be found to be in default, and a default judgment may be entered against you on the basis of the complaint and other evidence and the (#11) may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing.

If you choose to be represented by an attorney in this proceeding, the attorney is requested to file a Notice of Appearance with the disciplinary authority and the Administrative Law Judge within 20 days of your receiving this Notice.

Dated at Madison, Wisconsin this _____day of, _____20___ .

_____
Signature of Licensing Authority Member or Attorney
(#12)

INSERTIONS

1. Disciplinary authority
2. Disciplinary authority
3. Disciplinary authority
4. Administrative Law Judge
5. Complainant's attorney
6. Date of hearing
7. Time of hearing
8. Location of hearing
9. Legal authority (statute)
10. Legal authority (administrative code)
11. Disciplinary authority
12. Address and telephone number of person signing the complaint

Chapter RL 3

ADMINISTRATIVE INJUNCTIONS

RL 3.01	Authority.
RL 3.02	Scope; kinds of proceedings.
RL 3.03	Definitions.
RL 3.04	Pleadings to be captioned.
RL 3.05	Petition for administrative injunction.
RL 3.06	Notice of hearing.
RL 3.07	Service and filing of petition, notice of hearing and other papers.
RL 3.08	Answer.
RL 3.09	Administrative law judge.
RL 3.10	Prehearing conference.
RL 3.11	Settlements.
RL 3.12	Discovery.
RL 3.13	Default.
RL 3.14	Conduct of hearing.
RL 3.15	Witness fees and costs.
RL 3.16	Transcription fees.

RL 3.01 Authority. The rules in ch. RL 3 are adopted pursuant to authority in ss. 440.03 (1) and 440.21, Stats.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93.

RL 3.02 Scope; kinds of proceedings. The rules in this chapter govern procedures in public hearings before the department to determine and make findings as to whether a person has engaged in a practice or used a title without a credential required under chs. 440 to 459, Stats., and for issuance of an administrative injunction.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93.

RL 3.03 Definitions. In this chapter:

(1) "Administrative injunction" means a special order enjoining a person from the continuation of a practice or use of a title without a credential required under chs. 440 to 459, Stats.

(2) "Credential" means a license, permit, or certificate of certification or registration that is issued under chs. 440 to 459, Stats.

(3) "Dcpartment" means the department of regulation and licensing.

(4) "Division" means the division of enforcement in the department.

(5) "Petition" means a document which meets the requirements of s. RL 3.05.

(6) "Respondent" means the person against whom an administrative injunction proceeding has been commcnccd and who is named as respondent in a petition.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93.

RL 3.04 Pleadings to be captioned. All pleadings, notices. orders, and other papers filed in an administrative injunction proceeding shall be captioned: "BEFORE THE DEPARTMENT OF REGULATION AND LICENSING" and shall be entitled: "IN THE MATTER OF A PETITION FOR AN ADMINISTRATIVE INJUNCTION INVOLVING _____, RESPONDENT."

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93.

RL 3.05 Petition for administrative injunction. A petition for an administrative injunction shall allege that a person has engaged in a practice or used a title without a credential required under chs. 440 to 459, Stats. A petition may be made on information and belief and shall contain:

(1) The name and address of the respondent and the name and address of the attorney in the division who is prosecuting the petition for the division;

(2) A short statement in plain language of the basis for the division's belief that the respondent has engaged in a practice or used a title without a credential required under chs. 440 to 459, Stats., and specifying the statute or rule alleged to have been violated;

(3) A request in essentially the following form: "Wherefore, the division demands that a public hearing be held and that the department issue a special order enjoining the person from the continuation of the practice or use of the title;" and,

(4) The signature of an attorney authorized by the division to sign the petition.

History: Cr. Register, July. 1993, No. 451, eff. 8–1–93.

RL 3.06 Notice of hearing. (1) A notice of hearing shall be sent to the respondent by the division at least 10 days prior to the hearing, except in the case of an emergency in which shorter notice may be given, but in no case may the notice be provided less than 48 hours in advance of the hearing.

(2) A notice of hearing to the respondent shall be essentially in the form shown in Appendix I and signed by an attorney in the division.

History: Cr. Register, July. 1993, No. 451, eff. 8–1–93.

RL 3.07 Service and filing of petition, notice of hearing and other papers. (1) The petition, notice of hearing, all orders and other papers required to be served on a respondent may be served by mailing a copy of the paper to the respondent at the last known address of the respondent or by any procedure described in s. 801.14 (2), Stats. Service by mail is complete upon mailing.

(2) Any paper required to be filed with the department may be mailed to the administrative law judge designated to preside in the matter and shall be deemed filed on receipt by the administrative law judge. An answer under s. RL 3.08, and motions under s. RL 3.14 may be filed and served by facsimile transmission. A document filed by facsimile transmission under this section shall also be mailed to the department. An answer or motion filed by facsimile transmission shall be deemed filed on the first business day after receipt by the department.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93.

RL 3.08 Answer. (1) An answer to a petition shall state in short and plain terms the defenses to each allegation asserted and shall admit or deny the allegations upon which the division relies. If the respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation, the respondent shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the allegations denied. The respondent shall make denials as specific denials of designated allegations or paragraphs but if the respondent intends in good faith to deny only a part or to provide a qualification of an allegation, the respondent shall specify so much of it as true and material and shall deny only the remainder.

(2) The respondent shall set forth affirmatively in the answer any matter constituting an affirmative defense.

(3) Allegations in a petition are admitted when not denied in the answer.

(4) An answer to a petition shall be filed within 20 days from the date of service of the petition.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93.

RL 3.09 Administrative law judge. (1) DESIGNATION. Administrative injunction proceedings shall be presided over by an administrative law judge. The administrative law judge shall be an attorney in the department designated by the department general counsel, an employe borrowed from another agency pursuant to s. 20.901, Stats., or a person employed as a special project or limited term employe by the department. The administrative law judge may not be an employe in the division.

(2) AUTHORITY. An administrative law judge designated under this section has the authority described in s. 227.46 (1), Stats. Unless otherwise directed under s. 227.46 (3), Stats., an administrative law judge shall prepare a proposed decision, including findings of fact, conclusions of law, order and opinion, in a form that may be adopted by the department as the final decision in the case.

(3) SERVICE OF PROPOSED DECISION. The proposed decision shall be served by the administrative law judge on all parties with a notice providing each party adversely affected by the proposed decision with an opportunity to file with the department objections and written argument with respect to the objections. A party adversely affected by a proposed decision shall have at least 10 days from the date of service of the proposed decision to file objections and argument.

History: Cr. Register. July, 1993, No. 451, eff. 8-1-93.

RL 3.10 Prehearing conference. In any matter pending before the department, the division and the respondent may be directed by the administrative law judge to appear at a conference or to participate in a telephone conference to consider the simplification of issues, the necessity or desirability of amendments to the pleading, the admission of facts or documents which will avoid unnecessary proof and such other matters as may aid in the disposition of the matter.

History: Cr. Register, July, 1993, No. 451. eff. 8-1-93.

RL 3.11 Settlements. No stipulation or settlement agreement disposing of a petition or informal petition shall be effective or binding in any respect until reduced to writing, signed by the respondent and approved by the department.

History: Cr. Register, July. 1993, No. 451, eff. 8-1-93.

RL 3.12 Discovery. The division and the respondent may, prior to the date set for hearing, obtain discovery by use of the methods described in ch. 804, Stats., for the purposes set forth therein. Protective orders, including orders to terminate or limit examinations, orders compelling discovery, sanctions provided in s. 804.12, Stats., or other remedies as are appropriate for failure to comply with such orders may be made by the administrative law judge.

History: Cr. Register, July. 1993, No. 451, eff. 8-1-93.

RL 3.13 Default. If the respondent fails to answer as required by s. RL 3.08 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the department may make findings and enter an order on the basis of the petition and other evidence. The department may, for good cause, relieve the respondent from the effect of the findings and permit the respondent to answer and defend at any time before the department enters an order or within a reasonable time thereafter.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

RL 3.14 Conduct of hearing. (1) ADMINISTRATIVE LAW JUDGE. The hearing shall be presided over by an administrative law judge designated pursuant to s. RL 3.09.

(2) RECORD. A stenographic, electronic or other record shall be made of all hearings in which the testimony of witnesses is offered as evidence.

(3) EVIDENCE. The division and the respondent shall have the right to appear in person or by counsel, to call, examine, and cross-examine witnesses and to introduce evidence into the record.

(4) BRIEFS. The administrative law judge may require the filing of briefs.

(5) MOTIONS. (a) *How made.* An application to the administrative law judge for an order shall be by motion which, unless made during a hearing or prehearing conference, shall be in writing, state with particularity the grounds for the order, and set forth the relief or order sought.

(b) *Filing.* A motion shall be filed with the administrative law judge and a copy served upon the opposing party not later than 5 days before the time specified for hearing the motion.

(c) *Supporting papers.* Any briefs or other papers in support of a motion, including affidavits and documentary evidence, shall be filed with the motion.

(6) ADJOURNMENTS. The administrative law judge may, for good cause, grant continuances, adjournments and extensions of time.

(7) SUBPOENAS. (a) Subpoenas for the attendance of any witness at a hearing in the proceeding may be issued in accordance with s. 885.01, Stats. Service shall be made in the manner provided in s. 805.07 (5), Stats. A subpoena may command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein.

(b) An administrative law judge may issue protective orders according to the provisions of s. 805.07, Stats.

(8) LOCATION OF HEARING. All hearings shall be held at the offices of the department in Madison unless the administrative law judge determines that the health or safety of a witness or of a party or an emergency requires that a hearing be held elsewhere.

History: Cr. Register, July, 1993, No. 451. eff. 8-1-93.

RL 3.15 Witness fees and costs. Witnesses subpoenacd at the request of the division shall be entitled to compensation from the state for attendance and travel as provided in ch. 885, Stats.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

RL 3.16 Transcription fees. (1) The fee charged for a transcript of a proceeding under this chapter shall be computed by the person or reporting service preparing the transcript on the following basis:

(a) If the transcript is prepared by a reporting service, the fee charged for an original transcription and for copies shall be the amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.

Note: The State Operational Purchasing Bulletin may be obtained from the Department of Administration, State Bureau of Procurement, 101 E. Wilson Street, 6th Floor, P.O. Box 7867, Madison, Wisconsin 53707-7867.

(b) If a transcript is prepared by the department, the department shall charge a transcription fee of $1.75 per page and a copying charge of $.25 per page. If 2 or more persons request a transcript, the department shall charge each requester a copying fee of $.25 per page, but may divide the transcript fee equitably among the requesters. If the department has prepared a written transcript for its own use prior to the time a request is made, the department shall assume the transcription fee, but shall charge a copying fee of $.25 per page.

(2) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall be furnished with a transcript without charge upon the filing of an affidavit showing that the person is indigent according to the standards adopted in rules of the state public defender under ch. 977, Stats.

History: Cr. Register. July, 1993, No. 451, eff. 8-1-93.

Chapter RL 3

APPENDIX I

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULAITON AND LICENSING

IN THE MATTER OF A PETITION : FOR AN ADMINISTRATIVE; NOTICE OF INJUNCTION INVOLVING : HEARING

(#1),
Respondent.

NOTICE OF HEARING

TO: (#2)

You are hereby notified that a proceeding for an administrative injunction has been commenced against you by the Department of Regulation and Licensing. The petition attached to this Notice states the nature and basis of the proceeding. This proceeding may result in a special order against you under s. 440.21, Stats., enjoining you from the continuation of a practice or use of a title.

A HEARING ON THE MATTERS CONTAINED IN THE PETITION WILL BE HELD AT:

Date: (#3) Time: (#4)
Location: Room (#5),
1400 East Washington Avenue
Madison, Wisconsin

or as soon thereafter as the matter may be heard.
The questions to be determined at this hearing are whether (#6).

Within 20 days from the date of service of the Notice, you must respond with a written Answer to the allegations of the Petition. You may have an attorney help or represent you. Your Answer must follow the rules of pleading in s. RL 3.08 of the Wisconsin Administrative Code. File your Answer with the Administrative Law Judge for this matter who is:

(#7), Department of Regulation and Licensing, Office of Board Legal Services,
P.O. Box 8935,
Madison, Wisconsin 53708

Please file a copy of your answer with the division's attorney, who is:

(#8), Division of Enforcement,
Department of Regulation and Licensing,
P.O. Box 8935,
Madison, Wisconsin 53708

If you do not provide a proper Answer within 20 days or do not appear for the hearing, you will be found to be in default and a special order may be entered against you enjoining you from the continuation of a practice or use of a title. If a special order is issued as a result of this proceeding and thereafter you violate the special order, you may be required to forfeit not more than $10,000 for each offense.

You may be represented by an attorney at the hearing. This proceeding is a class 2 proceeding as defined in s. 227.01 (3) (b), Stats. If you choose to be represented by an attorney in this proceeding, the attorney is requested to file a Notice of Appearance with the Administrative Law Judge and the division within 20 days after you receive this Notice.

The legal authority and procedures under which the hearing is to be held are set forth in ss. 227.21, 440.44, (#9), Stats., and ch. RL 3, Wis. Admin. Code.

Dated at Madison, Wisconsin this _____ day of ____ 20__

_____
(...#10...), Attorney

INSERTIONS
1. Respondent
2. Respondent with address
3. Date of hearing
4. Time of hearing
5. Place of hearing
6. Issues for hearing
7. Administrative Law Judge
8. Division of Enforcement attorney
9. Legal authority (statute)
10. Division of Enforcement attorney

Chapter RL 4

DEPARTMENT APPLICATION PROCEDURES AND APPLICATION FEE POLICIES

RL 4.01 Authorization.
RL 4.02 Definitions.
RL 4.03 Time for review and determination of credential applications.
RL 4.04 Fees for examinations, reexaminations and proctoring examinations.
RL 4.05 Fee for test review.
RL 4.06 Refunds.

RL 4.01 Authorization. The following rules are adopted by the department of regulation and licensing pursuant to **ss.** 440.05, 440.06 and 440.07, Stats.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. **Register, July, 1996, No.** 487, **eff. 8–1–96.**

RL 4.02 Definitions. (1) "Applicant" means a person who applies for a license, permit, certificate or registration granted by the department or a board.

(2) "Authority" means the department or the attached examining board or board having authority to grant the credential for which an application has been filed.

(3) "Board" means the board of nursing and any examining board attached to the department.

(4) "Dcpartmcnt" means the department of regulation and licensing.

(5) "Examination" means the written and practical tests required of an applicant by the authority.

(6) "Service provider" means a party other than the department or board who provides examination services such as application processing, examination products or administration of examinations.

History: Cr. Register. October, 1978, No. 274, eff. 11–1–78; **reuum. (1) to** (4) ***to*** **be** (4), **(3), (1), (5)** and am. **(5), cr. (2)** and **(6), Register, July, 1996, No.** 487, **eff. 8–1–96.**

RL 4.03 Time for review and determination *of* credential applications. (1) TIME LIMITS. An authority shall review and make a determination on an original application for a credential within 60 business days after a completed application is received by the authority unless a different period for review and determination is specified by law.

(2) COMPLETED APPLICATIONS. An application is completed when all materials necessary to make a determination on the application and all materials requested by the authority have been received by the authority.

(3) EFFECT OF DELAY. A delay by an authority in making a determination on an application within the time period specified in this section shall bc reported to the permit information center under **s.** 227.1 16, Stats. Delay by an authority in making a determination on an application within the time period specified in this section does not relieve any person from the obligation to secure approval from the authority nor affect in any way the authority's responsibility to interpret requirements for approval and to grant or deny approval.

History: Cr. Register. August, 1992. No. 440, eff. 9–1–92; **reuum. from RL** 4.06 and **am., Register, July, 1996, No.** 487, **eff. 8–1–96.**

RL 4.04 Fees for examinations, reexaminations and proctoring examinations. (1) EXAMINATION FEE SCHEDULE. A list of all current examination fees may be obtained at no charge from the Office of Examinations, Department of Regulation and Licensing, 1400 Bast Washington Avenue, **P.O.** Box 8935, Madison, WI 53708.

(3) EXPLANATION OF PROCEDURES FOR SETTING EXAMINATION FEES. (a) Fees for examinations shall be established under **s.** 440.05 (1) (b), Stats., at the department's best estimate of the actual cost of preparing, administering and grading the examination or obtaining and administering an approved examination from a service provider.

(b) Examinations shall be obtained from a service provider through competitive procurement procedures described in ch. Adm 7.

(c) Fees for examination services provided by the department shall be established based on an estimate of the actual cost of the examination services. Computation of fees for examination services provided by the department shall include standard component amounts for contract administration services, test development services and written and practical test administration services.

(d) Examination fees shall be changed as needed to reflect changes in the actual costs to the department. Changes to fees shall be implemented according to par. (e).

(e) Examination fees shall be effective for examinations held 45 days or more after the date of publication of a notice in application forms. Applicants who have submitted fees in an amount less than that in the most current application form shall pay the correct amount prior to administration of the examination. Overpayments shall be refunded by the department. Initial credential fees shall become effective on the date specified by law.

(4) REEXAMINATION OF PREVIOUSLY LICENSED INDIVIDUALS. Fees for examinations ordered as part of a disciplinary proceeding or late renewal under s. 440.08 (3) (b), Stats., are equal to the fee set for reexamination in the most recent examination application form, plus $10 application processing.

(5) PROCTORING EXAMINATIONS FOR OTHER STATES. (a) Examinations administered by an authority of the state may be proctored for persons applying for credentials in another state if the person has been detemiined eligible in the other state and meets this state's application deadlines. Examinations not administered by an authority of the state may only be proctored for Wisconsin residents or licensees applying for credentials in another state.

(b) Department fees for proctoring examinations of persons who arc applying for a credential in another state are equal to the cost of administering the examination to those persons, plus any additional cost charged to the department by the service provider.

History: Cr. Register, October. 1978. No. 274. eff. 11–1–78; r. and recr. Register, May, 1986. No. 365, eff. 6–1-86; am. Register, December, 1986, No. 372, eff. 1–1–87; am. Register, September, 1987, No. 381, eff. 10–1–87; am. (3), Register, September, 1988, No. 393, eff. 10–1–88; am (3). Register, September, 1990, No. 417, eff. 10–1–90; r. and recr. (1) to (3), cr. (4), renum. Figure and **am.** Register, April, 1992, No. 436, eff. 5–1–92; am. (4) Figure, cr. (5), Register, July, 1993, No. 451, eff. 8–1–93; r. and recr. Register, November, 1993, No. 455, eff. 12-1-93; **r. (2),** am. **(3)** (a), **(b), (c). (e),** (4), **(5), Register. July, 1996, No.** 487, **eff.** 8–1–96.

RL 4.05 Fee for test review. (1) The fee for supervised review of examination results by a failing applicant which is conducted by the department is $28.

(2) The fee for review of examination results by a service provider is the fee established by the service provider.

History: Cr. Register, April, 1992. No. 436, eff. 5–1–92; **am. Register, July, 1996, No. 487, eff. 8–1–96.**

RL 4.06 Refunds. (1) A refund of all but $10 of the applicant's examination fee and initial credential fee submitted to the department shall be granted if any of the following occurs:

(a) An applicant is found to be unqualified for an examination administered by the authority.

(b) An applicant is found to bc unqualified for a credential for which no examination is required.

(c) An applicant withdraws an application by written notice to the authority at least 10 days in advance of any scheduled examination.

(d) **An** applicant who fails to take an examination administered by the authority either provides written notice at least 10 days in advance of the examination date that the applicant is unable to take the examination, or if written notice was not provided, submits a written explanation satisfactory to the authority that the applicant's failure to take the examination resulted from extreme personal hardship.

(2) An applicant eligible for a refund may forfeit the refiind and choose instead to take an examination administered by the authority within 18 months of the originally scheduled examination at no added fee.

(3) An applicant who misses an examination as a result of being called to active military duty shall receive a full refund. The applicant requesting the refiind shall supply a copy of the call up orders or a letter from the commanding officer attesting to the call up.

(4) Applicants who pay fees to service providers other than the department are subject to the refund policy established by the service provider.

History: Cr. Register. October. 1978, No, 274. eff. 11 1 78; am. *(2)*(intro.), Register, May, 1986, No. 365, eff. 61 – 86; am. **(1)**and (2) (intro.), renum. (2) (c) **and** (3) to be (3) and **(4). cr.** (5), Register, September, 1987, No. *38* **1**, eff. 10–1–87; r. and recr. *(1)* **and** (4). Register, **April,** 1992, No. 436. eff. 5–1–92; r. (2), renum. (3) to (5) to be (2) to (4), Register, **July,** 1993, No. 451, eff. 8–1–93; renum. **from RL 4.03 and am., Register, July, 1996, No. 487, eff. 8–1–96.**

Chapter RL 6

SUMMARY SUSPENSIONS

RL 6.01 Authority and intent.
RL 6.02 Scope.
RL 6.03 Definitions.
RL 6.04 Petition for summary suspension.
RL 6.05 Notice of petition to respondent.
RL 6.06 Issuance of summary suspension order.
RL 6.07 Contents of summary suspension order.
RL 6.08 Service of summary suspension order.
RL 6.09 Hearing to show cause.
RL 6.10 Commencement of disciplinary proceeding
RL6.11 Delegation.

RL 6.01 Authority and intent. (1) This chapter is adopted pursuant to authority in ss. 227.11 (2) (a) and 440.03 (1), Stats., and interprets s. 227.51 (3), Stats.

(2) The intent of the department in creating this chapter is to specify uniform procedures for summary suspension of licenses, permits, certificates or registrations issued by the department or any board attached to the department in circumstances where the public health, safety or welfare imperatively requires emergency action.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.

RL 6.02 Scope. This chapter governs procedures in all summary suspension proceedings against licensees before the department or any board attached to the department. To the extent that this chapter is not in conflict with s. 448.02 (4), Stats., the chapter shall also apply in proceedings brought under that section.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.

RL 6.03 Definitions. In this chapter:

(1) "Board" means the bingo control board, real estate board or any examining board attached to the department.

(2) "Department" means the department of regulation and licensing.

(3) "Disciplinary proceeding" means a proceeding against one or more licensees in which a licensing authority may determine to revoke or suspend a license, to reprimand a licensee, or to limit a license.

(4) "License" means any license, permit, certificate, or registration granted by a board or the department or a right to renew a license, permit, certificate or registration granted by a board or the department.

(5) "Licensee" means a person, partnership, corporation or association holding any license.

(6) "Licensing authority" means the bingo control board, real estate board or any examining board attached to the department, the department for licenses granted by the department, or one acting under a board's or the department's delegation under s. RL 6.11.

(7) "Petitioner" means the division of enforcement in the department.

(8) "Respondent" means a licensee who is named as respondent in a petition for summary suspension.

History: Cr. Register, May, 1988. No. 389, eff. 6-1-88.

RL 6.04 Petition for summary suspension. (1) A petition for a summary suspension shall state the name and position of the person representing the petitioner, the address of the petitioner, the name and licensure status of the respondent, and an assertion of the facts establishing that the respondent has engaged in or is likely to engage in conduct such that the public health, safety or welfare imperatively requires emergency suspension of the respondent's license.

(2) A petition for a summary suspension order shall be signed upon oath by the person representing the petitioner and may be made on information and belief.

(3) The petition shall be presented to the appropriate licensing authority.

History: Cr. Register. May, 1988, No. 389. eff. 6-1-88.

RL 6.05 Notice of petition to respondent. Prior to the presenting of the petition, the petitioner shall give notice to the respondent or respondent's attorney of the time and place when the petition will be presented to the licensing authority. Notice may be given by mailing a copy of the petition and notice to the last-known address of the respondent as indicated in the records of the licensing authority as provided in s. 440.11 (2), Stats. as created by 1987 Wis. Act 27. Notice by mail is complete upon mailing. Notice may also be given by any procedure described in s. 801.11, Stats.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.

RL 6.06 Issuance of summary suspension order. (1) If the licensing authority finds that notice has been given under s. RL 6.05 and finds probable cause to believe that the respondent has engaged in or is likely to engage in conduct such that the public health, safety or welfare imperatively requires emergency suspension of the respondent's license, the licensing authority may issue an order for summary suspension. The order may be issued at any time prior to or subsequent to the commencement of a disciplinary proceeding under s. RL 2.04.

(2) The petitioner may establish probable cause under sub. (1) by affidavit or other evidence.

(3) The summary suspension order shall be effective upon service under s. RL 6.08, or upon actual notice of the summary suspension order to the respondent or respondent's attorney, whichever is sooner, and continue through the effective date of the final decision and order made in the disciplinary proceeding against the respondent, unless the license is restored under s. RL 6.09 prior to a formal disciplinary hearing.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.

RL 6.07 Contents of summary suspension order. The summary suspension order shall include the following:

(1) A statement that the suspension order is in effect and continues until the effective date of a final order and decision in the disciplinary proceeding against the respondent. unless otherwise ordered by the licensing authority;

(2) Notification of the respondent's right to request a hearing to show cause why the summary suspension order should not be continued;

(3) The name and address of the licensing authority with whom a request for hearing should be filed;

(4) Notification that the hearing to show cause shall be scheduled for hearing on a date within 20 days of receipt by the licensing authority of respondent's request for hearing, unless a later time is requested by or agreed to by the respondent;

(5) The identification of all witnesses providing evidence at the time the petition for summary suspension was presented and identification of the evidence used as a basis for the decision to issue the summary suspension order;

(6) The manner in which the respondent or the respondent's attorney was notified of the petition for summary suspension; and

(7) A finding that the public health, safety or welfare imperatively requires emergency suspension of the respondent's license.

History: Cr. Register, May, 1988. No. 389, eff. 61–88.

RL 6.08 Service of summary suspension order. An order of summary suspension shall be served upon the respondent in the manner provided in s. 801.11, Stats., for service of summons.

History: Cr. Register, May, 1988, No. 389, eff. 6–1–88.

RL 6.09 Hearing to show cause. (I) The respondent shall have the right to request a hearing to show cause why the summary suspension order should not be continued until the effective date of the final decision and order in the disciplinary action against the respondent.

(2) The request for hearing to show cause shall be filed with the licensing authority which issued the summary suspension order. The hearing shall be scheduled and heard promptly by the licensing authority but no later than 20 days after the filing of the request for hearing with the licensing authority, unless a later time is requested by or agreed to by the licensee.

(3) At the hearing to show cause the petitioner and the respondent may testify, call, examine and cross–examine witnesses. and offer other evidence.

(4) At the hearing to show cause the petitioner has the burden to show by a preponderance of the evidence why the summary suspension order should be continued.

(5) At the conclusion of the hearing to show cause the licensing authority shall make findings and an order. If it is determined that the summary suspension order should not be continued, the suspended license shall be immediately restored.

History: Cr. Register, May, 1988, No. 389, eff. 6–1–88.

RL 6.10 Commencement of disciplinary proceeding. (1) A notice of hearing commencing a disciplinary proceeding under s. RL 2.06 against the respondent shall be issued no later than 10 days following the issuance of the summary suspension order or the suspension shall lapse on the tenth day following issuance of the summary suspension order. The formal disciplinary proceeding shall be determined promptly.

(2) If at any time the disciplinary proceeding is not advancing with reasonable promptness, the respondent may make a motion to the hearing officer or may directly petition the appropriate board, or the department, for an order granting relief.

(3) If it is found that the disciplinary proceeding is not advancing with rcasonablc promptness, and the delay is not as a result of the conduct of respondent or respondent's counsel, a remedy, as would be just, shall be granted including:

(a) An order immediately terminating the summary suspension; or

(b) An order compelling that the disciplinary proceeding be held and determined by a specific dare.

History: Cr. Register. May, 1988, No. 389. eff. 6–1–88.

RL 6.11 Delegation. (1) A board may by a two–thirds vote:

(a) Designate under s. 227.46 (1), Stats., a member of the board or an employe of the department to rule on a petition for summary suspension, to issue a summary suspension order, and to preside over and rule in a hearing provided for in s. RL 6.09; or

(b) Appoint a panel of no less than two–thirds of the membership of the board to rule on a petition for summary suspension, to issue a summary suspension order, and to preside over and rule in a hearing provided for in s. RL 6.09.

(2) In matters in which the department is the licensing authority, the department secretary or the secretary's designee shall rule on a petition for summary suspension, issue a summary suspension order, and preside over and rule in a hearing provided for in s. RL 6.09.

(3) Except as provided in s. 227.46 (3), Stats., a delegation of authority under subs. (1) and (2) may be continuing.

History: Cr. Register, May, 1988, No. 389, eff. 6–1–88.

Chapter RL 7

IMPAIRED PROFESSIONALS PROCEDURE

RL 7.01 Authority and intent.
RL 7.02 Definitions.
RL 7.03 Referral to and eligibility for the procedure
RL 7.04 Requirements for participation.
RL 7.05 Agreement for participation.
RL 7.06 Standards for approval of treatment facilities or individual therapists
RL 7.07 Intradepartmental referral.
RL 7.08 Records.
RL 7.09 Report.
RL 7.10 Applicability of procedures to direct licensing by the department
RL 7.11 Approval of drug testing programs.

RL 7.01 Authority and intent. (1) The rules in this chapter are adopted pursuant to authority in ss. 15.08 (5) (b), 51.30. 146.82. 227.11 and 440.03, Stats.

(2) The intent of the department in adopting rules in this chapter is to protect the public from credential holders who are impaired by reason of their abuse of alcohol or other drugs. This goal will be advanced by providing an option to the formal disciplinary process for qualified credential holders committed to their own recovery. This procedure is intended to apply when allegations are made that a credential holder has practiced a profession while impaired by alcohol or other drugs or when a credential holder contacts the department and requests to participate in the procedure. It is not intended to apply in situations where allegations exist that a credential holder has committed violations of law, other than practice while impaired by alcohol or other drugs, which are substantial. The procedure may then be utilized in selected cases to promote early identification of chemically dependent professionals and encourage their rehabilitation. Finally, the department's procedure does not seek to diminish the prosecution of serious violations but rather it attempts to address the problem of alcohol and other drug abuse within the enforcement jurisdiction of the department.

(3) In administering this program, the department intends to encourage board members to share professional expertise so that all boards in the department have access to a range of professional expertise to handle problems involving impaired professionals.

History: Cr. Register. January, 1991, No. 421, eff. 2–1–91; am. (2), Register, July, 1996, No. 487, eff. 8–1–96.

RL 7.02 Definitions. In this chapter:

(1) "Board" means any examining board or affiliated credentialing board attached to the department and the real estate board.

(2) "Board liaison" means the board member designated by the board as responsible for approving credential holders for the impaired professionals procedure under s. RL 7.03, for monitoring compliance with the requirements for participation under s. RL 7.04, and for performing other responsibilities delegated to the board liaison under these rules.

(2a) "Coordinator" means a department employee who coordinates the impaired professionals procedure.

(2b) "Credential holder" means a person holding any license, permit, certificate or registration granted by the department or any board.

(3) "Department" means the department of regulation and licensing.

(4) "Division" means the division of enforcement in the department.

(5) "Informal complaint" means any written information submitted by any person to the division, department or any board which requests that a disciplinary proceeding be commenced against a credential holder or which alleges facts, which if hue, warrant discipline. "Informal complaint" includes requests for disciplinary proceedings under s. 440.20, Stats.

(6) "Medical review officer" means a medical doctor or doctor of osteopathy who is a licensed physician and who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with an individual's medical history and any other relevant biomedical information.

(7) "Procedure" means the impaired professionals procedure.

(8) "Program" means any entity approved by the department to provide the full scope of drug testing services for the department.

History: Cr. Register, January, 1991, No. 421, eff. 2–1–91; am. (1), (2), (5), cr. (2a), (2b), r. (6). Register, July, 1996, No. 487, eff. 8–1–96; cr. (6) and (8), Register, January, 2001, No. 541, eff. 2–1–01.

RL 7.03 Referral to and eligibility for the procedure. (1) All informal complaints involving allegations of impairment due to alcohol or chemical dependency shall be screened and investigated pursuant to s. RL 2.035. After investigation, informal complaints involving impairment may be referred to the procedure and considered for eligibility as an alternative to formal disciplinary proceedings under ch. RL 2.

(2) A credential holder who has been referred to the procedure and considered for eligibility shall be provided with an application for participation, a summary of the investigative results in the form of a draft statement of conduct to be used as a basis for the statement of conduct under s. RL 7.05 (1) (a), and a written explanation of the credential holder's options for resolution of the matter through participation in the procedure or through the formal disciplinary process pursuant to ch. RL 2.

(3) Eligibility for the procedure shall be determined by the board liaison and coordinator who shall review all relevant materials including investigative results and the credential holder's application for participation. Eligibility shall be determined upon criteria developed by each credentialing authority which shall include at a minimum the credential holder's past or pending criminal, disciplinary or malpractice record, the circumstances of the credential holder's referral to the department, the seriousness of other alleged violations and the credential holder's prognosis for recovery. The decision on eligibility shall be consistent with the purposes of these procedures as described in s. RL 7.01 (2). The board liaison shall have responsibility to make the determination of eligibility for the procedure.

(4) Prior to the signing of an agreement for participation the credential holder shall obtain a comprehensive assessment for chemical dependency from a treatment facility or individual therapist approved under s. RL 7.06. The credential holder shall arrange for the treatment facility or individual therapist to file a copy of its assessment with the board liaison or coordinator. The assessment shall include a statement describing the credential holder's prognosis for recovery. The board liaison and the credential holder may agree to waive this requirement.

(5) If a credential holder is determined to be ineligible for the procedure, the credential holder shall be referred to the division for prosecution.

(6) A credential holder detennined to be ineligible for the procedure by the board liaison or the department may, within 10 days of notice of the determination, request the credentialing authority to review the adverse determination.

History: Cr. Register. January, 1991. No. 421, eff. 2–1–91; an. **(2)** to (6). Register, July, 1996. No. 487, eff. 8- 1–96.

RL 7.04 Requirements for participation. (1) A credential holder who participates in the procedure shall:

(a) Sign an agreement for participation under s. RL 7.05.

(b) Remain free of alcohol. controlled substances, and prescription drugs, unless prescribed for a valid medical purpose.

(c) Timely enroll and participate in a program for the treatment of chemical dependency conducted by a facility or individual therapist approved pursuant to s. RL 7.06.

(d) Comply with any treatment recommendations and work restrictions or conditions deemed necessary by the board liaison or department.

(e) Submit random monitored blood or urine samples for the purpose of screening for alcohol or controlled substances provided by a drug testing program approved by the department under s. RL 7.11, as required.

(f) Execute releases valid under state and federal law in the form shown in Appendix I to allow access to the credential holder's counseling. treatment and monitoring records.

(g) Have the credential holder's supervising therapist and work supervisors file quarterly reports with the coordinator.

(h) Notify the coordinator of any changes in the credential holder's employer within 5 days.

(i) File quarterly reports documenting the credential holder's attendance at meetings of self–help groups such as alcoholics anonymous or narcotics anonymous.

(2) If the board liaison or department determines, based on consultation with the person authorized to provide treatment to the credential holder or monitor the credential holder's enrollment or participation in the procedure, or monitor any drug screening requirements or restrictions on employment under sub. (1), that a credential holder participating in the procedure has failed to meet any of the requirements set under sub. (1), the board liaison may request that the board dismiss the credential holder from the procedure. The board shall review the complete record in making this determination. If the credential holder is dismissed the matter shall be referred to the division.

(3) If a credential holder violates the agreement and the board does not dismiss and refer the credential holder to the division, then a new admission under s. RL 7.05 (1) (a) shall be obtained for violations which are substantiated.

History: Cr. Register, January, 1991, No. 421, **eff.** 2–1–91; am. Register. July, 1996, No. 487, eff. 8- 1–96: **am.** (1) **(e), Register, January, 2001, No. 541, eff. 2–1-01**

RL 7.05 Agreement for participation. (1) The agreement for participation in the procedure shall at a minimum include:

(a) A statement describing conduct the credential holder agrees occurred relating to participation in the procedure and an agreement that the statement may be used as evidence in any disciplinary proceeding under ch. RL **2.**

(b) An acknowledgement by the credential holder of the need for treatment for chemical dependency;

(c) An agreement to participate at the credential holder's expense in an approved treatment regimen.

(d) An agreement to submit to random monitored drug screens provided by a drug testing program approved by the department under s. RL 7.11 at the credential holder's expense, if deemed necessary by the board liaison.

(e) An agreement to submit to practice restrictions at any time during the treatment regimen as deemed necessary by the board liaison.

(f) An agreement to furnish the coordinator with signed consents for release of information from treatment providers and employers authorizing the release of information to the coordinator and board liaison for the purpose of monitoring the credential holder's participation in the procedure.

(g) An agreement to authorize the board liaison or coordinator to release information described in pars. (a), (c) and (e), the fact that a credential holder has been dismissed under s. RL 7.07 (3) (a) or violated terms of the agreement in s. RL 7.04 (1) (b) to (e) and (h) concerning the credential holder's participation in the procedure to the employer, therapist or treatment facility identified by the Credential holder and an agreement to authorize the coordinator to release the results of random monitored drug screens under par. (d) to the therapist identified by the credential holder.

(h) An agreement to participate in the procedure for a period of time as established by the board.

(2) The board liaison may include additional requirements for an individual credential holder. if the circumstances of the informal complaint or the credential holder's condition warrant additional safeguards.

(3) The board or board liaison may include a promise of confidentiality that all or certain records shall remain closed and not available for public inspection and copying.

History: Cr. Register. **January,** 1991. No. 421. eff. 2–1–91; am. (1) **(a)** to (g) **and** (2), Register. July, 1996. **Yo.** 487, eff. 8- 1- 96; **am. (1) (d), Register, January, 2001, No. 541, eff. 2–1–01**.

RL 7.06 Standards for approval of treatment facilities or individual therapists. (1) The board or board liaison shall approve a treatment facility designated by a credential holder for the purpose of participation in the procedure if:

(a) The facility is certified by appropriate national or state certification agencies.

(b) The treatment program focus at the facility is on the individual with drug and alcohol abuse problems.

(c) Facility treatmcnt plans and protocols are available to the board liaison and coordinator.

(d) The facility, through the credential holder's supervising therapist, agrees to file reports as required, including quarterly progress reports and immediate reports if a credential holder withdraws from therapy, relapses, or is believed to be in **an** unsafe condition to practice.

(2) As an altcrnativc *to* participation by means of a treatment facility, a credential holder may designate an individual therapist for the purpose of participation in the procedure. The board liaison shall approve an individual therapist who:

(a) Has credentials and experience determined by the board liaison to bc **in** the credential holder's area of need.

(b) Agrees to perform an appropriate assessment of the credential holder's therapeutic needs and to establish and implement a comprehensive treatment regimen for the credential holder.

(c) Forwards copies of the therapist's treatment regimen and office protocols to the coordinator.

(d) Agrees to file reports as required to the coordinator, including quarterly progress reports and immediate reports if a credential holder withdraws from therapy, relapses, or is believed to be in an unsafe condition to practice.

(3) If a board liaison does not approve a treatment facility or therapist as requested by the credential holder, the credential holder may, within 10 days of notice of the determination, request the board to review the board liaison's adverse determination.

History: Cr. Register, January, 1991. No. **421,** eff. 2–1–91: **am.** Register, July, 1996, No. 487. eff. X–1–96; **r.** (1) **(d) and (2) (d), renum. (1) (e) and (2) (e) to be (1) (d) and (2) (d) and am., Register, January, 2001, No. 541, eff. 2–1–01.**

RL 7.07 Intradepartmental referral. (1) A credential holder who contacts the department and requests to participate in the procedure shall be referred to the board liaison and the coordinator for determination of acceptance into the procedure.

(2) The division may refer individuals named in informal complaints to the board liaison for acceptance into the procedure.

(3) The board liaison may refer cases involving the following to the division for investigation or prosecution:

(a) Credential holders participating in the proccdurc who arc dismissed for failure to meet the requirements of their rehabilitation program or who otherwise engage in behavior which should be referred to prevent harm to the public.

(b) Credential holders who apply and who are determined to be ineligible for the procedure where the board liaison is in possession of information indicating a violation of law.

(c) Credential holders who do not complete an agreement for participation where the board liaison is in possession of information indicating a violation of law.

(d) Credential holders initially referred by the division to the board liaison who fail to complete an agreement for participation.

History: Cr. Register, January, 1991, No. 421, eff. 2–1–91; am. (1), (3)(a) to (d), Register, July. 1996, No. 487, eff. 8–1–96.

RL 7.08 Records. (1) CUSTODIAN. All records relating to the procedure including applications for participation, agreements for participation and reports of participation shall be maintained in the custody of the departmcnt secretary or the secretary's designee.

(2) AVAILABILITY OF PROCEDURE RECORVS FOR **PUBLIC** INSPECTION. Any requests to inspect procedure records shall be made to the custodian. The custodian shall evaluate each request on a case by case basis using the applicable law relating to open records and giving appropriate weight to relevant factors in order to determine whether public interest in nondisclosure outweighs the public interest in access to the records, including the reputational interests of the credential holder, the importance of Confidentiality to the functional integrity of the procedure, the existence of any pledge of confidentiality, statutory or common law rules which accord a status of confidentiality to the records and the likelihood that release of the records will impede an investigation.

(3) TREATMENT RECORDS. Treatment records concerning individuals who are receiving or who at any time have received services for mental illness, developmental disabilities, alcoholism, or drug dependence which are maintained by the department, by county departments under s. 51.42 or 51.437, Stats., and their staffs and by treatment facilities are confidential under s. 51.30, Stats., and shall not be made available for public inspection.

(4) PATIENT HEALTH CAKE RECORDS. Patient health care records are confidential under s. 146.82, Stats., and shall not be made available to the public without the informed consent of the patient or of a person authorized by the patient or as provided under s. 146.82 (2), Stats.

History: Cr. Register, January, 1991, No. 421, eff. 2–1–91; am. (2), Register, July, 1996, No. 487, eff. 8–1–96.

RL 7.09 Report. The board liaison or coordinator shall report on the procedure to the board at least twice a year and if requested to do so by a board.

History: Cr. Register. January. 1991, No. 421, eff. 2–1–91; am. Register, July, 1996, No. 487. eff. 8–1–96.

RL 7.10 Applicability of procedures to direct licensing by the department. This procedure may be used by the department in resolving complaints against persons licensed directly by the department if the department has authority to discipline the credential holder. In such cases: the department secretary shall have the authority and responsibility of the "board" as the term is used in the procedure and shall designate an employee to perform the responsibilities of the "board liaison."

History: Cr. Register, January, 1991. No. 421, eff. 2–1–91; am. Register, July. 1996, No. 487, eff. 8–1–96.

RL 7.11 Approval of drug testing programs. The department shall approve drug testing programs for use by credential holders who participate in drug and alcohol monitoring programs pursuant to agreements between the department or boards and credential holders. or pursuant to disciplinary orders. To be approved as a drug testing program for the department, programs shall satisfactorily meet all of the following standards in the areas of program administration, collection site administration, laboratory requirements and reporting requirements:

(1) Program administration requirements are:

(a) The program shall enroll participants by setting up an account, establishing a method of payment and supplying preprinted chain–of–custody forms.

(b) The program shall provide the participant with the address and phone number of the nearest collection sites and shall assist in locating a qualified collection site when traveling outside the local area.

(c) Random selection of days when participants shall provide specimens shall begin upon enrollment and the program shall notify designated department staff that selection has begun.

(d) The program shall maintain a nationwide 800 number or an internet website that is operational 24 hours per day, 7 days per week to inform participants of when to provide specimens.

(e) The program shall maintain and make available to the department through an internet website data that are updated on a daily basis verifying the date and time each participant was notified after random selection to provide a specimen, the date, time and location each specimen was collected, the results of drug screen and whether or not the participant complied as directed.

(f) The program shall maintain internal and external quality of test results and other services.

(g) The program shall maintain the confidentiality of participants in accordance with s. 146.82, Stats.

(h) The program shall inform participants of the total cost for each drug screen including the cost for program administration, collection, transportation, analysis, reporting and confirmation. Total cost shall not include the services of a medical review officer.

(i) The program shall immediately report to the department if the program, laboratory or any collection site fails to comply with this section. The department may remove a program from the approved list if the program fails to comply with this section.

(j) The program shall make available to the department experts to support a test result for 5 years after the test results are released to the department.

(k) The program shall not sell or otherwise transfer or transmit names and other personal identification information of the participants to other persons or entities without permission from the department. The program shall not solicit from participants presently or formerly in the monitoring program or otherwise contact participants except for purposes consistent with administering the program and only with permission from the department.

(L) The program and laboratory shall not disclose to the participant or the public the specific drugs tested.

(2) Collection site administration requirements are:

(a) The program shall locate, train and monitor collection sites for compliance with the U.S. department of transportation collection protocol under 49 CFR 40.

(b) The program shall require delivery of specimens to the laboratory within 24 hours of collection.

(3) Laboratory requirements are:

(a) The program shall utilize a laboratory that is certified by the U.S. department of health and human services, substance abuse and mental health services administration under 49 CFR 40. If the laboratory has had adverse or corrective action. the department shall evaluate the laboratory's compliance on a case by case basis.

(b) The program shall utilize a laboratory capable of analyzing specimens for drugs specified by the department.

(c) Testing of specimens shall be initiated within 48 hours of pickup by courier.

(dj All positive drug screens shall be confirmed utilizing gas chromatography in combination with mass spectrometry, mass spectrometry, or another approved method.

(e) The laboratory shall allow department personnel to tour facilities where participant specimens are tested.

(4) The rcquiremcnts for reporting of results are:

(a) The program shall provide results of each specimen to designated department personnel within 24 hours of processing

(b) The program shall inform designated dcpartmcnt personnel of confirmed positive test results on the same day the test results are confirmed or by the next business day if the results are confirmed after hours, on the weekend or on a state or federal holiday.

(c) The program shall fax, e-mail *or* electronically transinit laboratory copies of drug test results at the request of the department.

(d) The program shall provide a medical review officer upon request and at the expense of the participant, to review disputed positive test results.

(ej The program shall provide chain of custody transfer of disputed specimens to an approved independent laboratory for reteshng at the request of the participant or the department

History: Cr. Register, January, 2001, No. 541, ell. 2-1-01.

Chapter RL 7

APPENDIX I

CONSENT FOR RELEASE OF INFORMATION

I, (#1), hereby authorize (#2) to provide the board liaison for the Department of Regulation and Licensing Impaired Professionals Procedure, P.O. Box 8935, Madison, Wisconsin 53708, or persons designated by the board liaison who are directly involved in administration of the procedure, with (#3). I further authorize (#4) to discuss with the board liaison or the board liaison's designee any matter relating to the records provided and to allow the board liaison or the board liaison's designee to examine and copy any records or information relating to me.

I hereby also authorize the board liaison or the board liaison's designee to provide (#5) with copies of any information provided to the board liaison pursuant to this consent for release of information authorizing the release of infonnation to the board liaison from those persons and institutions.

In the event of my dismissal from the Impaired Professionals Procedure, I hereby also authorize the board liaison or the board liaison's designee to provide the Division of Enforcement with the results of any investigation conducted in connection with my application to participate in the Impaired Professionals Procedure and with any documentation, including patient health care records, evidencing my failure to meet participation requirements.

This consent for release of information is being made for the purposes of monitoring my participation in the Impaired Professionals Procedure, and any subsequent procedures before the Wisconsin (#6); and for the further purpose of permitting exchange of information between the board liaison or the board liaison's designee and persons or institutions involved in my participation in the Impaired Professionals Procedure where such exchange is necessary in the furtherance of my treatment or to provide information to the Division of Enforcement in the event of my dismissal from the Impaired Professionals Procedure.

Unless revoked earlier, this consent is effective until (#7). I understand that I may revoke this consent at any time and that information obtained as a result of this consent may be used after the above expiration date or revocation. A reproduced copy of this consent form shall be as valid as the original.

I understand that should I fail to execute this consent for release of information, I shall be ineligible to participate in the Impaired Professionals Procedure. I also understand that should I revoke this consent prior to completion of my participation in the Impaired Professionals Procedure, I will be subject to dismissal from the procedure.

I understand that the recipient of information provided pursuant to this Consent for Release of Information is not authorized to make any further disclosure of the information without my specific written consent, or except as otherwise permitted or rcquircd by law.

Dated this _____ day of _____, 19___

_____

Signature of IPP Participant Participant's Date of Birth

INSERTIONS

1. Participant

2. Persons and institutions provided with releases for provision of information to the department

3. Examples: Drug and alcohol treatment records
Mental health/psychiatric treatment records
Personnel records; work records
Results of blood or urine screens

4. Persons or institutions given authorization

5. Persons or institutions given authorization in the first paragraph

6. Name of board

7. Date to which consent is effective

Chapter RL 8

ADMINISTRATIVE WARNINGS

RL 8.01	Authority and scope.
RL 8.02	Definitions.
RL 8.03	Findings before issuance of an administrative warning.
RL 8.04	Issuance of an administrative warning.
RL 8.05	Request for a review of an administrative warning.
RL 8.06	Procedures.
RL 8.07	Transcription fees.

RL 8.01 Authority and scope. Rules in this chapter are adopted under the authority of s. 440.205, Stats., to establish uniform procedures for the issuance and use of administrative warnings.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

RL 8.02 Definitions. As used in s. 440.205, Stats., and in this chapter:

(1) "Credential" means a license, permit, or certificate of certification or registration that is issued under chs. 440 to 480, Stats.

(2) "Department" means the department of regulation and licensing.

(3) "Disciplinary authority" means the department or an attached examining board, affiliated credentialing board or board having authority to reprimand a credential holder.

(4) "Division" means the division of enforcement in the departmcnt.

(5) "First occurrence" means any of the following:

(a) The credential holder has never been charged as a respondent in a formal complaint filed under ch. RL 2.

(b) Other than the matter pending before the disciplinary authority, no informal complaint alleging the same or similar misconduct has been filed with the department against the credential holder.

(c) The credential holder has not been disciplined by a disciplinary authority in Wisconsin or another jurisdiction.

(6) "Minor violation" means all of the following:

(a) No significant harm was caused by misconduct of the credential holder.

(b) Continued practice by the credential holder presents no immediate danger to the public.

(c) If prosecuted, the likely result of prosecution would be a reprimand or a limitation requiring the credential holder to obtain additional education.

(d) The complaint does not warrant use of prosecutorial resources.

(e) The credential holder has not previously received an administrative warning.

(7) "Misconduct" means a violation of a statute or rule related to the profession or other conduct for which discipline may be imposed under chs. 440 to 480, Stats.

History: Cr. Register, January, 1999, Nu. 517, eff. 2–1–99.

RL 8.03 Findings before issuance of an administrative warning. Before issuance of an administrative warning, a disciplinary authority shall make all of the following findings:

(1) That there is specific evidence of misconduct by the credential holder.

(2) That the misconduct is a first occurrence for the credential holder.

(3) That the misconduct is a minor violation of a statute or rule related to the profession or other conduct for discipline may be imposed.

(4) That issuance of an administrative warning will adequately protect the public.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

RL 8.04 Issuance of an administrative warning. (1) An administrative warning shall be substantially in the form shown in Appendix I.

(2) An administrative warning may be issued to a credential holder by mailing the administrative warning to the last address provided by the credential holder to the department. Service by mail is complete on the date of mailing.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

RL 8.05 Request for a review of an administrative warning. A credential holder who has been issued an administrative warning may request the disciplinary authority to review the issuance of the administrative warning by filing a written request with the disciplinary authority within 20 days after the mailing of the administrative warning. The request shall be in writing and set forth:

(1) The credential holder's name and address.

(2) The reason for requesting a review.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

RL 8.06 Procedures. The procedures for an administrative warning review are:

(1) Within 45 calendar days of receipt of a request for review, the disciplinary authority shall notify the credential holder of the time and place of the review.

(2) No discovery is permitted. A credential holder may inspect records under s. 19.35, Stats., the public records law.

(3) The disciplinary authority or its designee shall preside over the review. The review shall be recorded by audio tape unless otherwise specified by the disciplinary authority.

(4) The disciplinary authority shall provide the credential holder with an opportunity to make a personal appearance before the disciplinary authority and present a statement. The disciplinary authority may request the division to appear and present a statement on issues raised by the credential holder. The disciplinary authority may establish a time limit for making apresentation. Unless otherwise determined by the disciplinary authority, the time for making a personal appearance shall be 20 minutes.

(5) If the credential holder fails to appear for a review, or withdraws the request for a review, the disciplinary authority may note the failure to appear in the minutes and leave the administrative warning in effect without fiirther action.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

RL 8.07 Transcription fees. (1) The fee charged for a transcript of a review under this chapter shall be computed by the person or reporting service preparing the transcript on the following basis:

(a) If the transcript is prepared by a reporting service, the fee charged for an original transcription and for copies shall be the amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.

(b) If a transcript is prepared by the department, the department shall charge a transcription fee of $1.75 per page and a copying charge of $.25 per page. If 2 or more persons request a transcript, the department shall charge each requester a copying fee of $.25 per page, but may divide the transcript fee equitably among the requesters. If the department has prepared a written transcript for its own use prior to the time a request is made, the department shall assume the transcription fee, but shall charge a copying fee of $.25 per page.

(2) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall be furnished with a transcript without charge upon the filing of a petition of indigence signed under oath.

History: Cr. Register, January, 1999, No. 517. eff. 2–1–99.

Chapter RL 8

APPENDIX I

DEPARTMENT OF REGULATION AND LICENSING

[DISCIPLINARY AUTHORITY]

ADMINISTRATIVE WARNING

This administrative warning is issued by the {disciplinary authority) to (credential holder) pursuant to s. 440.205, Stats. The {disciplinary authority} makes the following findings:

1) That there is evidence of professional misconduct by {credential holder',, to wit:

2) That this misconduct is a first occurrence for {credential holder).

3) That this misconduct is a minor violation of {statute or rule}

4) That issuance of this administrative warning will adequately protect the public and no further action is warranted.

Therefore, the {disciplinary authority} issues this administrative warning and hereby puts the (credential holder) on notice that any subsequent violation may result in disciplinary action. The investigation of this matter is hereby closed.

Date:_____ _____

Signature of authorized representative
For {Disciplinary Authority}

Right to Review

You may obtain a review of this administrative warning by filing a written request with the {disciplinary authority} within 20 days of mailing of this warning. The review will offer the credential holder an opportunity to make a personal appearance before the {disciplinary authority).

The record that this administrative warning was issued is a public record.

The content of this warning is private and confidential.

Chapter RL 9

DENIAL OF RENEWAL APPLICATION BECAUSE APPLICANT IS LIABLE FOR DELINQUENT TAXES

RL 9.01 Authority.
RL 9.02 Scope: nature of proceedings
RL 9.03 Definitions.
RL 9.04 Procedures for requesting the department of revenue to certify whether an applicant for renewal is liable for delinquent taxes.
RL 9.05 Denial of renewal.

RL 9.01 Authority. The rules in ch. RL 9 arc adopted under the authority in s. 440 03, Stats.

History: Emerg. cr. eff. 11–14–96; Cr. Register. August, 1996. No. 488. eff. 9–1–96.

RL 9.02 Scope; nature of proceedings. The rules in this chapter govern the procedures for requesting the Wisconsin department of revenue to certify whether an applicant is liable for delinquent taxes owed to this state under s. 440.08 (4) (b), Stats., as created by 1995 Wis. Act 27 and amended by 1995 Wis. Act 233, to rcvicw dcnial of an application for rcncwal because the applicant is liable for delinquent taxes.

History: Emerg. cr. eff. 11–14–96; Cr. Register, August, 1996, No. 488, eff. 9–1–96.

RL 9.03 Definitions. In this chapter:

(1) "Applicant" means a person who applies for renewal of a credential. "Person" in this subsection includes a business entity.

(2) "Credential" has the meaning in s. 440.01 (2) (a), Stats.

(3) "Department" means the department of regulation and licensing.

(4) "Liable for any delinquent taxes owed to this state" has the meaning set forth in s. 73.0301 (1) (c), Stats.

History Emerg. cr. eff. **11–14–96;** Cr. Register, **August, 1996,** No. 488, eff. **9–1–96; correction in (4) made under s. 13.93 (2m) (b) 7., Stats.**

RL 9.04 Procedures for requesting the department of revenue to certify whether an applicant for renewal is liable for delinquent taxes. (1) RENEWAL APPLICATION FORM. If the department receives a renewal application that does not include the information required by s. 440.08 (2g) (b), Stats., the application shall be denied unless the applicant provides the missing information within 20 days after the department first received the application.

Note: 1997 Wis. Act **191** repealed s. 440.08 (2g) (b), Stats.

(2) SCREENING FOR LIABILITY FOR DELINQUENT TAXES. The name and social security number or federal employer identification number of an applicant shall be compared with information at the Wisconsin department of revenue that identifies individuals and organizations who are liable for delinquent taxes owed to this state.

(3) NOTICE OF **INTENT** TO DENY BECAUSE OF TAX DELINQUENCY. If an applicant is identified as being liable for any delinquent taxes owed to this state in the screening process under sub. (2), the Wisconsin department of revenue shall mail a notice to the applicant at the last known address of the applicant according to s. 440.11, Stats., or to the address identified in the applicant's renewal application, if different from the address on file in the department. The notice shall state that the application for renewal submitted by the applicant shall be denied unless, within 10 days from the date of the mailing of the notice, the department of regulation and licensing receives a copy of a certificate of tax clearance issued by the Wisconsin department of revenue which shows that the applicant is not liable for delinquent state taxes or unless the Wisconsin department of revenue provides documentation to the department showing that the applicant is not liable for delinquent state taxes.

(4) OTHER REASONS FOR DENIAL.. If the department determines that grounds for denial of an application for renewal may exist other than the fact that the applicant is liable for any delinquent taxes owed to this state, the department shall make a determination on the issue of tax delinquency before investigating other issues of renewal eligibility.

History: Emerg. cr. eff. 11–14–96; Cr. Register, August, 1996, No. 488, eff. 9–1–96.

RL 9.05 Denial of renewal. The department shall deny an application for credential renewal if the applicant fails to complete the information on the application form under s. RL 9.04 or if the Wisconsin department of revenue certifies or affirms its certification under s. 440.08 (4) (b) 3., Stats., that the applicant is liable for delinquent taxes and the department does not receive a current certificate of tax clearance or the Wisconsin department of rcvcnue docs not provide documentation showing that the applicant is not liable for delinquent taxes within the time required under s. RL 9.04 (2) and (3). The department shall mail a notice of denial to the applicant that includes a statement of the facts that warrant the dcnial under s. 440.08 (4) (b), Stats., and a notice that the applicant may file a written request with the department to have the denial reviewed at a hearing before the Wisconsin department of revenue.

Note: Section 440.08 (4) (b) 3., Stats., referred to here was repealed **by** 1997 Wis. **Act** *237* and a new, unrelated s. 440.08 **(4)** (b) recreated.

History: Emerg. cr. eff. 11–14–96; Cr. Register, August, 1996, No. 488, eff. 9–1–96.

Chapter HFS 129

CERTIFICATION OF PROGRAMS FOR TRAINING AND TESTING NURSE ASSISTANTS, HOME HEALTH AIDES AND HOSPICE AIDES

HFS 129.01 Authority and purpose.
HFS 129.02 Applicability.
HFS 129.03 Definitions.
HFS 129.04 Waivers and variances.
HFS 129.05 Certification procedures.
HFS 129.06 Standards for instructors of instructional programs
HFS 129.07 Standards for instructional program.
HFS 129.08 Standards for competency evaluation programs
HFS 129.09 Retroactive approval of comparable programs.
HFS 129.10 Registry.
HFS 129.12 Appeals.

Note: Chapter HSS 129 was renumbered **to chapter HFS 129** under **s. 13.93** (2m) **(b) 1., Stats., and corrections** made **under s. 13.93 (2m)** (b) 7., **Stats., Register, June, 1999, No.** 522.

HFS 129.01 Authority and purpose. This chapter is promulgated under the authority of **ss.** 146.40 (3) and (5) and 227.11 (2) (a), Stats., to provide conditions of certification for instructional programs and competency evaluation programs for persons who work as nurse assistants in hospitals, nursing homes or facilities for the developmentally disabled, as home health aides with home health agencies or as hospice aides with hospices certified under 42 USC 1395 to 1395ccc, and conditions for including persons in the department's registry of nurse assistants, home health aides and hospice aides.

History: Cr. Register, June, 1991, No. 426, eff. 7–1–91; emerg. am. eff. 10–1–91; am. Register, June, **1992,** No. **438,** eff. 7–1–92.

HFS 129.02 Applicability. This chapter applies to any facility, agency or other organization that proposes to train or undertake competency evaluation testing of nurse assistants, home health aides or hospice aides under a program certified by the department under this chapter, and to all persons automatically included or eligible for inclusion and requesting inclusion in the department's registry of nurse assistants, home health aides and hospice aides.

History: Cr. Register, June, 1991, No. 426, eff. 7–1–91; emerg. am. eff. 10–1–91; **am.** Register, June, **1992,** No. **438.** eff. 7–1–92.

HFS 129.03 Definitions. In this chapter:

(2) "Basic nursing course" means a course or combination of courses which contain the basic nursing skills, competencies and knowledges that the department is satisfied are generally equivalent in content to the items contained in s. HFS 129.07 (2).

(3) "Client" means a person receiving care, treatment or diagnostic services from a hospital, nursing home, facility for the developmentally disabled, home health agency or hospice.

(4) "Clinical setting" means a practice setting where care and treatment of clients occur.

(5) "Competency evaluation program" means a testing program for nurse assistants, home health aides or hospice aides that applies for certification under this chapter or is certified under this chapter and that consists of a written or oral examination and a skills demonstration examination.

(6) "Department" means the Wisconsin department of health and family services.

(7) "Employment" means working for another for compensation on a full–time, part–time, temporary, per diem, contractual or other basis.

(8) "Facility for the developmentally disabled" means a place or a distinct part of a place where 5 or more unrelated persons reside who, because of their developmental disabilities, require access to 24–hour nursing care or to treatment for a developmental disability as defined in **s.** HFS 134.13 (9). "Facility for the developmentally disabled" does not include any of the following:

(a) **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.

(b) **A** hospice that directly provides inpatient care.

(c) **A** residential care apartment complex, as defined under s. 50.01 (1d), Stats.

(d) **A** nursing home.

(9) "Handicapping condition" means a physical or mental impairment which makes ability to care for oneself unusually difficult or limits the capacity to work.

(10) "Home health agency" has the meaning specified in s. 50.49 (1) (a), Stats.

(11) "Home health aide" means an individual employed by or under contract with a home health agency to provide home health aide services under the supervision of a registered nurse. "Home health aide" does not mean an individual who is licensed, permitted, certified or registered under ch. 441, 448, 449, 450, 455 or 459, Stats.

(11m) "Hospice" has the meaning specified in **s.** 50.90 (1), Stats., and is certified as a provider of services under 42 USC 1395 to 1395ccc.

(11r) "Hospice aide" means an individual employed by or under contract with a hospice to provide hospice aide services under the supervision of a registered nurse. "Hospice aide" does not mean an individual who is licensed, permitted, certified or registered under ch. 441, 448, 449, 450, 455 or 459, Stats., or who is a volunteer.

(12) ''Hospital" has the meaning specified in **s.** 50.33 (2), Stats.

(13) "Instructional program" means a training program for nurse assistants, home health aides or hospice aides that applies for certification under this chapter or is certified under this chapter.

(14) "Nurse's assistant" means an individual who performs routine patient care duties delegated by the registered nurse or licensed practical nurse who supervises the individual, for the direct health care of a client. "Nurse's assistant" does not mean a person who is licensed, receives a permit, is certified or is registered under ch. 441, 448, 449, 450, 451, 455 or 459, Stats., or an individual whose duties primarily involve skills that are different from those taught in instructional and competency evaluation programs certified under **s.** HFS 129.05. In this subsection, "registered nurse" means a nurse licensed as a registered nurse under s. 441.06, Stats., or who has a temporary permit under s. 441.08, Stats, and "licensed practical nurse" means a nurse who is licensed or has a temporary permit under s. 441.10, Stats.

(15) "Nursing home" has the meaning specified in **s.** 50.01 (3), Stats.

(16) "Program" means an instructional program, a competency evaluation program or an instructional and competency evaluation program. or the facility, agency or other organization or indi-

vidual that administers the instructional, competency evaluation or instructional and Competency evaluation program.

(17) "Registrant" means a nurse's assistant, home health aide or hospice aide included in the registry.

(18) "Registry" means the department's record, in the form of a list, of persons who have successfully completed an instructional and competency evaluation program or a competency evaluation program or are otherwise eligible under **s.** HFS 129.10(3) to be included in the list.

(19) "Student nurse" means an individual who is currently enrolled in a school for professional nurses or a school for licensed practical nurses that meets standards established under **s.** 441.01 (4), Stats., and ch. N 1, or who has successfully completed the course work of a basic nursing course of the school but has not successfully completed the examination under s. 441.05 or 441.10 (2), Stats.

History: Cr. Register, June, 1991, No. 426, eff. 7–1–91; emerg. am. (3), (5), (13) and (17), cr. (11m) and (11r), eff. 10–1–91; am. (3), (5), (13) and (17), cr. (11m) and (11r), Register, June, 1992, No. 438, eff. 7–1–92; r. and recr. (1), Register, December, 1992, No. 444, eff. 1–1–93; **emerg. r. (1), am. (6), (10) and (11m), r. and recr. (8), eff. 10–1–98; r. (1), am. (6), (10) and (11m), r. and recr. (8), Register, June, 1999, No. 522, eff. 7–1–99.**

HFS 129.04 Waivers and variances. (1) DEFINITIONS. In this section:

(a) "Variance" means the granting of an alternate requirement in place of a requirement of this chapter.

(b) "Waiver" means the granting of an exemption from a requirement of this chapter.

(2) REQUIREMENTS FOR WAIVERS OR VARIANCES. **A** waiver or variancc may bc granted if the department finds that the waiver or variance will not adversely affect the health, safety or welfare of any client and that:

(a) Strict enforcement of a requirement would result in unreasonable hardship on the instructional program or competency evaluation program; or

(b) An alternative to a rule, including new concepts, methods, procedures, techniques, equipment, personnel qualifications or the conducting of a pilot project, is in the interest of more effective training or testing programs or management.

(3) PROCEDURES. (a) *Requests.* 1. **All** requests for waiver of or variance from a requirement of this chapter shall be made in writing to the department, specifying the following:

a. The rule from which the waiver or variance is requested;

b. The time period for which the waiver or variance is requested;

c. If the request is for a variance, the specific alternative action which the program proposes;

d. The reasons for the request; and

e. Assurances that sub. *(2)* would be satisfied.

2. A request for a waiver or variance may be made at any time.

3. The department may require additional information from the program prior to acting on the request.

(b) *Grants and denials.* 1. The department shall grant or deny in writing each request for a waiver or variance. The notice of denial shall contain reasons for the denial. If a notice of denial is not issued within 60 days after the receipt of a complete request, the waiver or variance shall be automatically approved.

2. The terms of a requested waiver or variancc may be modified upon agreement between the department and a program.

3. The department may impose whatever conditions it considers necessary on the granting of a waiver or variance.

4. The department may limit the duration of any waiver or variance.

(c) *Hearings.* 1. **A** program may contest the denial of a requcstcd waiver or variance by requesting a hearing under ch. 227, Stats., as provided in **s.** HFS 129.12.

2. The program shall sustain the burden of proving that the denial of a waiver or variance was unreasonable.

(d) *Revocation.* The department may revoke a waiver or variance if:

1. It is detemiined that the waiver or variance is adversely affecting the outcome of the program;

2. The program has failed to comply with the waiver or variance as granted;

3. The program notifies the department in writing that it wishes to relinquish the waiver or variance and be subject to the rule previously waived or varied; or

4. Required by a change in law.

History: Cr. Register, June, 1991, No. 426, eff. 7–1–91.

HFS 129.05 Certification procedures. (1) APPLICATION. (a) Application for certification of an instructional program for nurse assistants, home health aides or hospice aides or a competency evaluation program for nurse assistants, home health aides or hospice aides shall be made on a form provided by the department.

Note: To obtain a copy of the application form for certification of instructional programs or **the** application form for certification of competency evaluation programs, write to the Bureau of Quality Assurance, P.O. **Box** 2969, Madison, Wisconsin 53701–2969.

(b) The applicant shall provide any additional information requested by the department during its review of the application.

(c) The program shall have an individual designated as responsible for the operation of the program and responsible for compliance of the program with all applicable provisions of this chapter, and that designation shall be noted on the application for certification. When the designee changes, the program is responsible for notifying the department within 10 days after the change takes place. The program shall provide written notification to the department as soon as the identity of the permanent replacement designee is known. **A** program may not operate without this designated individual.

(d) All aspects of the program shall be in compliance with all applicable federal, state and local laws.

(2) ACTION **BY** THE DEPARTMENT. (a) *Initial review of an instructional program.* 1. Upon receiving an application for certification of an instructional program, the department shall review the program to determine the applicant's compliance with ss. HFS 129.06 and 129.07. The department shall review the applicant's program for the following:

a. Program content, length and ratio of classroom instruction to skills training;

b. Qualifications of instructors;

c. Type of clinical supervision;

d. Provision for written evaluation of the program;

e. Reasonable accommodations for students and prospective students with handicapping conditions;

f. Criteria for successful completion; and

g. Appropriate furnishing of physical facilities to meet classroom instruction and skills training needs.

2. Within 90 days after receiving an application for certification of an instructional program, the department shall either approve the application and issue a certificate of approval or deny the application. If the application for certification is denied, the dcpartmcnt shall give the applicant reasons, in writing, for the denial and describe the process for appealing the denial.

(b) *Initial review of a competency evaluation program.* 1. Upon receiving an application for certification of a competency evaluation program, the department shall investigate the program to determine the applicant's compliance with **s.** HFS 129.08. The department shall review the applicant's program for the following:

a. Qualifications of the examiners;

b. Examples of test questions from the written or oral examination and the skills demonstration examination:

c. Standards for determination of successful and unsuccessful completion of the written or oral and skills demonstration examinations;

d. Reasonable accommodations for students and prospective students with handicapping conditions;

e. Effective procedures for maintenance of the security of the written or oral and skills demonstration examinations; and

f. Provision for written evaluation of the program on an annual basis.

2. The program shall have physical facilities that are appropriately furnished, safe and otherwise adequate to meet the written and oral examination and skills demonstration needs of the program.

3. Within 90 days after receiving an application for certification of a competency evaluation program, the department shall either approve the application and issue a certificate of approval or deny the application. If the application for certification is denied, the department shall give the applicant reasons, in writing, for the denial and describe the process for appealing the denial.

(c) *Post–approval review and monitoring.* 1. The department shall conduct a post approval review of a program within one year after the date on which the department initially approved the program. The department may conduct an on–site review of the program at that time or at any other time to verify that the program remains in compliance with this chapter.

2. The program shall submit an annual report to the department on a form provided by the department at least 30 days before expiration of the anniversary date of the approval and shall provide any additional information requested by the department during its review of the program. The program shall provide reasonable means for the department to examine records and gather requested information.

3. Any substantial change in the program shall be reported to the department in writing within 10 days after it takesplace. In this subdivision, "substantial change" means any change in the program designee under s. HFS 129.05 (1) (c), any change in primary instructor under s. HFS 129.06 (1) (d), any change in the training course instructor under s. HFS 129.06 (3) (b), any change in curriculum under s. HFS 129.07 (2), any change in examiner under s. HFS 129.08 (1) (b), any change in the competency examination tinder s. HFS 129.08 (2) and (3) or any change in the program's site under s. HFS 129.07 (3) (a) 5. or 129.08 (4) (c).

4. If at any time the department determines that a program has failed to comply with a requirement of this chapter, it may, after providing written notice, suspend or revoke certification of the program or impose a plan of correction on the program.

History: Cr. Register, June, 1991, No. 426, eff. 7–1–91; emerg. am. (1) (a), eff. 10–1–91; am. (1) (a) and (3) (c) 4., Register, June, 1992, No. 438, eff. 7–1–92; am. (1) (a), Register, December, 1992, No. 444, eff. 1–1–93.

HFS 129.06 Standards for instructors of instructional programs. (1) PRIMARY INSTRUCTOR. (a) The primary instructor for an instructional program shall be a registered nurse licensed to practice in Wisconsin who has a minimum of 2 years of experience working as a registered nurse.

(b) The primary instructor shall provide to the program a resume documenting his or her education and clinical experience in meeting clients' psychosocial, behavioral, cognitive and physical needs, and the program shall maintain that resume on file and shall include a copy of that resume with its application for certification.

(c) The primary instructor shall attend a training course for instructors that is approved by the department under sub. (3), except that the department may waive this requirement for an instructor who has had a substantially equivalent course or substantially equivalent training or clinical experience.

(d) When the program loses a primary instructor, the program shall notify the department of the loss within 10 days after it takes place. The program shall provide written notification to the department as soon as the identity of the replacement primary instructor is known.

(2) PROGRAM TRAINER. (a) Personnel from the health care and public health fields may serve as program trainers to meet specialized instructional needs. Examples of personnel are licensed registered nurses, licensed practical nurses, pharmacists, dietitians, social workers, registered sanitarians, fire safety experts, health care administrators, gerontologists, psychologists, physical and occupational therapists, activity therapists, speech and language pathologists and audiologists.

(b) Program trainers shall have a minimum of one year of experience in the area in which they will provide training.

(c) Program trainers shall work under the general supervision of the primary instructor.

(3) TRAINING COURSE FOR PRIMARY INSTRUCTORS. Application for approval of a training course for primary instructors shall be made on a form provided by the department. The department shall review an application for approval of a training course for primary instructors and shall either approve or deny the application within 90 days after receiving it. based on compliance with the following criteria:

(a) The instructor shall bc a registered nurse licensed to practice in Wisconsin who has a minimum of 2 years of experience as an instructor of nursing practice or as an instructor of nurse assistants, home health aides or hospice aides.

(b) When there is a change in the training course instructor, the program shall notify the department of the change and provide written notification to the department of the name and qualifications of the replacement training course instructor as soon as that is known;

(c) The course shall be a minimum of 16 hours in length; and

(d) The training shall cover at least the following areas:

1. The principles of adult learning, and training techniques that take these into consideration;

2. Formulating training objectives, including behavior objectives which state measurable performance criteria to provide a basis for competency evaluation:

3. Designing the curriculum to provide a logical organization of the material to be covered.

4. Developing lesson plans;

5. Choosing appropriate teaching strategies and methodologies;

6. Dcvcloping learning materials;

7. Applying methods for evaluating trainee learning;

8. Effectively supervising trainees' clinical practice;

9. Defining criteria for successful achievement of training program objectives, including development of oral and written examinations and development of methods for demonstrating skills based on behaviorally stated course objectives; and

10. Developing a recordkeeping system.

History: Cr. Register, June, 1991, No. 426, eff. 7–1–91; emerg. am. (3) (a), eff. 10–1–91; am. (3) (a), Register. June, 1992, No. 438, eff. 7–1–92.

HFS 129.07 Standards for instructional programs. (1) DEFINITIONS. In this section:

(a) "Body mechanics" means use of the muscles of the body and the skeletal system in such a way as to avoid injury or strain when assisting in the movement, positioning and transfer of a client.

(b) "Developmental tasks" means those functions normally associated with the aging process, including but not limited to acceptance of and adjustment to the psychosocial and physiological processes, transition throughout adulthood, retirement development and life review.

(c) "Restorative services" means education and training to restore the client to the fullest possible level of functioning or to promote and maintain the client's fullest possible level of functioning and to attempt to prevent further loss of functioning.

(d) "Soft restraint" means any garment which interferes with the free movement of the client and which the client is unable to remove easily, such as a belt restraint, vest restraint or pelvic restraint.

(2) CURRICULUM. (a) *Minimum requirements.* An instructional program shall include theory and practice in at least the 6 care areas and each of their components included in this subsection.

(b) *Interpersonal communication rind social interuction.* The program shall include the theory of and practice in communicating and interacting on a one–to--one basis with a client; serving as part of a team implementing client care objectives; demonstrating sensitivity to clients' emotional, social and psychological needs through directed interactions; and skills which enable expressions of age–appropriate behavior by allowing clients to make personal choices and by reinforcing behavior that supports a client's sense of dignity. A nurse's assistant, home health aide or hospice aide shall be able to:

1. Identify the components of a caregiver–client relationship and be able to:

a. Recognize the uniqueness of each client, in terms of that person's cultural, generational, social, ethnic, religious or other background, values or characteristics;

b. Recognize the needs of a client with Alzheimer's disease, dementia, mental illness or mental retardation;

c. Recognize ways that both workers and clients cope with stress;

d. Recognize what constitutes abuse; and

e. Recognize the messages conveyed by body language and facial expressions;

2. Demonstrate an ability to establish effective relationships with clients and be able to:

a. Communicate with them with respect and dignity;

b. Explain procedures and activities to them before carrying out the procedures or beginning the activities;

c. Demonstrate concern for clients who have long–term or disabling illnesses or are dying; and

d. Identify developmental tasks associated with the aging process;

3. Demonstrate an ability to use appropriate verbal and nonverbal communication skills with clients and be able to:

a. Recognize effective listening techniques;

b. Distinguish assertive from aggressive responses;

c. Identify the difference between non–acceptable and acceptable touching during job performance; and

d. Identify therapeutic interventions and specialized techniques for responding to wandering and confusion;

4. Recognize common barriers to communication, including language, vision changes, hearing loss, speech problems, memory loss and disorientation:

5. Demonstrate an ability to promote the independence of clients within the limitations of their physical, mental and intellectual impairments by fostering self–help skills through appropriate responses to clients' attempts to provide self care, including recognizing clients' level of ability in self care activities; and

6. Identify the role of the family and other persons of importance to the client in the client's care and as resources for client emotional support.

(c) *Basic nursing skills.* The program shall include the theory of and practice in basic nursing skills, including bed making, taking vital signs, measuring height and weight, caring for the client's environment, measuring fluid and nutrient intake and output, assisting in the provision of proper nutritional care, walking or transferring the client using body mechanics, and maintaining infection control and safety standards. A nurse's assistant, home health aide or hospice aide shall be able to:

1. Demonstrate acceptable personal hygiene habits;

2. Recognize the components of working relationships;

3. Identify how and when to seek guidance: using the supervisory channels of communication within the facility or agency;

4. Use proper body mechanics;

5. Demonstrate an understanding of the meaning of common medical terms and abbreviations;

6. Observe and report changes in client behavior and physical status, including recognizing abnormal signs and symptoms of common diseases and conditions;

7. Recognize the circumstances that require assistance to a client who may be choking on ingested food particles;

8. Recognize generally the normal physical and psychological changes associated with aging;

9. Identify the basic principles of nutrition and hydration;

10. Recognize and report deviations from a client's normal food and fluid intake and output;

11. Recognize the basic requirements of commonly prescribed therapeutic diets;

12. Employ common measures to promote a client's skin integrity, considering the client's ethnicity, race and age;

13. Demonstrate appropriate techniques in walking, transferring, positioning and transporting clients;

14. Recognize and respond appropriately to unsafe environmental conditions, including damp floors, frayed electrical cords and loose hand rails;

15. Recognize and respond appropriately to emergency situations, including following emergency evacuation procedures;

16. Demonstrate appropriate handwashing techniques;

17. Apply soft restraints;

18. Maintain the safety and cleanliness of client care areas, and areas where food is stored;

19. Make use of proper isolation technique;

20. Perform commonly accepted infection control practices, including proper gloving technique and proper disposal of blood and body fluids and secretions:

21. Make occupied and unoccupied beds;

22. Measure temperature, pulse and respiration;

23. Measure a client's weight and height;

24. Record objective information, such as a client's height and weight;

25. Apply nonprescription oinhnents to unbroken skin areas;

26. Assist with care of clients when death is imminent; and

27. Assist with post–mortem care.

(d) *Personal care skills.* The program shall include the theory of and practice in basic personal care **skills,** including bathing, mouth care, grooming, dressing and toileting, and assisting with eating, hydration and skin care. A nurse's assistant, home health aide or hospice aide shall demonstrate an ability to:

1. Give a complete or partial bed bath and assist clients in taking baths and showers;

2. Provide care of the perineal area;.

3. Apply appropriate oral hygiene practices when assisting clients with oral hygiene. including caring for the client's dentures;

4. Provide nail, hair and skin care;

5. Shave and shampoo clients, including applying nonprescription medicated shampoos;

6. Dress and undress clients;

7. Prepare clients for meals;

8. Assist in feeding clients, including helping clients use adaptive devices and feeding utensils and encouraging clients to eat nutritionally balanced meals; and

9. Assist with bowel and bladder elimination.

(e) *Basic restorative services.* The program shall include the theory of and practice in providing restorative services, including the application of assistive devices for ambulation, eating and dressing; maintenance of range of motion through appropriate exercises; proper turning and positioning both in bed and chair; proper transferring techniques: bowel and bladder training; and care and use of prosthetic devices such as hearing aids, artificial eyes and artificial limbs, A nurse's assistant, home health aide or hospice aide shall demonstrate the ability to:

1. Recognize the importance of bowel and bladder programs;

2. Recognize the method for maintaining and improving musculoskeletal functioning by promoting joint mobility, body alignment and movement, including being able to:

a. Position clients by use of pillows, towel rolls, padding and footboards;

b. Perform simple range of motion exercises; and

c. Assist clients in the use of crutches. walkers, wheelchairs, canes, prostheses and appliances;

3. Transfer clients as necessary using Hoyer lifts, wheelchairs and gait belts;

4. Reinforce breathing exercises, including coughing and deep breathing; and

5. Help clients use hearing aids and glasses.

(f) *Rights of clients.* 1. The program shall cover principles and requirements relating to clients' rights.

2. The nurse's assistant, home health aide or hospice aide shall demonstrate behavior that indicates he or she recognizes at least the following obligations in relation to clients' rights:

a. To provide privacy for clients in treatment, living arrangements and caring for personal needs;

b. To maintain the confidentiality of client health and personal records;

c. To allow clients to make personal choices to accommodate their needs;

d. To provide help needed by clients in getting to and participating in activities, including client and family group meetings;

e. To maintain the personal possessions of clients in good and secure condition;

f. To care for clients in a manner that does not involve abuse or neglect; and

g. To report every instance of abuse, as defined in s. HFS 13.03(1), or neglect, as defined in s. HFS 13.03(14), of a client to appropriate facility staff.

3. The nurse's assistant, home health aide or hospice aide shall demonstrate behavior that recognizes that clients have rights and that the assistant or aide must respect those rights. The nurse's assistant, home health aide or hospice aide shall:

a. Demonstrate respect and concern for each client's rights and preferences and awareness of ethnic, cultural, social, generational and religious differences;

b. Show respect for cultural, ethnic and religious food preferences;

c. Recognize what constitutes abuse or neglect of clients and demonstrate an understanding of how to interact with clients to avoid behavior which can be interpreted as abuse or neglect;

d. Demonstrate prevention and intcrvention skills with combative clients which balance appropriate client care with a need to protect self and others;

e. Recognize the role of state and federal regulatory agencies in licensing or otherwise approving providers and in investigating complaints of abuse, neglect or misappropriation of client property;

f. Demonstrate an understanding of the process by which a client or staff member may file a grievance on behalf of a client and seek redress for a perceived violation of client rights;

g. Recognize the role of client advocacy groups as client resources; and

h. Demonstrate awareness of how to file a complaint with the department regarding operations within the provider setting.

(g) *Dementias.* The program shall include instruction about the dementias and techniques for meeting the basic needs of clients with dementia as follows:

1. The nature of dementia, including the cause, course and symptoms of the impairment;

2. The effects on the client of staff verbal and nonverbal communication with the client and means of modifying these communications and approaches to facilitate effective interaction between clients and staff;

3. The feeding and fluid intake problems associated with dementia and the specialized techniques for addressing those problems;

4. The effect of the environment on clients with dementia and the appropriate environmental stimuli to use with those clients to reduce stress and maximize normal functioning;

5. The specialized techniques for responding to client behavior such as wandering and confusion;

6. Diversional activities such as specially selected soft music and therapeutic ambulation that should be used in caring for clients with dementia; and

7. The stress involved for the client, family and nurse's assistant, home health aide or hospice aide in caring for a client with dementia and techniques for coping with this stress.

(3) PROGRAM OPERATION. (a) *Clinical setting.* The instructional program shall have all of the following:

1. Access to a clinical setting;

2. Qualified faculty members for both the classroom and skills portions of the instructional program;

3. Reasonable accommodations for students and prospective students with handicapping conditions;

4. An adequate number of clinical instructors in the clinical setting to provide safe and effective supervision and assistance; and

5. Classroom facilities that are adequate to meet the needs of the program.

(b) *Program length.* The program shall be a minimum of 75 hours in length, including at least 16 hours in a clinical setting and 16 hours of classroom instruction. Competency evaluation and provider orientation may not be counted toward meeting the 75 hour minimum.

(c) *Skills training instructor to trainee ratio.* The ratio of instructors to trainees in skills training shall be adequate to ensure that each trainee is provided safe and effective assistance and supervision.

(d) *Expectations and records.* 1. The instructional program shall maintain a list of the skills and a summary of the knowledge which a trainee is expected to have upon completion of the instructional program.

2. The primary instructor shall record the date the individual satisfactorily performs each required task or skill. Upon satisfactory completion of all required skills and competencies and attainment of the necessary knowledge, the trainee shall be allowed to take a written or oral competency evaluation examination and a skills competency demonstration examination.

3. The primary instructor shall provide a copy of the trainee's performance record to the trainee.

(e) *Record* ***retention.*** All records required by this section shall be retained for a period of at least 3 years.

History: Cr. Register, June, 1991, No. 426, eff. 7–1–91; emerg. am. (2) (b) (intro.), (c) (intro.), (d) (intro.), (e) (intro.), (f) 2. intro., 3. intro. and (g) 7., eff. 10–1–91; am. (2) (b) (intro.), (c) (intro.), (d) (intro.), (e) (intro.), (f) 2. intro., **3.** intro. and (g) 7., Register, June, **1992,** No. **438, eff. 7-1-92; emerg. am. (2) (f) 2. g., eff. 10–1–98; am. (2) (f) 2. g., Register, June, 1999, No. 522. eff. 7–1–99.**

HFS 129.08 Standards *for* competency evaluation programs. (1) EXAMINER QUALIFICATIONS. (a) The examiner conducting the clinical competency evaluation of a trainee shall meet the qualifications for the primary instructor under s. HFS 129.06 (1).

(b) When the program loses an examiner. the program shall notify the department of the loss and provide written notification to the department of the name and qualifications of the replacement examiner **as** soon as that is known.

(2) WRITTEN OR ORAL EVALUATION COMPONENT. (a) The competency evaluation program shall develop a pool of test questions which address all 6 content areas and their components under s. HFS 129.07 (2). The pool of test questions shall include at least 3 complete and different examinations. All questions within a content area shall be selected on a random basis.

(b) 1. The competency evaluation program shall develop written and oral examinations from the pool of test questions. The content of the written and oral examinations shall reflect the content and emphasis of the instructional program completed by the individual to ensure that the individual has successfully completed the instructional program and the test is relevant to the instructional program. The examiner shall review the instructional program performance record of the individuals.

2. The written and oral examinations shall be given in English, except that ifanurse's assistant, home health aide or hospice aide will be working in a provider setting in which the predominant language is other than English, the examination for that person may be given in the predominant language used in the facility.

(c) The competency evaluation program may develop an oral examination for nurse assistants, home health aides and hospice aides who have limited literacy skills. The oral examination shall cover the same subject areas that are included in the original written examination adapted for oral testing, and shall include a component to determine the assistant's or aide's ability to read basic, objective job–related information, such as reading a client's name band or a client's flow sheet.

(d) A total of at least 25 written or oral questions shall be asked. The questions shall cover at least the 6 content areas under s. HFS 129.07 (2) and shall be selected randomly from at least *3* possible selections. The questions shall be in the following areas:

1. Interpersonal communication and social interaction, 4 questions;

2. Basic nursing skills, **7** questions, of which *5* shall address:

a. Observation, reporting and documentation of changes in client status and services furnished;

b. Recognizing and reporting change of client condition and status to supervisor;

c. Knowledge of emergency procedures;

d. Knowledge of infection control procedures; and

e. Maintenance of a clean, safe and healthy environment;

3. Personal care skills, 1 question;

4. Basic restorative services, 3 questions;

5. Client rights, **5** questions, of which 3 shall address:

a. Right to respect;

b. Right to privacy and confidentiality; and

c. Right to maintain personal property; and

6. Dementias, 5 questions.

(e) The criteria for successful completion of the competency evaluation program shall include satisfactory scores on the items under subds. **2.** and 5.

(3) DEMONSTRATION COMPONENT. (a) The competency evaluation program shall develop a pool of skill demonstration exercises. There shall be a sufficient number of skill demonstration exercises for at least 3 complete and different skills demonstration examinations to evaluate the individual's ability to perform the required job tasks. The skills and competencies listed in the curriculum shall meet the definition of a task. Tasks shall be randomly selected from the pool of skills to be demonstrated. An examination shall include a minimum of 13 specific tasks in the core curriculum areas of basic nursing skills, personal care skills and basic restorative services. The core areas of interpersonal communication and social interaction shall be integrated throughout the skills demonstration evaluation. The skill demonstration exercises shall address at least the following areas:

1. Interpersonal communication and social interaction. Skills, competencies and knowledges addressed in this core curriculum area shall be integrated into the content of the skills demonstration. A minimum of 3 tasks taken from this core area shall be evaluated during the skills demonstration;

2. Basic nursing skills. Skill demonstration exercises shall include the reading and recording of temperature, pulse and respiration;

3. Personal care skills. Skill demonstration exercises shall include:

a. Bed bath;

b. Sponge or tub bath or shower;

c. Shampoo;

d. Nail care;

e. Skin care;

f. Oral hygiene;

g. Toileting and elimination;

h. Dressing;

i. Eating and feeding–techniques; and

j. Hydration; and

4. Basic restorative services. Skill demonstration exercises shall include:

a. Ambulation;

b. Positioning;

c. Range of motion exercises; and

d. Transferring.

(b) The criteria for successful completion of a competency evaluation program shall include satisfactory scores in the exercises under par. **(a)** 2., 3. and **4.**

(c) The examiner shall prepare objective criteria for measuring successful completion of each task. The criteria shall bc prepared in advance of administration of a skills demonstration examination. Upon completion of the examination, the examiner shall discuss with the trainee the trainee's performance of each task in relationship to the criteria.

(4) PROGRAM OPERATION. The competency evaluation program shall maintain the following standards in operating the program:

(a) Reasonable accommodations for students and prospective students with handicapping conditions;

(b) An adequate number of examiners to provide safe and effective supervision and assistance;

(c) Classroom facilities that are adequate to meet the needs of the testing program; and

(d) Retention of all records requiredunder this section for a period *of* at least 3 years.

(5) REPEATING THE EXAMINATION. If an individual fails to pass a Competency evaluation examination, the individual may repeat the examination until he or she successfully completes it. If the individual passes the written component and fails the demonstration component. only the demonstration component need be repeated. If the individual passes the demonstration component and fails the written component, only the written component need be repeated. A repeat examination shall differ in content from the examination previously taken by the individual.

History: Cr. Register, June, 1991, No. 426, eff. 7–1–91; emerg. am. (2) (b) 2. and *(c)*, eff. 10-1–91; am. (2) (b) 2. and (c), r. and recr. (3)(a) 4., Register, June. **1992.** No. 438. **eff.** 7–1–92.

HFS 129.09 Retroactive approval *of comparable* programs. (1) APPLICATION. (a) The department may approve retroactively an instructional and competency testing program or a competency testing program that is substantially the same as an instructional and competency evaluation program or a competency evaluation program certified by the department under s. HFS 129.05.

(b) Application for retroactive approval of a comparable instructional and competency testing program or a competency testing program shall be made on a form provided by the department.

Note: To obtain a copy of the application for approval of a coinparable program, write Bureau of Quality Assurance, **P.O. Box** *2969,* Madison, Wisconsin 53701–2969.

(c) The applicant shall provide any additional information requested by the department during its review of the application.

(2) ACTION BY THE DEPARTMENT. (a) Upon receiving an application for retroactive approval of a comparable instructional and competency testing program or a competency testing program, the department shall review the applicant's program for the following:

1. For an instructional and competency testing program. classroom and clinical setting instruction to total a 75–hour curriculum;

2. For an instructional and competency testing program, curriculum content that includes basic nursing skills, personal care skills, basic restorative services, interpersonal communication and social interaction, and client rights;

3. An instructor or examiner who is a registered nurse;

4. An evaluation process which includes a written or oral testing component and a skills demonstration component along with criteria for successful completion of the program; and

5. Adequate physical facilities and equipment available for use by the program.

(b) Within 90 days after receiving an application for approval of a comparable instructional and competency testing program or a competency evaluation program, the department shall either approve the application or deny the application. If the application for approval is denied, the department shall give the applicant reasons, in writing, for the denial and describe the process for appealing the denial.

(c) An instructional and competency testingprogram or a competency testing program is eligible to be considered for approval as a comparable instructional and competency evaluation program or a competency evaluation program if the program was in operation prior to October 1, 1990.

History: Cr. Register, June, 1991, No. 426, eff. 7–1–91.

HFS 129.10 Registry. (1) ESTABLISHMENT AND MAINTENANCE. (a) The department shall establish and maintain a registry of persons who have satisfactorily completed a nurse's assistant, home health aide or hospice aide instructional program and competency evaluation program or only a competency evaluation program, or who otherwise meet the requirements of or are exempt under s. 146.40 (2), Stats., and request inclusion in the registry.

(b) If an individual has satisfactorily completed in another state a nurse's assistant, home health aide or hospice aide instructional program and competency evaluation program, or only a competency evaluation program, which meets federal requirements for the program and which provides training and evaluation equivalent to Wisconsin's program, that individual shall be eligible for listing in the registry under par. (a).

Note: The registry under this chapter is the list of qualified caregivers required under s. 146.40 **(4g)** (a) 1., Stats. It is one of 2 parts of the Department's caregiver registry required under s. 146.40 (4g), Stats. See ch. HFS 13 for the other **part,** the list of caregivers who have been found to have abused or neglected a client or misappropriated a client's property.

(2) CONTENT OF REGISTRY. Information in the registry shall include the registrant's:

(a) Eligibility for employment in a department–approved hospital or a department–licensed nursing home or facility for the developmentally disabled, or with a department–licensed home health agency or a hospice certified under 42 USC 1395 to 1395ccc;

(b) Social security number;

(c) Full name, including middle initial;

(d) Mailing address;

(e) Date of birth;

(f) Date of completion of instructional program, if applicable;

(g) Date of completion of competency evaluation program, if applicable;

(h) Competency evaluation program number, if applicable; and

(i) Date of completion of program approved under s. HFS 129.09, if applicable.

(3) NOTIFICATION OR APPLICATION. (a) The examiner of a competency evaluation program shall notify the department when an individual has satisfactorily completed the program. The notification shall bc in writing on a form provided by the department and shall be submitted to the department within 30 days after the individual satisfactorily completes the program.

(b) **A** person who is eligible under sub. (1) for inclusion in the registry but for whom notification is not required under par. (a), or a hospital, nursing home, facility for the developmentally disabled, home health agency or hospice on behalf of that person, may apply to the department to include that person in the registry. Application shall be made on a form provided by the department.

Note: To obtain **a** copy of the notification/application form for adding a nurse's assistant. home health aide or hospice aide to the registry, write to the Bureau of **Quality** Assurance, P.O. Box 2969, Madison. Wisconsin 53701–2969.

(4) ACTION BY THE DEPARTMENT. (a) Upon receiving an application under sub. (3) (b) to list a person in the registry, the department shall review the application and make whatever inquiries are necessary to determine if the person is eligible to be included in the registry.

(b) Within 30 days after receiving an application, the department shall either approve the application and include the person in the registry or deny the application. If the application for inclusion is denied the department shall give the person, or the facility or agency that submitted the application on behalf of that person, reasons, in writing, for the denial.

(5) RELEASE OF REGISTRY INFORMATION. With the exception of sub. (2) (b), and to the extent permitted by state and federal law, the information included in the registry about individuals is public information. The department shall respond promptly to inquiries concerning registry information. A request for registry information shall be in writing and accompanied by a self–addressed stamped envelope.

Note: Send a request for registry information **to:** Bureau of Quality Assurance, P.O. Box 2969, Madison, Wisconsin 53701–2969.

History: Cr. Register, June, 1991, No. 426, eff. 7–1–91; emerg. am. (1) (a) and (b), (2) (a) and (j), (3) (b) and (5), eff. 10–1–91, am. (1), (2) (a), (j), (3) (b) and (5), Register. June. *1992,* No. 438, eff. 7–1–92; renum. **(2)** (intro.) and (a) to (j) to be (2) (a) (intro.) and 1. to 9. and (b) and am. (2) (a) 8., 9. and (b), Register, December, 1992,

No. 444. eff. 1–1–93; emerg. **r. (2) (b), r.** and **recr. (5), eff. 10–1–98; renum. (2)** (a) to **be (2), r. (2) (b), r. and** recr. **(5),** Register, June, **1999,** No. **522, eff. 7–1–99.**

HFS 129.11 Complaints of abuse or misappropriation *of* property. History: Cr. Register, December, 1992, No. 444, eff. 1–1–93, emerg. **r. eff. 10–1–98; r.** Register, **June, 1999, No. 522,** *eff.* **7–1–99.**

HFS 129.12 Appeals. (1) An aggrieved party may appeal to the department of administration's division of hearings and appeals any of the following:

(a) **A** denial of a request for a waiver or variance under s. HFS 129.04 (3) (b) or the revocation of a waiver or variance under s. HFS 129.04 (3) (d);

(b) A denial of an application for certification of an instructional program under s. HFS 129.05 (2) (a) 2;

(c) **A** denial of an application for certification of a competency evaluation program under s. HFS 129.05 **(2)** (b) 3;

(d) A denial of an application under s. HFS 129.06 (3) for approval of a training course for primary instructors;

(e) **A** denial of an application under s. HFS 129.09 (2) (b) for approval of a comparable program; or

(f) A denial under s. HFS 129.10 (4) (b) of an application to include a person in the registry.

(2) An appeal shall be in writing and shall take the form of a request for a hearing. The request for a hearing shall be filed with the department of administration's division of hearings and appeals no later than 30 days after the date of the denial, suspension or revocation, and is considered filed when received by the division of hearings and appeals.

Note: The address of the Division of Hearings and Appeals is P.O. Box 7875. Madison, Wisconsin 53707. Appeals may be delivered in person to that office at 5005 University Avenue, Room 201, Madison. Wisconsin.

Note: As provided in s. 146.40(4m), Stats., an aggrieved party wanting to appeal **a** suspension or revocation of certification or the imposition **of** a plan of correction under s. HFS 129.05 (2) (c) 4. should ask the department of administration's division of hearings and **appeals** in writing for a hearing. The address **of** the Department of Administration's Division of Hearings and Appeals **is** 5005 University Avenue, Suite 201, Madison, Wisconsin 53705–5400.

History: Cr. Register, June. 1991. No. 426, eff. 7–1–91; r. (1) *(c)* and (e), renum. (1) (d) and (f) to (h) to be (1) (c) to (f), Register, June, 1992, No. 438, eff. 7–1–92; renum. from HSS 129.11, Register. December, 1992, No. 444, eff. 1–1–93; emerg. **am. (2), eff. 10–1–98;** am. **(2),** Register, June, **1999, No. 522, eff. 7–1–99.**

Chapter HFS 129

APPENDIX A

Bureau of Quality Assurance Regional Offices

Bureau of Quality Assurance
Madison/Southern Regional Office
3514 Memorial Drive
Madison WI 53704
(608) 243–2370

Bureau of Quality Assurance
Milwaukee/Southeastern Regional Office
819 N. 6th St., Rm. 875
Milwaukee WI 53203
(414) 227–5000

Bureau of Quality Assurance
Rhinelander/Northern Regional Office
1853 N. Stevens, Suite B
Rhinelander WI 54501
(715) 365–2800

Bureau of Quality Assurance
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Chapter HFS 132

NURSING HOMES

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Note: Chapter H 32 as it existed on July 31. 1982 was repealed and a new chapter HFS 132 was created effective August 1. 1982. Chapter HSS 132 was renumbered chapter HFS 132 under s. 13.93 (2m) (b) 1., Stats.. and corrections made under s. 13.93(2m) (b) 6. and 7.. Stats., Register, December, 1996, No. 492.

Subchapter I — General

HFS 132.11 Statutory authority. This chapter is promulgated under the authority of s. 50.02, Stats., to provide conditions of licensure for nursing homes.

History: Cr. Register, July, 1982, No. 319. eff. 8-1-82.

HFS 132.12 Scope. All nursing homes licensed under s. 50.03, Stats., are subject to all the provisions of this chapter, except for those provisions that apply only to particular licensure categories, and except for those nursing homes regulated by ch. HFS 134. Nursing homes include those owned and operated by the state, counties, municipalities. or other public bodies.

History: Cr. Register. July. 1982, No. 319, eff. 8-1-82.

HFS 132.13 Definitions. In this chapter:

(1) "Abuse" means any single or repeated act of force, violence, harassment, deprivation, neglect or mental pressure which reasonably could cause physical pain or injury, or mental anguish or fear.

(2) "Ambulatory" means able to walk without assistance.

(3) "Department" means the Wisconsin department of health and family services.

(4) "Developmental disability" means mental retardation or a related condition, such as cerebral palsy, epilepsy or autism, but excluding mental illness and infirmities of aging, which is:

(a) Manifested before the individual reaches age 22;

(b) Likely to continue indefinitely; and

(c) Results in substantial functional limitations in 3 or more of the following areas of major life activity:

1. Self-care;
2. Understanding and use of language;
3. Learning;
4. Mobility;
5. Self--direction; and
6. Capacity for independent living.

(5) "Dietitian" means a person who either:

(a) Is eligible for registration as a dietitian by the commission on dietetic registration of the American dietetic association under its requirements in effect on January 17, 1982; or

(b) Has a baccalaureate degree with major studies in food and nutrition, dietetics, or food scrvicc management, and has one year of supervisory experience in the dietetic service of a health care institution.

(6) "Direct supervision" means supervision of an assistant by a supervisor who is present in the same building as the assistant while the assistant is performing the supervised function.

(7) "Facility" means a nursing home subject to the requirements of this chapter.

(8) "Full-time" means at least 37.5 hours each week devoted to facility business.

(8m) "IMD" or "institution for mental diseases" means a facility that meets the definition of an institution for mental diseases under 42 CFR 435.1009.

(9) "Intermediate care facility" means a nursing home which is licensed by the department as an intermediate care facility to provide intermediate nursing care.

(10) "Intermediate nursing cars" means basic care consisting of physical, emotional, social and other rehabilitative services under periodic medical supervision. This nursing care requires the skill of a registered nurse for observation and recording of reactions and symptoms, and for supervision of nursing care. Most of the residents have long-term illnesses or disabilities which may have reached a relatively stable plateau. Other residents whose conditions are stabilized may need medical and nursing services to maintain stability. Essential supportive consultant services are provided.

(11) "Licensed practical nurse" means a person licensed as a licensed practical nurse under ch. 441, Stats.

(12) "Limited nursing care" means simple nursing care procedures required by residents with long-term illnesses or disabilities in order to maintain stability and which can be provided safely only by or under the supervision of a person no less skilled than

a licensed practical nurse who works under the direction of a registered nurse. Supervision of the physical, emotional, social and rehabilitative needs of the resident is the responsibility of the appropriate health care provider serving under the direction of a physician.

(13) "Mobile nonambulatory" means unable to walk without assistance, but able to move from place to place with the use of a device such as a walker, crutches, a wheel chair or a wheeled platform.

(14) "Nonambulatory" means unable to walk without assistance.

(15) "Nonmobile" means unable to move from place to place.

(16) "Nurse" means a rcgistercd nurse or licensed practical nurse.

(17) "Nurse practitioner" means a registered professional nurse who meets the requirements of s. HFS 105.20 (2) (b).

Note: HFS 105.20 (2) (b) was repealed eff. 1–1–91

(18) "Nursing assistant" means a person who is employed primarily to provide direct care services to residents but is not registered or licensed under ch. 441, Stats.

(19) "Personal care" means personal assistance, supervision and a suitable activities program. In addition:

(a) Provision is made for periodic medical supervision and other medical services as needed. These services are for individuals who do not need nursing care but do need the services provided by this type of facility in meeting their needs. Examples of these individuals are those referred from institutions for the developmentally disabled, those disabled from aging, and the chronically ill whose conditions have become stabilized;

(b) The services provided are chiefly characterized by the fact that they can be provided by personnel other than those trained in medical or allied fields. The services are directed toward personal assistance, supervision, and protection;

(cj The medical service emphasizes a preventive approach of periodic medical supervision by the resident's physician as part of a formal medical program that will provide required consultation services and also cover emergencies; and

(d) The dietary needs of residents are met by the provision of an adequate general diet or by therapeutic, medically prescribed diets.

(20) "Pharmacist" means a person registered as a pharmacist under ch. 450, Stats.

(21) "Physical therapist" means a person licensed *to* practice physical therapy under ch. 448, Stats.

(22) "Physician" means a person licensed to practice medicine or osteopathy under ch. 448, Stats.

(23) "Physician extender" means a person who is a physician's assistant or a nurse practitioner acting under the general supervision and direction of a physician.

(24) "Physician's assistant" means a person certified under ch. **448,** Stats., to perform as a physician's assistant.

(25) "Practitioner" means a physician, dentist, podiatrist or other person permitted by Wisconsin law to distribute, dispense and administer a controlled substance in the course of professional practice.

(26) "Recuperative care" means care anticipated to be provided 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 a medical treatment.

(27) "Registered nurse" means a person who holds a certificate of registration as a registered nurse under ch. 441, Stats.

(28) "Resident" means a person cared for or treated in any facility on a 24–hour basis irrespective of how the person has been admitted to the facility.

(29) "Respite care" means care anticipated to be provided 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.

(30) "Short–term care" means recuperative care or respite care.

(31) "Skilled nursing facility" means a nursing home which *is* licensed by the department to provide skilled nursing services.

(32) (a) "Skilled nursing services" means those services furnished pursuant to a physician's orders which:

1. Require the skills of professional personnel such as registered or licensed practical nurses; and

2. Are provided either directly by or under the supervision of these personnel.

(b) In determining whether a service is skilled, the following criteria shall be used:

1. The service would constitute a skilled service where 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 professional personnel;

2. The restoration potential of a resident *is* not the deciding factor in determining whether a service is to be considered skilled or unskilled. Even where full recovery or medical improvement is not possible, skilled care may be needed to prevent, to the extent possible, deterioration of the condition or to sustain current capacities; and

3. **A** service that is generally unskilled would be considered skilled where, because of special medical complications, its performance or supervision or the observation of the resident necessitates the use of skilled nursing personnel.

(33) "Specialized consultation" means the provision of professional or technical advice, such as systems analysis, crisis resolution or inservice training, to assist the facility in maximizing service outcomes.

(34) "Supervision" means at least intermittent face–to–face contact between supervisor and assistant, with the supervisor instructing and overseeing the assistant, but does not require the continuous presence of the supervisor in the same building as the assistant.

(35) "Tour of duty" means a portion of the day during which a shift of resident care personnel are on duty.

(36) "Unit dose drug delivery system" means a system for the distribution of medications in which single doses of medications are individually packaged and sealed for distribution to residents.

History: Cr. Register, July, 1982, No. 319, eff. 8–1–82; emerg. renum. (3) to **(24)** to be **(4)** to (25), cr. **(3),** eff. 9–15–86; r. and recr. Register. January. 1987, No. 373, **eff.** 2–1-87; emerg. cr. **(8m),** eff. 7–1-88; am. **(4),** Register, February, 1989, No. 398, eff. 3-1–89; cr. **(8m),** Register, October, 1989. No. 406, eff. 11-1 89.

HFS 132.14 Licensure. (1) CATEGORIES. Nursing homes shall elect one of the following categories of licensure:

(a) Skilled nursing facility; or

(b) Intermediate care facility.

(1m) LICENSURE AS AN INSTITUTION FOR MENTAL DISEASES

(a) *Requirements.* The department may grant a facility a license to operate as an institution for mental diseases if the following conditions are met:

1. The conversion of all or some of the beds within the facility will result in a physically identifiable unit of the facility, which may be a ward, contiguous wards, a wing, a floor or a building, and which is separately staffed;

2. The IMD shall have a minimum of 16 beds;

3. The conversion of beds to or from an IMD shall not increase the total number of beds within the facility; and

4. The facility has submitted an application under subs. (2) and (3) to convert all or a portion of its beds to an IMD and the department has determined that the facility is in substantial compliance with this chapter. **A** facility may not submit an application for conversion of beds to or from an IMD more than 2 times a year.

(b) *Exclusion.* An existing facility applying to be licensed in whole or part as an IMD is not subject to prior review under ch. 150, Stats.

(2) APPLICATION. Application for a license shall be made on a form provided by the department.

Note: To obtain a copy **of** the application form for a license to operate a nursing home, write: Bureau of Quality Assurance, P.O. Box 309, Madison, Wisconsin 53701.

(3) REQUIREMENTS FOR LICENSURE. (a) In every application the license applicant shall provide the following information:

1. The identities of all persons or business entities having the authority, directly or indirectly, to direct or cause the direction of the management or policies of the facility;

2. The identities of all persons or business entities having any ownership interest whatsoever in the facility, whether direct or indirect, and whether the interest is in the profits, land or building, including owners of any business entity which owns any part of the land or building;

3. The identities of all creditors holding a security interest in the premises, whether land or building; and

4. In the case of a change of ownership, disclosure of any relationship or connection between the old licensee and the new licensee, and between any owner or operator of the old licensee and the owner or operator of the new licensee, whether direct or indirect.

(b) The applicant shall provide any additional information requested by the department during its review of the license application.

(c) The applicant shall submit evidence to establish that he or she has sufficient resources to permit operation of the facility for a period of ***6*** months.

(d) No license may be issued unless and until the applicant has supplied all information requested by the department.

(4) REVIEW OF APPLICATION. (a) *Investigation.* After receiving a complete application, the department shall investigate the applicant to determine if the applicant is fit and qualified to be a licensee and to determine if the applicant is able to comply with this chapter.

(b) *Fit and qualified.* In making its determination of the applicant's fitness, the department shall review the information contained in the application and shall review any other documents that appear to be relevant in making that determination, including survey and complaint investigation findings for each facility with which the applicant is affiliated or was affiliated during the past 5 years. The department shall consider at least the following:

1. Any class **A** or class B violation, as defined under s. 50.04, Stats., issued by the department relating to the applicant's operation of a residential or health care facility in Wisconsin;

2. Any adverse action against the applicant by the licensing agency of this state or any other state relating to the applicant's operation of a residential or health care facility. In this subdivision, "adverse action" means an action initiated by a state licensing agency which resulted in the denial, suspension or revocation of the license of a residential or health care facility operated by the applicant;

3. Any adverse action against the applicant based upon noncompliance with federal statutes or regulations in the applicant's operation of a residential or health care facility in this or any other state. In this subdivision, "adverse action" means an action by a state or federal agency which resulted in the denial, non–renewal, cancellation or termination of certification of a residential or health care facility operated by the applicant;

4. The frequency of noncompliance with state licensure and federal certification laws in the applicant's operation of a residential or health care facility in this or any other state;

5. Any denial, suspension, enjoining or revocation of a license the applicant had as a health care provider as defined in **s.** 146.81 (1), Stats., or any conviction of the applicant for providing health care without a license;

6. Any conviction of the applicant for a crime involving neglect or abuse of patients or of the elderly or involving assaultive behavior or wanton disregard for the health or safety of others;

7. Any conviction of the applicant for a crime related to the delivery of health care services or items;

8. Any conviction of the applicant for a crime involving controlled substances;

9. Any knowing or intentional failure or refusal by the applicant to disclose required ownership information; and

10. Any prior financial failures of the applicant that resulted in bankruptcy or in the closing of an inpatient health care facility or the moving of its residents.

(5) ACTION BY THE DEPARTMENT. Within 60 days after receiving a complete application for a license, the department shall either approve the application and issue a license or deny the application. The department shall deny a license to any applicant who has a history, determined under sub. (4) (b) 1. to 4., of substantial noncompliance with federal or this state's or any state's nursing home requirements, or who fails under sub. (4) (b) 5. to 10., to qualify for a license. If the application for a license is denied, the department shall give the applicant reasons, in writing, for the denial and shall identify the process for appealing the denial.

(6) TYPES OF LICENSE. (a) *Probationary license.* If the applicant has not been previously licensed under this chapter or if the facility 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 **s.** 50.03 (5), Stats. If the applicant is found to be fit and qualified under sub. (4) and in substantial compliance with this chapter, the department shall issue a regular license upon expiration of the probationary license. The regular license is valid indefinitely unless suspended or revoked.

(b) ***Regular license.*** If the applicant has been previously licensed, the department shall issue a regular license if the applicant is found to be in substantial compliance with this chapter. A regular license is valid indefinitely unless suspended or revoked.

(7) SCOPE OF LICENSE. (a) The license is issued only for the premises and the persons named in the license application, and may not be transferred or assigned by the licensee.

(b) The license shall state any applicable restrictions, including maximum bed capacity and the level of care that may be provided, and any other limitations that the department considers appropriate and necessary taking all facts and circumstances into account.

(c) A licensee shall fully comply with all requirements and restrictions of the license.

(8) REPORTING. Every 12 months, on a schedule determined by the department, a nursing home licensee shall submit a report to the department in the form and containing the information that the department requires, including payment of the fee required under **s.** 50.135 (2) (a), Stats. If a complete report is not timely filed, the department shall issue a warning to the licensee. If a nursing home licensee who has not filed a timely report fails to submit a complete report to the department within 60 days after the date established under the schedule determined by the department, the department may revoke the license.

History: Cr. Register, **July,** 1982, No. 319, eff. 8–1–82; cr. (5), Register, November, 1985, No. 359, eff. 12–1–85; r. and recr., Register, January, 1987, No. 373, **eff.** 2–1–87; emerg. cr. (1m), eff. 7–1–88; am. (3) (c), renum. (4) to ***(6)*** to be (5) to (7) and am. (5) and (6) (a), cr. (4), Register, February, 1989, No. 398, eff. 3–1–89; cr. (1m),

Register. October, 1989, No. 406. eff. 11–1–89: am. (5), cr. (8). Register. August 2000. No. 536. eff. 9–1–00.

HFS 132.15 Certification for medical assistance. For rcquircments for certification under the medical assistance program, see ch. HFS 105.

History: Cr. Register, July, 1982, No. 319, eff. 8–1–82.

Subchapter II — Enforcement

HFS 132.21 Waivers and variances. (1) DEFINITIONS. As used in this section:

(a) "Waiver.' means the grant of an exemption from a requirement of this chapter.

(b) "Variance" means the granting of an alternatc requirement in place of a requirement of this chapter.

(2) REQUIREMENTS FOR WAIVERS *on* VARIANCES. A waiver or variance may be granted if the department finds that the waiver or variance will not adversely affect the health, safety, or welfare of any resident and that:

(a) Strict enforcement of a requirement would result in unreasonable hardship on the facility or on a resident; or

(b) An alternative to a rule, including new concepts, methods, procedures, techniques, equipment, personnel qualifications. or the conducting of pilot projects, is in the interests of better care or management.

(3) PROCEDURES. (a) *Applications.* 1. All applications for waiver or variance from the requirements of this chapter shall be made in writing to the department, specifying the following:

a. The rule from which the waiver or variance is requested:

b. The time period for which the waiver or variance is requested;

c. If the request is for a variance, the specific alternative action which the facility proposes;

d. The reasons for the request; and

e. Justification that sub. **(2)** would be satisfied.

2. Requests for a waiver or variance may be made at any time.

3. The department may require additional information from the facility prior to acting on the request.

(b) *Grants and denials.* 1. The department shall grant or deny each request for waiver or variance in writing. Notice of denials shall contain the reasons for denial. If a notice of denial is not issued within 60 days after the receipt of a complete request, the waiver or variance shall be automatically approved.

2. The terms of a requested variance may be modified upon agreement between the department and a facility.

3. The department may impose such conditions on the granting of a waiver or variance which it deems necessary.

4. The department may limit the duration of any waiver or variance.

(c) ***Hearings.*** 1. Denials of waivers or variances may be contested by requesting a hearing as provided by ch. 227, Stats.

2. The licensee shall sustain the burden of proving that the denial of a waiver or variance was unreasonable.

(d) ***Revocation.*** The department may revoke a waiver or variance if:

1. It is determined that the waiver or variance is adversely affecting the health, safety or welfare of the residents; or

2. The facility has failed to comply with the variance as granted; or

3. The licensee notifies the department in writing that it wishes to relinquish the waiver or variance and be subject to the rule previously waived or varied; or

4. Required by a change in law.

History: Cr. Register, July, 1982, No. 319, eff. 8–1–82: am. (3) (a) I. d., Register, January, 1987, No. 373, eff. 2–1–87.

Subchapter III — Residents' Rights and Protections

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

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

1. Receive, send, and mail sealed, unopened correspondence. No resident's incoming or outgoing correspondence may be opened, delayed, held, or censored, except that a resident or guardian may direct in writing that specified incoming correspondence be opened, delayed, or held.

2. Use a telephone for private communications.

3. Have private visits, pursuant to a reasonable written visitation policy.

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

(c) Finances. Manage one's own financial affairs, including any personal allowances under federal or state programs. No resident funds may be held or spent except in accordance with the following requirements:

1. A facility may not hold or spend a resident's funds unless the resident or another person legally responsible for the resident's funds authorizes this action in writing. The facility shall obtain separate authorizations for holding a resident's funds and for spending a resident's funds. The authorization for spending a resident's funds may include a spending limit. Expenditures that exceed the designated spending limit require a separate authorization for each individual occurrence;

2. Any resident funds held or controlled by the facility, and any earnings from them, shall be credited to the resident and may not be commingled with other funds or property except that of other residents;

3. The facility shall furnish a resident, the resident's guardian, or a representative designated by the resident with at least a quarterly statement of all funds and property held by the facility for the resident and all expenditures made from the resident's account, and a similar statement at the time of the resident's permanent discharge. If the resident has authorized discretionary expenditures by the facility and the facility has accepted responsibility for these expenditures, upon written request of the resident, the resident's guardian or a designated representative of the resident, the facility shall issue this statement monthly; and

4. The facility shall maintain a record of all expenditures, disbursements and deposits made on behalf of the resident.

(d) *Admission information.* Be fully informed in writing, prior to or at the time of admission, of all services and the charges for thcsc services, and be informed in writing, during the resident's stay, of any changes in services available or in charges for services, as follows:

1. No person may be admitted to a facility without that person or that person's guardian or any other responsible person designated in writing by the resident signing an acknowledgement of having received a statement of information before or on the day of admission which contains at least the following information or, in the case of a person to bc admitted for short–term care, the information required under s. HFS 132.70 (3):

a. An accurate description of the basic services provided by the facility, the rate charged for those services, and the method of payment for them:

b. Information about all additional services regularly offered but not included in the basic services. The facility shall provide information on where a Statement of the fees charged for each of these services can be obtained. These additional services include pharmacy; x–ray. beautician and all other additional services regularly offered to residents or arranged for residents by the facility;

c. The method for notifying residents of a change in rates or fees;

d. Terms for refunding advance payments in case of transfer, death or voluntary or involuntary discharge;

e. Tenns of holding and charging for a bed during a resident's temporary absence;

f. Conditions for involuntary discharge or transfer, including transfers within the facility;

g. Information about the availability of storage space for personal effects; and

h. **A** summary of residents' rights recognized and protected by this section and all facility policies and regulations governing resident conduct and responsibilities.

2. No statement of admission information may be in conflict with any part of this chapter.

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

(f) *Privacy.* Have physical and emotional privacy in treatment, living arrangements, and in caring for personal needs, including: but not limited to:

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

Note: Sees. HFS 132.84(1) **(a).**

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 third–party payment contracts.

(g) *Work.* Not be required to perform work for the facility, but may work for the facility if:

1. The work is included for therapeutic purposes in the resident's plan of care; and

2. The work is ordered by the resident's physician and does not threaten the health, safety, or welfare of the resident or others.

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

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

(j) *Transfer or discharge.* Be transferred or discharged, and be given reasonable advance notice of any planned transfer or **dis**charge and an explanation of the need for and alternatives to the transfer or discharge except when there is a medical emergency. The facility, agency, program or person to which the resident is transferred shall have accepted the resident for transfer in advance of the transfer, except in a medical emergency.

Note: See s. HFS 132.53.

(k) *Abuse and restraints.* Be free from mental and physical abuse. and be free from chemical and physical restraints except as authorized in writing by a physician for a specified and limited period of time and documented in the resident's medical record. Physical restraints may be used in an emergency when necessary to protect the resident or another person from injury or to prevent physical harm to the resident or another person resulting from the destruction of property, provided that written authorization for continued use of the physical restraints is obtained from the physician within 12 hours. Any use of physical restraints shall be noted in the resident's medical record. "Physical restraint" means any article, device or garment used primarily to modify resident behavior by interfering with the free movement of the resident or normal functioning of a portion of the body, and which the resident is unable to remove easily, or confinement in a locked room, but docs not include a mechanical support as defined under s. HFS 132.60 (6)(a) 2.

Note: See ss. HFS 132.33. 132.43, and 132.60(6).

(L) *Care.* Receive adequate and appropriate care within the capacity of the facility.

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

(n) *Care planning.* Be fully informed of one's treatment and care and participate in the planning of that treatment and care.

(o) *Religious activity.* Participate in religious activities and services, and meet privately with clergy.

(p) *Nondiscriminatory treatment.* Be free from discrimination based on the source from which the facility's charges for the resident's care are paid, as follows:

1. No facility may assign a resident to a particular wing or other distinct area of the facility, whether for sleeping, dining or any other purpose, on the basis of the source or amount of payment, except that a facility only part of which is certified for Medicare reimbursement under 42 USC 1395 is not prohibited from assigning a resident to the certified part of the facility because the source of payment for the resident's care is Medicare.

2. Facilities shall offer and provide an identical package of basic services meeting the requirements of this chapter to all individuals regardless of the sources of a resident's payment or amount of payment. Facilities may offer enhancements of basic services, or enhancements of individual components of basic services, provided that these enhanced services are made available at an identical cost to all residents regardless of the source of a resident's payment. **A** facility which elects to offer enhancements to basic services to its residents must provide all residents with a detailed explanation of enhanced services and the additional charges for these services pursuant to par. (d) 1. b.

3. If a facility offers at extra charge additional services which are not covered by the medical assistance program under ss. 49.43 to 49.497, Stats., and chs. HFS 101 to 108, it shall provide them to any resident willing and able to pay for them, regardless of the source from which the resident pays the facility's charges.

4. No facility may require, offer or provide an identification tag for a resident or any other item which discloses the source from which the facility's charges for that resident's care are paid,

(2) INCOMPETENCE. If the resident is found incompetent by a court under ch. 880, Stats., 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.

(3) CORRECTIONS CLIENTS. Rights established under this section do not, except as determined by the department, apply to residents in a facility who are in the legal custody of the department for correctional purposes.

(4) NOTIFICATION. (a) *Serving **notice.*** Copies of the resident rights provided under this section and the facility's policies and regulations governing resident conduct and responsibilities shall

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

(b) *Amendments.* All amendments to the rights provided under this section and all amendments to the facility regulations and policies governing resident conduct and responsibilities require notification of each resident or guardian, if any, or any other responsible person designated in writing by the resident, at the time the amendment is put into effect. The facility shall provide the resident or guardian. if any, or any other responsible person designated in writing by the resident and each member of the facility's staff with a copy of all amendments.

(c) *Posting.* Copies of the residents' rights provided under this chapter and the facility's policies and regulations governing resident conduct and responsibilities shall be posted in a prominent place in the facility.

(5) ENCOURAGEMENT AND ASSISTANCE. Each facility shall encourage and assist residents to exercise their rights as residents and citizens and shall provide appropriate training for staff awareness so that staff are encouraged to respect the rights of residents established under this section.

(6) COMPLAINTS. (a) *Filing complaints.* Any person may file a complaint with a licensee or the department regarding the operation of a facility. Complaints may be made orally or in writing.

(b) *Reviewing complaints.* 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 purpose of effectuating this section, shall report to the administrator.

(c) *Reporting complaints.* Allegations that residents' rights have been violated by persons licensed, certified or registered under chs. 441,446 to 450,455, and 456, Stats., shall be promptly reported by the facility to the appropriate licensing or examining board and to the person against whom the allegation has been made. Any employee of the facility and any person licensed, certified, or registered under chs. 441,446 to 450,455 or 456, Stats., may also report such allegations to the board.

(d) *Liability.* No person who files a report as required in par. (c) or who participates, in good faith, in the review system established under par. (b) shall be liable for civil damages for such acts, in accordance with s. 50.09 (6) (c), Stats.

(e) *Summary of complaints.* The facility shall attach a statement which summarizes complaints or allegations of violations of rights established under this section to an application for a license. The statement shall contain the date of the complaint or allegation, the names of the persons involved, tbe disposition of the matter, and the date of disposition. The department shall consider the statement in reviewing the application.

History: Cr. Register, July, 1982, No. 319. eff. 8–1–82; r. and recr. (1) (c), (d), (j), (m). (2) to (4). renum. (5) to (6), cr. (1) (p) and (S), Register, January, 1987. No. 373, eff. 2–1–87; am. (1) (d) 1. intro., (k) and (4) (b), Register, February, 1989, No. 398, eff. 3–1–89; am. (6) (e). Register, August. 2000, No. 536, eff. 9–1–00.

HFS 132.32 Community organization access. **(1)** ACCESS. (a) In this section, "access" means the right to:

1. Enter any facility;

2. Seek a rcsidcnt's agreement to communicate privately and without restriction with the resident:

3. Communicate privately and without restriction with any resident who does not object to communication; and

4. Inspect the health care and other records of a resident under ss. 146.81 through 146.83, Stats. Access does not include the right to examine the business records of the facility without the consent of the administrator or designee.

(b) Any employee, agent, or designated representative of a community legal services program or community service organization who meets the requirements of sub. (2) shall be permitted access to any facility whcncver visitors are permitted by the written visitation policy referred to in s. HFS 132.31 (1) (a) 3., but not before 8:00 a.m., nor after 9:00 p.m.

(2) CONDITIONS. (a) The employee, agent, or designated representative shall, upon request of the facility's administrator or administrator's designee, present valid and current identification signed by the principal officer of the agency, program, or organization rcprcscnted, and evidence of compliance with par. (b).

(b) Access shall be granted for visits which are consistent with an express purpose of an organization which is currently registered with the state board on aging and long term care or purpose of which is to:

1. Visit, talk with, or offer personal, social. and legal services to any resident. or obtain infomiation from the resident about the facility and its operations;

2. Inform residents of their rights and entitlements and their corresponding obligations under federal and state law, by means of educational materials and discussions in groups or with individual residents;

3. Assist any resident in asserting legal rights regarding claims for public assistance, medical assistance and social security benefits, and in all other matters in which a resident may be aggrieved; or

4. Engage in any other method of advising and representing residents so as to assure them full enjoyment of their rights.

History: Cr. Register. July, 1982, No. 319, eff. 8–1–82.

HFS 132.33 Housing residents in locked units. **(1)** DEFINITIONS. As used in this section:

(a) "Locked unit" means a ward, wing or room which is designated as a protective environment and is secured in a manner that prevents a resident from leaving the unit at will. **A** physical restraint applied to the body is not a locked unit. **A** facility locked for purposes of security is not a locked unit, provided that residents may exit at will.

(b) "Consent" means a written, signed request given without duress by a resident capable of understanding the nature of the locked unit, the circumstances of one's condition, and the meaning of the consent to be given.

(2) RESTRICTION. Except as otherwise provided by this section, no resident may be housed in a locked unit. Physical or chemical restraints or repeated use of emergency restraint under sub. (5) may not be used to circumvent this restriction. Placement in a locked unit shall be based on the determination that this placement is the least restrictive environment consistent with the needs of the person.

Note: For requirements relating to the use of physical and chemical restraints, including locked rooms. see s. HFS 133.60*(6)*.

(3) PLACEMENT. (a) A resident may be housed in a locked unit under any one of the following conditions:

1. The resident consents under sub. (4) to being housed on a locked unit;

2. The court that protectively placed the resident under s. 55.06, Stats., made a specific finding of the need for a locked unit;

3. The resident has been transferred to a locked unit pursuant to s. 55.06 (9) (c), Stats., and the medical record contains documentation of the notice provided to the guardian, the court and the agency designated under s. 55.02, Stats.; or

4. In an emergency governed by sub. (5).

(b) **A** facility may transfer a rcsident from a locked unit to an unlocked unit without court approval pursuant to s. 55.06 (9) (b), Stats., if it determines that the needs of the resident can be met on an unlocked unit. Notice of the transfer shall be provided as

required under s. 55.06 (9) (b), Stats., and shall be documented in the resident's medical record.

(4) CONSENT. (a) A resident may give consent to reside in a locked unit.

(b) The consent of par. (a) shall be effective only for 90 days from the date of the consent, unless revoked pursuant to par. (c). Consent may be renewed for 90-day periods pursuant to this subsection.

(c) The consent of par. (a) may be revoked by the resident at any time. The resident shall be transferred to an unlocked unit promptly following revocation.

(5) EMERGENCIES. In an emergency, a resident may be confined in a locked unit if necessary to protect the resident or others from injury or to protect property. provided the facility immediately attempts to notify the physician for instructions. A physician's order for the confinement must be obtained within 12 hours. No resident may be confined for more than an additional 72 hours under order of the physician.

History: Cr. Register. July; 1982, No. 319, eft 8-1-82; am. (1) (a) and (2), r. and recr. (3), Register, January. 1987. No. **373,** eff. 2-1-87.

Subchapter IV — Management

HFS 132.41 Administrator. (I) STATUTORY REFERENCE. Section 50.04 (2), Stats., requires that a nursing home be supervised by an administrator licensed under ch. 456, Stats. Supervision shall include, but not be limited to, taking all reasonable steps to provide qualified personnel to assure the health, safety, and rights of the residents.

(2) FULL-TIME ADMINISTRATOR. Every nursing home shall be supervised full-time by an administrator licensed under ch. 456, Stats., except:

(a) *Multiple facilities.* If more than one nursing home or other licensed health care facility is located on the same or contiguous property, one full-time administrator may serve all the facilities;

(b) *Small homes.* A facility licensed for 50 beds or less shall employ an administrator for at least 4 hours per day on each of 5 days per week. No such administrator shall be employed in more than 2 nursing homes or other health care facilities.

(3) ABSENCE OF ADMINISTRATOR. A person present in and competent to supervise the facility shall be designated to be in charge whenever there is not an administrator in the facility, and shall be identified to all staff.

(4) CHANGE OF ADMINISTRATOR. (a) *Termination of administrator.* Except as provided in par. (b). no administrator shall be terminated unless recruitment procedures are begun immediately.

(b) *Replacement of administrator.* If it is necessary immediately to terminate an administrator, or if the licensee loses an administrator for other reasons, a replacement shall be employed or designated as soon as possible within 120 days of the vacancy.

(c) *Temporary replacement.* During any vacancy in the position of administrator, the licensee shall employ or designate a person competent to fulfill the functions of an administrator.

(d) *Notice of change of administrator.* When the licensee loses an administrator, the licensee shall notify the department within 2 working days of loss and provide written notification to the department of the name and qualifications of the person in charge of the facility during the vacancy and the name and qualifications of the replacement administrator, when known.

Note: See s. 50.04(2), Stats.

History: Cr. Register, July, 1982, No. 319, eff. 8 1-82.

HFS 132.42 Employees. (1) DEFINITION. In this section, "employee" means anyone directly employed by the facility on other than a consulting or contractual basis.

(2) QUALIFICATIONS AND RESTRICTIONS. No person under 16 years of age shall bc etnployed to provide direct care to residents. An employee less than 18 years of age who provides direct care to residents must work under the direct supervision of a nurse.

(3) PHYSICAL HEALTH CERTIFICATIONS. (a) *New employees.* Every employee shall be certified in writing by a physician or physician extender as having been screened for tuberculosis infection and being free from clinically apparent communicable disease within 90 days before beginning work.

(b) *Continuing employees.* Employees shall be retested for tuberculosis infection based on the prevalence of tuberculosis in the community and the likelihood of exposure to tuberculosis in the facility.

(c) *Non-employees.* Persons who reside in the facility but are not residents or employees, such as relatives of the facility's owners, shall obtain physician certifications as required of employees,

(4) DISEASE SUKVEILLANCE AND CONTKOL. Facilities shall develop and implement written policies for control of communicable diseases which ensure that employees and volunteers with symptoms or signs of communicable disease or infected skin lesions are not permitted to work unless authorized to do so by a physician or physician extender.

(5) VOLUNTEERS. Facilities may use volunteers provided that the volunteers receive the orientation and supervision necessary to assure resident health, safety, and welfare.

History: Cr. Register. **July,** 1982, No. 319, eff. 8-1-82; am. **(3)** (a) and (4), Register, January. **1987,** No. **373,** eff. 2-1-87.

HFS 132.43 Abuse of residents. (1) CONSIDERATE CARE AND TREATMENT. Residents shall receive considerate care and treatment at all times consistent with s. 50.09 (1) (e), Stats.

(2) RESIDENT ABUSE. No one may abuse a resident.

History: Cr. Register, **July,** 1982, No. **319,** eff. 8-1-82.

HFS 132.44 Employee development. (I) NEW EMPLOYEES. (a) *Orientation for nil employees.* Except in an emergency, before performing any duties, each new employee, including temporary help, shall receive appropriate orientation to the facility and its policies, including, but not limited to, policies relating to fire prevention, accident prevention, and emergency procedures. **All** employees shall be oriented to residents' rights under s. HFS 132.31 and to their position and duties by the time they have worked 30 days.

(b) *Training.* Except for nurses, all employees who provide direct care to residents shall be trained through:

1. A training program given by a registered nurse;
2. A program offered by a hospital or health agency;
3. A course of study in a vocational school;
4. The American Red Cross course for nursing assistants in nursing homes; or
5. A program approved by the department.

(c) *Assignments.* employees shall be assigned only to resident care duties consistent with their training.

(2) CONTINUING EDUCATION (a) *Nursing inservice.* The facility shall require employees who provide direct care to residents to attend educational programs designed to develop and improve the skill and knowledge of the employees with respect to the needs of the facility's residents, including rehabilitative therapy, oral health care, and special programming for developmentally disabled residents if the facility admits developmentally disabled persons. These programs shall be conducted as often as is necessary to enable staff to acquire the skills and techniques necessary to implement the individual program plans for each resident under their care.

(b) *Dietary inservice.* Educational programs shall be held periodically for dietary staff, and shall include instruction in the proper handling of food, personal hygiene and grooming, and nutrition and modified diet patterns served by the facility.

(3) MEDICATION ADMINISTRATION. Before persons, other than nurses and practitioners, arc authorized under s. HFS 132.60 (5)

(d) 1. to administer medications. they shall be trained in a course approved by the department

Note: For recordkeeping requirements for all orientation and inservice programs, sees. HFS **132.45** (6) (f).

History: Cr. Register. July, 1982, No. 3 19, eff. 8–1–82; r. and recr. (2) (a) and am. (4). Register, January, 1987, No. 373. eff. 2–1 –87.

HFS 132.45 Records. (1) GENERAL. The administrator or administrator's designee shall provide the department with any information required to document compliance with ch. HFS 132 and ch. 50, Stats., and shall provide reasonable means for examining records and gathering the information.

(2) PERSONNEL RECORDS. A separate record of each employee shall be maintained, be kept current, and contain sufficient information to support assignment to the employee's current position and duties.

(3) MEDICAL RECORDS — STAFF. (a) *Timeliness.* Duties relating to medical records shall be completed in a timely manner.

(b) *Skilled cure facilities.* 1. Each skilled care facility shall designate a full–time employee of the facility as the person responsible for the medical record service, who:

a. Is a graduate of a school of medical record science that is accredited jointly by the council on medical education of the American medical association and the American medical record association; or

b. Receives regular consultation as appropriate from a person qualified under subd. 1. a. Such consultation shall not be substituted for the routine duties of staff maintaining records.

2. The records consultant under subd. 1. b. shall evaluate the records and records service, identify problem areas, and submit written recommendations for change to the administrator.

(c) *Intermediate carefncilities.* In an intermediate care facility, an employee shall be assigned responsibility for maintaining, completing, and preserving medical records.

(4) MEDICAL RECORDS — GENERAL. (a) *Availability of records.* Medical records of current residents shall be stored in the facility and shall be easily accessible, at all times, to persons authorized to provide care and treatment. Medical records of both current and past residents shall be readily available to persons designated by statute or authorized by the resident to obtain the release of the medical records.

(b) *Organization.* The facility shall maintain a systematically organized records system appropriatc to the nature and size of the facility for the collection and release of resident information.

(c) *Unit record.* A unit record shall be maintained for each resident and day care client.

(d) *Indexes.* 1. A master resident index shall be maintained.

2. **A** disease index shall be maintained which indexes medical records at least by final diagnosis.

(e) Maintenance. The facility shall safeguard medical records against loss, destruction, or unauthorized use, and shall provide adequate space and equipment to efficiently review, index, file, and promptly retrieve the medical records.

(f) *Retention and destruction.* 1. The medical record shall be completed and stored within 60 days following a resident's discharge or death.

2. An original medical record and legible copy or copies of court orders or other documents, if any, authorizing another person to speak or act on behalf of this resident shall be retained for a period of at least 5 years following a resident's discharge or death. All other records required by this chapter shall be retained for a period of at least 2 years.

3. Medical records no longer required to be retained under subd. 2. may be destroyed. provided:

a. The confidentiality of the information is maintained; and

b. The facility permanently retains at least identification of the resident, final diagnosis, physician, and dates of admission and discharge. This may be achieved by way of the indexes required by par. (d).

4. A facility shall arrange for the storage and safekeeping of records for the periods and under the conditions required by this paragraph in the event the facility closes.

5. If the ownership of a facility changes, the medical records and indexes shall remain with the facility.

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

2. **A** rubber stamp reproduction of a person's signature may be used instead of a handwritten signature, if:

a. The stamp is used only by the person whose signature the stamp replicates; and

b. The facility possesses a statement signed by the person, certifying that only that person shall possess and use the stamp.

3. Symbols and abbreviations may be used in medical records if approved by a written facility policy which defines the symbols and abbreviations and which controls their use.

(5) MEDICAL RECORDS — CONTENT. Except for persons admitted for short–term care, to whom s. HFS 132.70 (7) applies, each resident's medical record shall contain:

(a) *Identification and summary sheet.*

(b) *Physician's documentation.* 1. An admission medical evaluation by a physician or physician extender. including:

a. A summary of prior treatment;

b. Current medical findings;

c. Diagnoses at the time of admission to the facility;

d. The resident's rehabilitation potential;

e. The results of the physical examination requircd by s. HFS 132.52 (3); and

f. Level of care;

2. All physician's orders including, when applicable. orders concerning:

a. Admission to the facility as required by s. HFS 132.52 (2) (a);

b. Medications and treatments as specified by s. HFS 132.60 (5);

c. Diets as required by s. HFS 132.63 (4);

d. Rehabilitative services as required by s. HFS 132.64 (2);

e. Limitations on activities;

f. Restraint orders as required by s. HFS 132.60 (6); and

g. Discharge or transfer as required by s. HFS 132.53:

3. Physician progress notes following each visit as required by s. HFS 132.61 (2) (b) 6.;

4. Annual physical examination, if required; and

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

(c) *Nursing service documentation.* 1. A history and assessment of the resident's nursing needs as required by s. HFS 132.52 (5);

2. Initial care plan as required by s. HFS 132.52 (4), and the care plan required by s. HFS 132.60 (8);

3. Nursing notes are required as follows:

a. For residents requiring skilled care, a narrative nursing note shall be required as often as needed to document the resident's condition, but at least weekly; and

b. For residents not requiring skilled care, a narrative nursing note shall be required as often as needed to document the resident's condition, but at least every other week;

4. In addition to subds. 1., 2., and 3., nursing documentation describing:

a. The general physical and mental condition of the resident, including any unusual symptoms or actions;

b. All incidents or accidents including time, place, details of incident or accident, action taken, and follow–up care;

c. The administration of all medications (see s. HFS 132.60 (5) (d)), the need for PRN medications and the resident's response, refusal to take medication, omission of medications, errors in the administration of medications, and drug reactions;

d. Food and fluid intake, when the monitoring of intake is necessary;

e. Any unusual occurrences of appetite or refusal or reluctance to accept diets;

f. Summary of restorative nursing measures which are provided;

g. Summary of the use of physical and chemical restraints as required by s. HFS 132.60 (6) (g);

h. Other non–routine nursing care given;

i. The condition of a resident upon discharge; and

j. The time of death, the physician called, and the person to whom the body was released.

(d) *Social service records.* 1. A social history of the rcsidcnt as required by s. HFS 132.52 (6): and

2. Notes regarding pertinent social data and action taken.

(e) *Activities records.* Documentation of activities programming, a history and assessment as required by s. HFS 132.52 (6), a summary of attendance, and quarterly progress notes.

(f) *Rehabilitative services.* 1. An evaluation of the rehabilitative needs of the resident; and

2. Progress notes detailing treatment given, evaluation, and progress.

(g) *Dietary assessment.* Record of the dietary assessment required by s. HFS 132.52 (6).

(h) *Dental services.* Records of all dental services.

(i) *Diagnostic services.* Records of all diagnostic tests performed during the resident's stay in the facility.

(j) *Plan of care.* Plan of care required by s. HFS 132.60 (8).

(k) *Authorization or consent.* A photocopy of any court order or other document authorizing another person to speak or act on behalf of the resident and any resident consent form required under this chapter, except that if the authorization or consent form exceeds one page in length an accurate summary may be substituted in the resident record and the complete authorization or consent form shall in this case be maintained as required under sub. (6) (i). The summary shall include:

1. The name and address of the guardian or other person having authority to speak or act on behalf of the resident;

2. The date on which the authorization or consent takes effect and the date on which it expires;

3. The express legal nature of the authorization or consent and any limitations on it; and

4. Any other factors reasonably necessary to clarify the scope and extent of the authorization or consent.

(L) *Discharge or transfer information.* Documents, prepared upon a resident's discharge or transfer from the facility, summarizing, when appropriate:

1. Current medical findings and condition:

2. Final diagnoses;

3. Rehabilitation potential;

4. A summary of the course of treatment:

5. Nursing and dietary information;

6. Ambulation status;

7. Administrative and social information; and

8. Needed continued care and instructions.

(6) OTHER RECORDS. The facility shall retain:

(a) *Dietary records.* All menus and therapeutic diets;

(b) *Staffing records.* Records of staff work schedules and time worked;

(c) *Safety tests.* Records of tests of fire detection, alarm, and extinguishment equipment;

(d) *Resident census.* At least a weekly census of all residents, indicating numbers of residents requiring each level of care;

(e) *Professional consultations.* Documentation of professional consultations by:

1. A dietitian, if required by s. HFS 132.63 (2) (b):

2. A registered nurse, if required by s. HFS 132.62 (2); and

3. Others, as may be used by the facility;

(f) *inservice and orientation programs.* Subject matter, instructors and attendance records of all inservice and orientation programs;

(g) *Transfer agreements.* Transfer agreements, unless exempt under s. HFS 132.53 (4);

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

(i) *Court orders and consentforms.* Copies of court orders or other documents, if any, authorizing another person to speak or act on behalf of the resident.

History: Cr. Register, July, 1982, No. 319, eff. 8–1–82; am. (1) (3) (c) (5) (intro.), (b) 1. intro. and e., 2. a. and d., 3.. (c) 1. and 2., (d) 1., (e), (f) 1. and (g), (6) (g), renum. (4) (a) to (e), (5) (e) and (6) (h) to be (4) (c) to (g), (5) (L) and (6) (i) and am. (5) (L), cr. (4) (a) and (b), (5) (e) and (6) (h), Register, January, 1987. No. 373. eff. 2–1–87.

Subchapter V — Admissions, Retentions and Removals

HFS 132.51 Limitations on admissions and programs. (1) LICENSE LIMITATIONS. (a) *Bed capacity* No facility may house more residents than the maximum bed capacity for which it is licensed. Persons participating in a day care program are not residents for purposes of this chapter.

(b) *Care levels.* 1. No person who requires care greater than that which the facility is licensed to provide may be admitted to or retained in the facility.

2. No resident whose condition changes to require care greater than that which the facility is licensed to provide shall be retained.

(c) *Other conditions.* The facility shall comply with all other conditions of the license.

(2) OTHER LIMITATIONS ON ADMISSIONS. (a) *Persons requiring unavailable services.* Persons who require services which the facility does not provide or make available shall not be admitted or retained.

(b) *Communicable diseuses.* 1. 'Restriction.' No person suspected of having a disease in a communicable state shall be admitted, unless the facility has the means to manage the condition as provided by subd. 2.

2. 'Isolation techniques.' Persons suspected of having a disease in a communicable state shall be managed substantially according to *Guidelinefo r Isolation Precautions in Hospitals* and Guideline for Infection Control in Hospital Personnel and Universal Precautions for Prevention of Blood borne Pathogens in Health Care Settings, published by the US. department of health and human services, public health services, centers for disease control.

3. 'Reportable diseases.' Suspected diseases reportable by law shall be reported to the local public health agency or the division of health, bureau of community health and prevention, as provided by ch. HFS 145.

Note: For a copy of ch. HFS 145 which includes a list of the communicable diseases which must he reported, Write the Bureau of Public Health. P.O. Box 309. Madison, WI 53701 (phone 608–267–9003). There is no charge fora copy of ch. HFS 145. The referenced publications, "Guideline for Isolation Precautions in Hospitals and Guideline for Infection Control in Hospital Personnel" (HHS Publication No. (CSC) 83–8314) and "Universal Precautions for Prevention of. . . Bloodborne Pathogens

in Health Care Settings", may be purchased from the Superintendent of Documents. Washington D.C. 20402. and is available for review in the office of the Department's Bureau of Quality Assurance, the Office of the Secretary of State, and the Revisor of Statutes Bureau.

(c) *Destructive residents.* Residents who are known to be destructive of property, self–destructive, disturbing or abusive to other residents, or suicidal, shall not be admitted or retained. unless the facility has and uses sufficient resources to appropriately manage and care for them.

(d) *Developmental disabilities.* 1. No person who has a developmental disability may be admitted to a facility unless the facility is certified as an intermediate care facility for the mentally retarded, except that a person who has a developmental disability and who requires skilled nursing care services may be admitted to a skilled nursing facility.

2. Except in an emergency, no person who has a developmental disability may be admitted to a facility unless the county department under s. 46.23, 51.42, or 51.437, Stats., of the individual's county of residence has recommended the admission.

(e) *Mental illness.* Except in an emergency, no person who is under age 65 and has a mental illness as defined in s. 51.01 (13), Stats., may be admitted to a facility unless the county department under s. 46.23, 51.42 or 51.437, Stats., of the individual's county of residence has recommended the admission.

(f) *Minors.* 1. No person under the age of 18 years may be admitted, unless approved for admission by the department.

2. Requests for approval to admit a person under the age of 18 years shall be made in writing and shall include:

a. A statement from the referring physician stating the medical, nursing, rehabilitation, and special services required by the minor;

b. A statement from the administrator certifying that the required services can be provided;

c. A statement from the attending physician certifying that the physician will be providing medical care; and

d. A statement from the persons or agencies assuming financial responsibility.

(g) *Admissions 7 days a week.* No facility may refuse to admit new residents solely because of the day of the week.

(3) DAY CARE SERVICES. A facility may provide day care services to persons not housed by the facility, provided that:

(a) Day care services do not interfere with the services for residents;

(b) Each day care client is served upon the certification by a physician or physician's assistant that the client is free from tuberculosis infection; and

(c) Provision is made to enable day care clients to rest. Beds need not be provided for this purpose, and beds assigned to residents may not be provided for this purpose.

Note: For administration of medications to day care clients, see s. HFS 131.60(5) (d) 6.; for required records, see s. HFS 132.45 (4) (c).

History: Cr. Register, July, 1982, No. 319, eff. 8–1–82; emerg. r. and recr. (2) (d) and (3), eff. 9–15–86; r. and recr. (2) (d) am. (1) (b) 1., (2) (e) 1. and 2. intro.. (3) (3) and (b), (4) (c), Register, January, 1987, No. 373, eff. 2–1–87; am. (2) (b) 2. and 3 (d) 2., r. (2) (d) 3. and (3), renum. (2) (e), (9 and (4) to be (2) (9.(g) and (3), cr. (2) (e), Register, February, 1989, No. 398, eff. 3–1–89; correction in (2) {h) 3. made under s. 13.93 (2m) (b) 7., Stats., Register, August, 2000. No. **536.**

HFS 132.52 Procedures for admission. (1) APPLICABILITY. The procedures in this section apply to all persons admitted to facilities except persons admitted for short–term care. Section HFS 132.70 (2) applies to persons admitted for short–term care.

(2) PHYSICIAN'S ORDERS. No person may be admitted as a resident except upon:

(a) Order of a physician;

(b) Receipt of information from a physician, before or on the day of admission, about the person's current medical condition and diagnosis, and receipt of a physician's initial plan of care and orders from a physician for immediate care of the resident; and

(c) Receipt of certification in writing from a physician that the person is free of communicable tuberculosis and clinically apparent communicable disease, or an order for procedures to treat any disease the person may be found to have.

(3) MEDICAL EXAMINATION AND EVALUATION. (a) *Examination.* Each resident shall have a physical examination by a physician or physician extender within 48 hours following admission unless an examination was performed within 15 days bcforc admission.

(b) *Evaluation.* Within 48 hours after admission the physician or physician extender shall complete the resident's medical history and physical examination record.

Note: For admission of residents with communicable disease, see s. HFS 132.5l (2) (b).

(4) INITIAL CARE PLAN. Upon admission, a plan of care for nursing services shall be prepared and implemented, pending development of the plan of care required by s. HFS 132.60 (8).

(5) RESIDENT HISTORY AND ASSESSMENT. Within 72 hours of a resident's admission, a registered nurse shall supervise the preparation of a written history and assessment summarizing the resident's prior health care, patterns of activities of daily living, needs, capabilities, and disabilities.

(6) SPECIALTY ASSESSMENTS. Within 2 weeks following admission, each service discipline appropriate to the resident's care. but in all cases dietetics, activities, and social services, shall prepare a history and assessment of the resident's prior health and care in the respective discipline.

Note: For care planning requirements, ***sees.*** HFS 132.60 (8).

(7) FAMILY CARE INFORMATION AND REFERRAL. If the secretary of the department has certified that a resource center, as defined in s. HFS 10.13 (42), is available for the facility under s. HFS 10.71, the facility shall provide information to prospective residents and refer residents and prospective residents to the aging and disability resource center as required under s. 50.04 (2g) to (2i), Stats., and s. HFS 10.73.

History: Cr. Register, July, 1982, No. 319, eff. 8–1–82; renum. (1) to (5) to be (2) to (6) and am. (2) and (3), cr. (1), Register. January, 1987, No. 373, eff. 2–1–87; cr. (7), Register. October, 2000. No. 538, eff. 11–1-00.

HFS 132.53 Transfers and discharges. (1) SCOPE. This section shall apply to all resident transfers and discharges, except that in the event of conflict with s. 49.45 (6c) (c) and (d), 49.498 (4) or 50.03 (5m) or (14), Stats., the relevant statutory requirement shall apply.

(2) CONDITIONS. (a) *Prohibition and exceptions.* No resident may be discharged or transferred from a facility, except:

1. Upon the request or with the informed consent of the resident or guardian;

2. For nonpayment of charges, following reasonable opportunity to pay any deficiency;

3. If the resident requires care other than that which the facility is licensed to provide;

4. If the resident requires care which the facility does not provide and is not required to provide under this chapter;

5. For medical reasons as ordered by a physician;

6. In case of a medical emergency or disaster;

7. If the health, safety or welfare of the resident or other residents is endangered, as documented in the resident's clinical record;

8. If the resident does not need nursing home care;

9. If the short–tenn care period for which the resident was admitted has expired; or

10. As otherwise permitted by law.

(b) *Alternate placement.* 1. Except for transfers or discharges under par. (a) 2. and 6., no resident may be involuntarily trans-

ferred or discharged unless an alternative placement is arranged for the resident pursuant to s. HFS 132.31 (1) (j).

2. No resident may be involuntarily transferred or discharged under par. (a) 2. for nonpayment of charges if the resident meets both of the following conditions:

a. 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; and

b. The funding of the resident's care in the nursing home under s. 49.45 (6m), Stats., is reduced or terminated because either the resident requires a level or type of care which is not provided by the nursing home or the nursing home is found to be an institution for mental diseases as defined under 42 **CFR** 435.1009.

(3) PROCEDURES. (a) *Notice.* The facility shall provide a resident, the resident's physician and, if known, an immediate family member or legal counsel, guardian, relative or other responsible person at least 30 days notice of transfer or discharge under sub. (2) (a) 2. to 10., and the reasons for the transfer or discharge, unless the continued presence of the resident endangers the health, safety or welfare of the resident or other residents. The notice shalt also contain the name, address and telephone number of the board on aging and long–term care. For a resident with developmental disability or mental illness, the notice shall contain the mailing address and telephone number of the protection and advocacy agency designated under s. 51.62 (2) (a), Stats.

(b) *Planning conference.* 1. Unless Circumstances posing a danger to the health, safety or welfare of a resident require otherwise, at least 7 days before the planning conference required by subd. 2., the resident, guardian, if any, any appropriate county agency, and others designated by the resident, including the resident's physician, shall be given a notice containing the time and place of the conference, a statement informing the resident that any persons of the resident's choice may attend the conference, and the procedure for submitting a complaint to the department.

2. Unless the resident is receiving respite care or unless precluded by circumstances posing a danger to the health, safety, or welfare of a resident, prior to any involuntary transfer or discharge under sub. (2) (a) 2. to 10., a planning conference shall be held at least 14 days before transfer or discharge with the resident, guardian; if any, any appropriate county agency, and others designated by the resident, including the resident's physician, to review the need for relocation. assess the effect of relocation on the resident, discuss alternative placements and develop a relocation plan which includes at least those activities listed in subd. 3.

3. Transfer and discharge activities shall include:

a. Counseling regarding the impending transfer or discharge;

b. The opportunity for the resident to make at least one visit to the potential alternative placement, if any, including a meeting with that facility's admissions staff, unless medically contraindicated or waived by the resident;

c. Assistance in moving the resident and the resident's belongings and funds to the new facility or quarters; and

d. Provisions for needed medications and treatments during relocation.

4. A resident who is transferred or discharged at the resident's request shall be advised of the assistance required by subd. 3. and shall be provided with that assistance upon request.

(c) *Records.* Upon transfer or discharge of a resident, the documents required by s. HFS 132.45 *(5)*(L) and (6) (h) shall be prepared and provided to the facility admitting the resident, along with any other information about the resident needed by the admitting facility.

(4) TRANSFER AGREEMENTS. (a) *Reqzrirement.* Each facility shall have in effect a transfer agreement with one or more hospitals under which inpatient hospital care or other hospital services arc available promptly to the facility's residents when needed. Each intcnncdiatc care facility shall also have in effect a transfer agreement with one or more skilled care facilities.

(b) *Transfer of 'residents.* A hospital and a facility shall be considered to have a transfer agreement in effect if there is a written agrecmcnt between them or, when the 2 institutions arc under common control, if there is a written statement by the person or body which controls them, which gives reasonable assurance that:

1. Transfer of residents will take place between the hospital and the facility ensuring timely admission, whenever such transfer is medically appropriate as determined by the attending physician; and

2. There shall be interchange of medical and other information necessary for the care and treatment of individuals transferred between the institutions, or for determining whether such individuals can be adequately cared for somewhere other than in either of the institutions.

(c) *Exemption.* A facility which does not have a resident transfer agreement in effect, but which is found by the department to have attempted in good faith to enter into such an agreement with a hospital sufficiently close *to* the facility to make feasible the transfer between them of residents and the information referred to in par. (b) 2., shall be considered to have such an agreement in effect if and for so long as the department finds that to do so is in the public interest and essential to ensuring skilled nursing facility services in the community.

(d) *Notice requirements.* 1. Before a resident of a facility is transferred to a hospital or for therapeutic leave, the facility shall provide written information to the resident and an immediate family member or legal counsel concerning the provisions of the approved state medicaid plan about the period of time, if any, during which the resident is permitted to return and resume residence in the nursing facility.

2. At the time of a resident's transfer to a hospital or for therapeutic leave, the facility shall provide written notice to the resident and an immediate family member or legal counsel of the duration of the period, if any, specified under subd. 1.

Note: The "approved state medicaid plan" **referred to** s. **49.498 (4)** (d) **1a,** *Stats.*, **and subd.** 1. **states that the department shall have a bedhold policy.** The **bedhold policy** is **found** in s. HFS **107.09 (4)** (j).

(5) BEDHOLD. (a) *Bedhold.* **A** resident who is on leave or temporarily discharged, as to a hospital for surgery or treatment, and has expressed an intention to return to the facility under the terms of the admission statement for bedhold, shall not be denied readmission unless, at the time readmission is requested, a condition of sub. (2) (b) has been satisfied.

(b) *Limitation.* The facility shall hold a resident's bed under par. (a) until the resident returns, until the resident waives his or her right to have the bed held, or up to 15 days following the temporary leave or discharge, whichever is earlier.

Note: See s. HFS **107.09 (4) (j) for medical assistance bedhold rules.**

(6) APPEALS ON TRANSFERS AND DISCHARGES. (a) *Right to appeal.* 1. A resident may appeal an involuntary transfer or discharge decision.

2. Every facility shall post in a prominent place a notice that a resident has a right to appeal a transfer or discharge decision. The notice shall explain how to appeal that decision and shall contain the address and telephone number of the nearest bureau of quality assurance regional office. The notice shall also contain the name, address and telephone number of the state board on aging and long–term care or, if the resident is developmentally disabled or has a mental illness, the mailing address and telephone number of the protection and advocacy agency designated under s. 51.62 (2) (a), Stats.

3. A copy of the notice of a resident's right to appeal a transfer or discharge decision shall be placed in each resident's admission folder.

4. Every notice of transfer or discharge under sub. (3) (a) to a resident, relative, guardian or other responsible party shall include a notice of the resident's right to appeal that decision.

(b) *Appeal procedures.* 1. If a resident wishes to appeal a transfer or discharge decision. the resident shall send a letter to the nearest regional office of the department's bureau of quality assurance within 7 days after receiving a notice of transfer or discharge from the facility?with a copy to the facility administrator, asking for a review of the decision.

2. The resident's written appeal shall indicate why the transfer or discharge should not take place.

3. Within 5 days after receiving a copy of the resident's written appeal, the facility shall provide written justification to the department's bureau of quality assurance for the transfer or discharge of the resident from the facility.

4. If the resident files a written appeal within 7 days after receiving notice of transfer or of discharge from the facility, the resident may not be transferred or discharged from the facility until the department's bureau of quality assurance has completed its review of the decision and notified both the resident and the facility of its decision.

5. The department's bureau of quality assurance shall complete its review of the facility's decision and notify both the resident and the facility in writing of its decision within 14 days after receiving written justification for the transfer or discharge of the resident from the facility.

6. A resident or a facility may appeal the decision of the department's bureau of quality assurance in writing to the department of administration's division of hearings and appeals within 5 days after receipt of the decision.

Note: The mailing address of the Division of Hearings and Appeals is P.O. Box 7875, Madison: Wisconsin 53707.

7. The appeal procedures in this paragraph do not apply if the continued presence of the resident poses a danger to the health, safety or welfare of the resident or other residents.

History: Cr. Register, July, 1982, No. 319, eff. 8–1–82; cr. (2) (b) 8. and 9., am. (2) (c), (3) (b) 2. and (c), Register, January, 1987, No. 373. eff. 2–1–87; renum. (2) (c) to be (2) (c) 1. and am., cr. (2) (c) 2., Register. February, 1989, No. 398, eff. 3–1–89; am. (2) (c) 2. b., Register. October, 1989, No. 406, eff. 11–1–89; r. and recr. (1) to (3), cr. (4) (d) and (6), Register, June, 1991, No. 426, eff. 7–1–91.

HFS 132.54 Transfer within the facility. Prior to any transfer of a resident between rooms or beds within a facility, the resident or guardian, if any, and any other person designated by the resident shall be given reasonable notice and an explanation of the reasons for transfer. Transfer of a resident between rooms or beds within a facility may be made only for medical reasons or for the resident's welfare or the welfare of other residents or as permitted under s. HFS 132.31 (1) (p) 1.

History: Cr. Register, July, 1982, No. 319, eff. 8–1–82; am. Register, January, 1987, No. 373, eff. 2–1–87.

Subchapter VI — Services

HFS 132.60 Resident care. (1) INDIVIDUAL CARE. Unless it is in conflict with the plan of care, each resident shall receive care based upon individual needs.

(a) *Hygiene.* 1. Each resident shall be kept comfortably clean and well–groomed.

2. Beds shall be made daily, with a complete change of linen to be provided as often as necessary, but at least once each week.

3. Residents shall have clean clothing as needed to present a neat appearance and to be free of odors. Residents who are not bedfast shall be dressed each day, in their own clothing if available, as appropriate to their activities, preferences, and comforts.

(b) *Decubiti prevention.* Nursing personnel shall employ appropriate nursing management techniques to promote the maintenance of skin integrity and to prevent development of decubiti (bedsores). These techniques may include periodic position change, massage therapy and regular monitoring of skin integrity.

(c) *Basic nursing care.* 1. Nursing care initiated in the hospital shall be continued immediately upon admission to the nursing home unless ordered otherwise by the admitting physician.

2. Nursing personnel shall provide care designed to maintain current functioning and to improve the resident's ability to carry out activities of daily living, including assistance with maintaining good body alignment and proper positioning to prevent deformities.

3. Each resident shall be encouraged to be up and out of bed as much as possible, unless otherwise ordered by a physician.

4. Any significant changes in the condition of any resident shall be reported to the nurse in charge or on call, who shall take appropriate action including the notice provided for in sub. (3).

(d) *Rehabilitative measures.* Residents shall be assisted in carrying out rehabilitative measures initiated by a rehabilitative therapist or ordered by a physician, including assistance with adjusting to any disabilities and using any prosthetic devices.

(e) *Tuberculosis retesting.* Residents shall be retested for tuberculosis infection based on the prevalence of tuberculosis in the community and the likelihood of exposure to tuberculosis in the facility.

Note: See s. HFS 132.60 (5) (a) 1 for treatments and orders.

(2) NOURISHMENT. (a) *Diets.* Residents shall be served diets as prescribed.

(b) *Adaptive devices.* Adaptive self–help devices, including dentures if available, shall be provided to residents, and residents shall be trained in their use to contribute to independence in eating.

(c) *Assistance.* Residents who require assistance with food or fluid intake shall be helped as necessary.

(d) *Food and fluid intake and diet acceptance.* A resident's food and fluid intake and acceptance of diet shall be observed, and significant deviations from normal eating patterns shall be reported to the nurse and either the resident's physician or dietitian as appropriate.

Note: For other dietary requirements, see s. HFS 132.63.

(3) NOTIFICATION OF CHANGES IN CONDITION OR STATUS OF RESIDENT. (a) *Changes in condition.* A resident's physician, guardian, if any, and any other responsible person designated in writing by the resident or guardian to be notified shall be notified promptly of any significant accident, injury, or adverse change in the resident's condition.

(b) *Changes in status.* A resident's guardian and any other person designated in writing by the resident or guardian shall be notified promptly of any significant non–medical change in the resident's status. including financial situation, any plan to discharge the resident, or any plan to transfer the resident within the facility or to another facility.

Note: For responses to changes in medical condition, see s. HFS 132.60 (1) (c) 4; for records, see s. HFS 132.45 (5) (c) 4.

(4) EMERGENCIES. In case of a medical emergency, the facility shall provide or arrange for appropriate emergency services.

(5) TREATMENT AND ORDERS. (a) *Orders.* 1. 'Restriction.' Medications, treatments and rehabilitative therapies shall be administered as ordered by a physician or dentist subject to the resident's right to refuse them. No medication, treatment or changes in medication or treatment may be administered to a resident without a physician's or dentist's written order which shall be filed in the resident's clinical record, except as provided in subd. 2.

2. 'Oral orders.' Oral orders from physicians or dentists may be accepted by a nurse or pharmacist, or, in the case of oral orders for rehabilitative therapy, by a therapist. Oral orders shall be immediately written, signed and dated by the nurse, pharmacist or therapist on a physician's or dentist's order sheet, and shall be countersigned by the physician or dentist within 72 hours and filed in the resident's clinical record within 10 days of the order.

3. 'Oral orders without nurses.' If the facility docs not have nurse coverage, an oral order for medications shall be telephoned to a registered pharmacist by the physician or dentist. The nursing home may not administer the medication until it has received a transcript of the oral order from the pharmacist. The order shall be countersigned and filed as required under subd. 2.

4. 'Review of medications.' Each resident's medication shall be reviewed by a registered nurse at the time of the review of the plan of care.

(b) *Stop orders.* 1. 'Compliance with stop order policies.' Medications not specifically limited as to time or number of doses when ordered shall be automatically stopped in accordance with the stop order policy required by s. HFS 132.65 (3) (a) 3. b.

2. 'Notice to physicians or dentists.' Each resident's attending physician or dentist shall be notified of stop order policies and contacted promptly for renewal of orders which are subject to automatic termination.

(c) *Release of medications to residents.* Medications shall be released to residents who are on leave or have been discharged only on order of the physician or dentist.

(d) *Adniinistration of medications.* 1. 'Personnel who may administer medications.' In a nursing home, medication may be administered only by a nurse, a practitioner, as defined in s. 450.01 (17), Stats., or a person who has completed training in a drug administration course approved by the department.

2. 'Responsibility for administration.' Policies and procedures designed to provide safe and accurate administration of medications shall be developed by the facility and shall be followed by personnel assigned to prepare and administer medications and to record their administration. The same person shall prepare, administer, and immediately record in the resident's clinical record the administration of medications, except when a single unit dose package distribution system is used.

3. 'Omitted doses in unit dose system.' If, for any reason, a medication is not administered as ordered in a unit dose system, an "unadministered dose slip" with an explanation of the omission shall be placed in the resident's medication container and a notation shall be made in the clinical record.

4. 'Self-administration.' Self-administration of medications by residents shall be permitted on order of the resident's physician or dentist or in a predischarge program under the supervision of a registered nurse or designee.

5. 'Errors and reactions.' Medication errors and suspected or apparent drug reactions shall be reported to the nurse in charge or on call as soon as discovered and an entry made in the resident's clinical record. The nurse shall take appropriate action.

6. 'Day care.' The handling and administration of medications for day care clients shall comply with the requirements of this subsection.

(e) *Reference sources.* Up-to-date medication reference texts and sources of information shall be available to the nurse in charge or on call.

Note: See s. HFS 132.65, pharmaceutical services, for additional requirements.

(6) PHYSICAL AND CHEMICAL RESTRAINTS. (a) *Definitions.* As used in this subsection. the following definitions apply:

1. "Physical restraint" means any article, device or garment used primarily to modify resident behavior by interfering with the free movement of the resident or normal functioning of a portion of the body, and which the resident is unable to remove easily, or confinement in a locked room, but does not include a mechanical support.

Note: For rules governing locked units, see s. HFS 132.33.

2. "Mechanical support" means any article, device, or garment which is used only to achieve the proper position or balance of the resident, which may include but is not limited to a geri chair, posey belt, jacket, or a bedside rail.

3. "Chemical restraint" means a medication used primarily *to* modify behavior by interfering with the resident's freedom of movement or mental alertness.

(b) *Orders required.* Physical or chemical restraints shall be applied or administered only on the written order of a physician which shall indicate the resident's name, the reason for restraint, and the period during which the restraint is to be applied.

(c) *Emergencies.* A physical restraint may be applied temporarily without an order if necessary to protect the resident or another person from injury or to prevent physical harm to the resident or another person resulting from the destruction of property, provided that the physician is notified immcdiatcly and authorization for continued use is obtained from the physician within 12 hours.

(d) *Restriction.* If the mobility of a resident is required to be restrained and can be appropriately restrained either by a physical or chemical restraint or by a locked unit. the provisions of s. HFS 132.33 shall apply.

(e) *Type ofrestraints.* Physical restraints shall be of a type which can be removed promptly in an emergency. and shall be the least restrictive type appropriate to the resident.

(f) *Periodic care.* Nursing personnel shall check a physically restrained resident as necessary, but at least every 2 hours, to see that the resident's personal needs are met and to change the resident's position.

(g) *Records.* Any use of restraints shall be noted, dated, and signed in the resident's clinical record on each tour of duty during which the restraints are in use.

Note: Sees. HFS 132.45 *(5)*(c) 4. g., records.

(7) USE OF OXYGEN. (a) *Orders for oxygen.* Except in an emergency, oxygen shall be administered only on order of a physician.

(b) *Person administering.* Oxygen shall be administered to residents only by a capable person trained in its administration and use.

(c) *Signs.* "No smoking" signs shall be posted in the room and at the entrance of the room in which oxygen is in use.

(d) *Flammable goods.* Prior to administering oxygen, all matches and other smoking material shall be removed from the room.

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

1. Realistic goals, with specific time limits for attainment; and

2. The methods for delivering needed care, and indication of which professional disciplines are responsible for delivering the care.

Note: For requirements upon admission, see s. HFS 132.52. For requirements for short-term care residents, *see* s. HFS 132.70 (2).

(b) *Evaluations and updates.* The care of each resident shall be reviewed by each of the services involved in the resident's care and the care plan evaluated and updated as needed.

Note: For concurrent review of medications. see sub. (5) (a) 4.

(c) *Implementation.* The care plans shall be substantially followed.

(d) *Assessment instrument.* A resident's care plan shall be developed based on the facility's assessment required under s. 49.498 (2) (c), Stats., of the resident. The assessment shall be conducted by the facility using a form approved by the department which is based on a minimum data set specified under 42 USC 1395i-3 (f) (6) **(A).** The form shall cover resident identifying information; background information about the resident, including current payment sources, responsible party if not the resident, and any advance directives; the rcsidcnt's diagnosis, condition

and body control, cognitive patterns, hearing, vision, dental status, need for help to perform activities of daily living, continence, recent use of appliances, devices or programs, potential for rehabilitation, skin condition, psychological well being, mood and behavior patterns, activities, medications use, and any special treatment or procedures the person is receiving such as chemotherapy.

Note: For copies of the resident assessment form, write to the Bureau of Quality Assurance, P.O. Box 309, Madison, WI 53701

History: Cr. Register, July. 1982, No. 319, eff. 8–1–82; r. and recr. (5) (d) 1., Register, February, 1983, No. 326, eff. 3–1–83; am. (1) (d), (2) (d), (3) (5) (a) 1. to 3., (6) (c) and (8) (a), r. and recr. (1) (b) and (6) (f), Register, January, 1987, No. 373, eff. 2–1–87; am. (6) (a) 1. Register, February, 1989, No. 398, eff. 3–1–89; cr. (8) (d), Register, November, 1990, No. 419, eff. 12–1–90; correction in (5) (d) made under s. 13.93 (2m) (b) 7., Stats., Register. August, 2000. No. 536.

HFS 132.61 Medical services. (1) MEDICAL DIRECTION IN SKILLED CARE FACILITIES. (a) *Medical director.* Every skilled care facility shall retain, pursuant to a written agreement, a physician to serve as medical director on a part–time or full–time basis as is appropriate for the needs of the residents and the facility. If the facility has an organized medical staff, the medical director shall be designated by the medical staff with approval of the licensee.

(b) *Coordination of medical care.* Medical direction and coordination of medical care in the facility shall be provided by the medical director. The medical director shall develop written rules and regulations which shall be approved by the licensee and include delineation of the responsibilities of attending physicians. If there is an organized medical staff, by–laws also shall be developed by the medical director and approved by the licensee. Coordination of medical care shall include liaison with attending physicians to provide that physicians' orders are written promptly upon admission of a resident, that periodic evaluations of the adequacy and appropriateness of health professional and supportive staff and services are conducted, and that the medical needs of the residents are met.

(c) *Responsibilities to the facility.* The medical director shall monitor the health status of the facility's employees. Incidents and accidents that occur on the premises shall be reviewed by the medical director to identify hazards to health and safety.

(2) PHYSICIAN SERVICES IN ALL FACILITIES. The facility shall assure that the following services are provided:

(a) *Attending physicians.* Each resident shall be under the supervision of a physician of the resident's or guardian's choice who evaluates and monitors the resident's immediate and long–term needs and prescribes measures necessary for the health, safety, and welfare of the resident. Each attending physician shall make arrangements for the medical care of a physician's residents in the physician's absence.

Note: For medical examinations and assessments required for admission, see s. HFS 132.52.

(b) *Physicians' visits.* 1. Each resident who requires skilled nursing care shall be seen by a physician at least every 30 days, unless the physician specifies and justifies in writing an alternate schedule of visits.

2. Each resident who docs not require skilled nursing care shall be seen by a physician at least every 90 days, unless the physician specifics and justifies in writing an alternate schedule of visits.

3. In no case may a physician's alternate schedule specify fewer than one visit annually.

4. The physician shall review the plan of care required under s. HFS 132.52 (2) (b) at the time of each visit.

5. The physician shall review the resident's medications and other orders at least at the time of each visit.

Note: For review by a registered nurse, see s. HFS 132.60(5) (a) 4.

6. The physician shall write, date and sign a note on the resident's progress at the time of each visit.

7. Physician visits are not required for respite care residents except as provided under s. HFS 132.70 (5).

(c) *Availability of physicians for emergency patient care.* The facility shall have written procedures, available at each nurse's station, for procuring a physician to furnish necessary medical care in emergencies and for providing care pending arrival of a physician. The names and telephone numbers of the physicians or medical service personnel available for emergency calls shall be posted at each nursing station.

Note: For reporting requirements, see s. HFS 132.45(5) (c) 4; for requirements to notify others, see s. HFS 132.60(3) (a).

History: Cr. Register, July, 1982, No. 319, eff. 8–1–82; r. and recr. (2) (b). Register, January, 1987, No. 373, eff. 2–1–87; correction in (2) (b) made under s. 13.93 (2m) (b) 7.. Stats., Register, December, 1996. No. 492.

HFS 132.62 Nursing services. (1) DEFINITIONS. (a) "Nursing personnel" means nurses, nurse aides, nursing assistants, and orderlies.

(b) "Ward clerk" means an employee who performs clerical duties of the nursing personnel.

(2) NURSING ADMINISTRATION. (a) *Director of nursing services in skilled care and intermediate carefacilities.* 1. 'Staffing requirement.' Every skilled care facility and every intermediate care facility shall employ a full–time director of nursing services who may also serve as a charge nurse in accordance with par. (b). The director of nursing services shall work only on the day shift except as required for the proper supervision of nursing personnel.

2. 'Qualifications.' The director of nursing services shall:

a. Be a registered nurse; and

b. Be trained or experienced in areas such as nursing service administration, restorative nursing, psychiatric nursing, or geriatric nursing.

3. 'Duties.' The director of nursing services shall be responsible for:

a. Supervising the functions, activities and training of the nursing personnel;

b. Developing and maintaining standard nursing practice, nursing policy and procedure manuals, and written job descriptions for each level of nursing personnel;

c. Coordinating nursing services with other resident services;

d. Designating the charge nurses provided for by this section;

e. Being on call at all times, or designating another registered nurse to be on call, when no registered nurse is on duty in the facility; and

f. Ensuring that the duties of nursing personnel shall be clearly defined and assigned to staff members consistent with the level of education, preparation, experience, and licensing of each.

(b) *Charge nurses in skilled care ,facilities and intermediate carefacilities.* 1. 'Staffing requirement.' A skilled nursing facility shall have at least one charge nurse on duty at all times, and:

a. A facility with fewer than 60 residents in need of skilled nursing care shall have at least one registered nurse, who may be the director of nursing services, on duty as charge nurse during every daytime tour of duty;

b. A facility with 60 to 74 residents in need of skilled nursing care shall, in addition to the director of nursing services, have at least one registered nurse on duty as charge nurse during every daytime tour of duty;

c. A facility with 75 to 99 residents in need of skilled nursing care shall have, in addition to the director of nursing services, at least one registered nurse on duty as charge nurse during every daytime tour of duty. In addition, the facility shall have at least one registered nurse on duty as charge nurse every day on at least one other non–daytime tour of duty.

d. A facility with 100 or more residents in need of skilled nursing care shall have, in addition to the director of nursing ser-

vices, at least one registered nurse on duty as charge nurse at all times.

e. *An* intermediate care facility shall have a charge nurse during every daytime tour of duty, who may be the director of nursing.

2. 'Qualifications.' Unless otherwise required under this paragraph, the charge nurses shall be registered nurses or licensed practical nurses, and shall have had specialized training, or be acquiring specialized training, or have had experience in areas such as nursing service administration, restorative nursing. psychiatric nursing, or geriatric nursing.

3. 'Duties.' a. The charge nurse, if a registered nurse, shall supervise the nursing care of all assigned residents, and delegate the duty to provide for the direct care of specific residents, including administration of medications, to nursing personnel based upon individual resident needs, the facility's physical arrangement, and the staff capability.

b. The charge nurse, if a licensed practical nurse, shall manage and direct the nursing and other activities of other licensed practical nurses and less skilled assistants and shall arrange for the provision of direct care to specific residents, including administration of medications, by nursing personnel based upon individual resident needs, the facility's physical arrangement, and the staff capability. A licensed practical nurse who serves as a charge nurse shall be under the supervision and direction of a registered nurse who is either in the facility or on call.

(c) *Nurses in intermediate care facilities.* 1. An intermediate care facility with fewer than 60 residents shall have at least one registered nurse or one licensed practical nurse on duty during every daytime tour of duty. The registered nurse may be the director of nursing services in accordance with par. (a).

2. An intermediate care facility with 60 or more residents shall have at least one registered nurse on duty during every daytime tour of duty. The registered nurse may be the director of nursing services in accordance with par. (a).

(3) NURSE STAFFING. In addition to the requirements of sub. (2), the following conditions shall be met:

(a) ***Total staffing.*** Every facility shall provide at least the following hours of service by nursing personnel, computed on a daily basis:

1. For each resident in need of skilled nursing care, 2.25 hours per day; for each resident in need of intermediate nursing care, 2.00 hours per day; and for each resident in need of limited nursing care, 1.25 hours per day of nursing personnel; of which a minimum of 20% shall be provided by nurses.

2. For each resident in need of personal care. .50 hours of patient care personnel per day.

(b) ***Assignments.*** There shall be adequate nursing service personnel assigned to care for the specific needs of each resident on each tour of duty. Those personnel shall be briefed on the condition and appropriate care of each resident.

(c) ***Reliefpersonnel.*** Facilities shall obtain qualified relief personnel.

(d) ***Records; weekly schedules.*** Weekly time schedules shall be planned at least one week in advance, shall be posted and dated, shall indicate the names and classifications of nursing personnel and relief personnel assigned on each nursing unit for each tour of duty, and shall be updated as changes occur.

Note: See s. HFS 132.45 (6) (b) for records.

(e) ***Staff meetings.*** Meetings shall bc held at least quarterly for the nursing personnel to brief them on new developments, raise issues relevant to the service, and for such other purposes as are pertinent. These meetings may be held in conjunction with those required by s. HFS 132.44.

(f) *Twenty–four hour* ***coverage.*** All facilities shall have at least one nursing staff person on duty at all times.

(g) *Staffing patterns.* The assignment of the nursing personnel required by this subsection to each tour of duty shall be consistent with the needs of the residents in the facility.

(hj ***Computing hours.*** 1. Only staff time related to the nursing service shall be counted to satisfy the requirements of this section.

2. When determining staff time to count toward satisfaction of the minimum nursing service hours in this section, the following duties of non–nursing personnel, including ward clerks. may be included:

a. Direct resident care, if the personnel have been appropriately trained to perform direct resident care duties;

b. Routine completion of medical records and census reports, including copying, transcribing, and filing;

c. Processing requests for diagnostic and consultative services, and arranging appointments with professional services;

d. Ordering routine diets and nourishments; and

e. Notifying staff and services of pending discharges.

3. No services provided by volunteers may be counted toward satisfaction of this requirement.

History: Cr. Register, **July,** 1982, No. 319, eff. 8–1–82; am. (2) (b) 2. and (c), r. (2) (d). Register. January, 1987, No 373, eff. 2–1–87; am. (3) (a), Register, February, 1989, No. 398, eff. 3–1–89.

HFS 132.63 Dietary service. **(1)** DIETARY SERVICE. The facility shall provide a dietary service or contract for a dietary service which meets the requirements of this section.

(2) STAFF. (a) *Full or part–time supervisor.* The dietary service shall be supervised by a full–time supervisor, except that an intermediate care facility with fewer than 50 residents may employ a person to work as supervisor part–time.

(b) ***Qualifications.*** The dietary service supervisor shall be either:

1. A dietitian; or

2. Shall receive necessary consultation from a dietitian and shall either:

a. Have completed a course of study in food service supervision at a vocational, technical, and adult education school or equivalent, or presently be enrolled in such a course of study; or

b. Hold an associate degree as a dietetic technician.

Note: See s. HFS 132.45 (6) (e) 1., for records of consultations.

(c) ***Staff.*** There shall be dietary service personnel on duty at least 12 hours daily who may include the supervisor.

(3) HYGIENE OF STAFF. Dietary staff and other personnel who participate in dietary service shall be in good health and practice hygienic food handling techniques.

Note: For inservice training requirements, see s. HFS 132.44 (2) (b).

(4) MENUS. **(a)** ***General.*** 1. Menus shall be planned and written at least 2 weeks in advance of their use, and shall be adjusted for seasonal availability of foods.

2. Menus shall be in accordance with physicians' orders and, to the extent medically possible, in accordance with the "recommended daily dietary allowances," of the food and nutrition board of the national research council, national academy of sciences as contained in Appendix A of this chapter.

3. Food sufficient to meet the needs of each resident shall be planned, prepared and served for each meal. When changes in the menu are necessary, substitutions shall provide equal nutritive value.

4. The facility shall make reasonable adjustments to accommodate each resident's preferences, habits, customs, appetite, and physical condition.

5. A file of tested recipes shall be maintained.

6. A variety of protein foods, fruits, vegetables, dairy products, breads, and cereals shall be provided.

(b) ***Therapeutic diets.*** 1. Therapeutic diets shall be served only on order of the physician, and shall be consistent with such orders.

2. Therapeutic menus shall be planned as provided in par. (a) 1., with supervision or consultation from a qualified dietitian.

3. Vitamin and mineral supplements shall be given only on order of the physician.

(5) MEAL SERVICE. (a) *Schedule.* At least 3 meals or their equivalent shall be offered to each resident daily, not more than 6 hours apart, with not more than a 15–hour span between a substantial evening meal and the following breakfast.

(b) *Identification of trays.* Trays, if used, shall be identified with the resident's name and type of diet.

(c) *Table service.* The facility shall provide table service in dining rooms for all residents who can and want to cat at a table, including residents in wheelchairs.

(d) *Re–service.* Food served to a resident in an unopened manufacturer's package may not be re–served unless the package remains unopened and maintained at a proper temperature.

(e) *Temperature.* Food shall be served at proper temperatures.

(f) *Snacks.* If not prohibited by the resident's diet or condition. nourishments shall be offered routinely to all residents between the evening meal and bedtime.

(g) *Drinking water:* When a resident is confined to bed, a covered pitcher of drinking water and a glass shall be provided on a bedside stand. The water shall be changed frequently during the day, and pitchers and glasses shall be sanitized daily. Single–service disposable pitchers and glasses may be used. Common drinking utensils shall not be used.

(6) FOOD SUPPLIES AND PREPARATION. (a) *Supplies.* Food shall bc purchased or procured from approved sources or sources meeting federal, state, and local standards or laws.

(b) *Preparation.* Food shall be cleaned and prepared by methods that conserve nutritive value, flavor and appearance. Food shall be cut, chopped, or ground as needed for individual residents.

(c) *Milk.* Only pasteurized fluid milk which is certified Grade **A** shall be used for beverages. Powdered milk may be used for cooking if it meets Grade **A** standards or **is** heated to a temperature of 165° F. (74° C.) during cooking.

(7) SANITATION. (a) *Equipment and utensils.* 1. All equipment, appliances, and utensils used in preparation or serving of food shall be maintained in a functional, sanitary, and safe condition. Replacement equipment shall meet criteria established in "Listing of Food Service Equipment" by the national sanitation foundation.

2. The floors, walls, and ceilings of all rooms in which food or drink is stored or prepared or in which utensils are washed shall be kept clean, smooth, and in good repair.

3. All furnishings, table linens, drapes, and furniture shall be maintained in a clean and sanitary condition.

4. Single–service utensils shall be stored in the original, unopened wrapper until used, may not be made of toxic material and may not be re–used or redistributed if the original wrapper has been opened.

Note: Copies of the National Sanitation Foundation's "Listing of Food Service Equipment-' are kept on file and may be consulted in the department and in the offices of the secretary of state and the revisor of statutes.

(b) *Storage and handling of food.* 1. Food shall be stored, prepared, distributed, and served under sanitary conditions which prevent contamination.

2. **All** readily perishable food and drink, except when being prepared or served, shall be kept in a refrigerator which shall have a temperature maintained at or below 40" F. (4°C.).

Note: See ch. HFS 145 for the requirements for reporting incidents of suspected disease transmitted by food.

(c) *Animals.* Animals shall not be allowed where food is prepared, served or stored, or where utensils are washed or stored.

(8) DISHWASHING. Whether washed by hand or mechanical means: all dishes, plates, cups, glasses, pots, pans, and utensils shall bc cleaned in accordance with accepted procedures which shall include separate steps for prc–washing, washing, rinsing, and sanitizing by means of hot water or chemicals or a combination approved by the department.

History: Cr. Register, July, 1982, No. 319, eff. 8–1–82; **am.** (2) (a), (4) (a) 3., (5) (d) and (f) and (7) (a) 4., Register, January, 1987, No. 373, **eff.** 2–1–87; r. and recr. (5) (c). Register, February, 1989, No. 398, eff. 3–1–89;

HFS 132.64 Rehabilitative services. (1) PROVISION OF SERVICES. Each facility shall either provide or arrange for, under written agreement, specialized rehabilitative services as needed by residents to improve and maintain functioning.

(2) SERVICE PLANS AND RESTRICTIONS. (a) *Conformity with orders and plan.* Rehabilitative services shall be administered as ordered by the physician and substantially in conformance with the plan of care required by **s.** HFS 132.60 (8).

(b) *Report to physician.* Within 2 weeks of the initiation of rchabilitativc treatment, a report of the resident's progress shall bc made to the physician.

(c) *Review of plan.* Rehabilitative services shall be re–evaluated at least quarterly by the physician and therapists, and the plan of care updated as necessary.

(3) SPECIALIZED SERVICES — QUALIFICATIONS. (a) *Physical therapy.* Physical therapy shall be given or supervised only by a physical therapist.

(b) *Speech and hearing therapy.* Speech and hearing therapy shall be given or supervised only by a therapist who:

1. Meets the standards for a certificate of clinical competence granted by the American speech and hearing association; or

2. Meets the educational standards, and is in the process of acquiring the supervised experience required for the certification of subd. 1.

(c) *Occupational therapy.* Occupational therapy shall be given or supervised only by a therapist who meets the standards for registration as an occupational therapist of the American occupational therapy association.

(d) *Equipment.* Equipment necessary for the provision of therapies required by the residents shall be available and used as needed.

Note: For record requirement, see s. HFS **132.45.**

History: Cr. Register, July, 19112. No. 319, eff. 8–1–82.

HFS 132.65 Pharmaceutical services. (1) DEFINITIONS. **As** used in this section:

(a) "Medication" has the same meaning as the term "drug" defined in **s. 450.06,** Stats.

(b) "Prescription medication" has the same meaning as the term "prescription drug" defined in s. 450.07, Stats.

(c) "Schedule II drug" means any medication listed in s. 961.16, Stats.

(2) SERVICES. Each facility shall provide for obtaining medications for the residents from licensed pharmacies.

(3) SUPERVISION. (a) *Pharmaceutical services committee.* 1. The facility shall have a pharmaceutical services committee consisting of at least the consulting or staff pharmacist, the director of nursing services or consulting registered nurse, the administrator and a physician.

2. The committee shall meet at least quarterly and document its activities, findings and recommendations.

3. The committee shall establish, maintain, and supervise such policies and procedures as are necessary to comply with this chapter and assure that resident needs are met, including but not limited to the following:

a. In facilities maintaining a bulk supply of non–prescription medications, the procedures for handling, administering, and maintaining records of receipt and disposition of bulk supplies;

b. The automatic termination of medication orders which are not limited as to time or dosages;

c. Review of medication errors;

d. The maintenance of an emergency medication kit under sub. (4); and

e. The maintenance of a contingency supply of medications, if any, as permitted by sub. *(5)*.

(b) *Medication consultant.* 1. Each skilled nursing facility shall retain a registered pharmacist who shall visit the facility at least monthly to review the drug regimen of each resident and medication practices. The pharmacist shall submit a written report of findings at least quarterly to the facility's pharmaceutical services committee.

2. Each intermediate care facility shall retain a registered pharmacist who shall visit the facility at least monthly to review medication practices and the drug regimen of each resident and who shall notify the attending physician if changes are appropriate.. The pharmacist shall submit a written report of findings at least quarterly to the facility's pharmaceutical services committee.

(4) EMERGENCY MEDICATION KIT. (a) A facility may have one or more emergency medication kits. All emergency medication kits shall be under the control of a pharmacist.

(b) The emergency kit shall be sealed and stored in a locked area.

(5) CONTINGENCY SUPPLY OF MEDICATIONS. (a) *Maintenance.* A facility may have a contingency supply of medications not to exceed 10 units of any medication. Any contingency supply of medications must be under the control of a pharmacist.

(b) *Storage.* Contingency drugs shall be stored at a nursing unit, except that those medications requiring refrigeration shall be stored in a refrigerator.

(c) *Single units.* Contingency medications shall be stored in single unit containers, a unit being a single capsule, tablet, ampule, tubex, or suppository.

(d) *Committee authorization.* The pharmaceutical services committee shall determine which medications and strengths of medications are to be stocked in the contingency storage unit and the procedures for use and restocking of the medications.

(e) *Control.* Unless controlled by a "proof-of-use" system, as provided by sub. (6) (e), a copy of the pharmacy communication order shall be placed in the contingency storage unit when any medication is removed.

(6) REQUIREMENTS FOR ALL MEDICATION SYSTEMS. (a) *Obtaining new medications.* 1. When medications are needed which are not stocked, a registered nurse or designee shall telephone an order to the pharmacist who shall fill the order and release the medication in return for a copy of the physician's written order.

2. When new medications are needed which are stocked, a copy of the resident's new medication order shall be sent to the pharmacist filling medication orders for the resident.

(b) *Storing and labeling medications.* Unless exempted under par. (f), all medications shall be handled in accordance with the following provisions:

1. 'Storage.' Medications shall be stored near nurse's stations, in locked cabinets, closets or rooms, conveniently located, well lighted, and kept at a temperature of no more than 85"F. (29" C.).

2. 'Transfer between containers.' Medications shall be stored in their original containers, and not transferred between containers, except by a physician or pharmacist.

3. 'Controlled substances.' Separately locked and securely fastened boxes or drawers, or permanently affixed compartments, within the locked medication area shall be provided for storage of schedule II drugs, subject to 21 USC ch. 13, and Wisconsin's uniform controlled substance act, ch. 961, Stats.

4. 'Separation of medications.' Medications packaged for individual residents shall be kept physically separated.

5. 'Refrigeration.' Medications requiring refrigeration shall be kept in a separate covered container and locked, unless the refrigeration is available in a locked drug room.

6. 'External use of medications.' Poisons and medications for external use only shall bc kept in a locked cabinet and separate from other medications, except that time-released transdermal drug delivery systems, including nitroglycerin ointments, may be kept with internal medications.

7. 'Accessibility to drugs.' Medications shall be accessible only to the registered nurse or designee. In facilities where no registered nurse is required, the medications shall be accessible only to the administrator or designee. The key shall be in the possession of the person who is on duty and assigned to administer the medications.

8. 'Labeling medications.' Prescription medications shall be labeled with the expiration date and as required by s. 450.11 (4), Stats. Non-prescription medications shall be labeled with the name of the medication, directions for use, the expiration date and the name of the resident taking the medication.

(c) *Destruction of medications.* 1. 'Time limit.' Unless otherwise ordered by a physician, a rcsident's medication not returned to the pharmacy for credit shall be destroyed within *72* hours of a physician's order discontinuing its use, the resident's discharge, the resident's death or passage of its expiration date. No resident's medication may be held in the facility for more than 30 days unless an order is written every 30 days to hold the medication.

2. 'Procedure.' Records shall be kept of all medication returned for credit. Any medication not returned for credit shall be destroyed in the facility and a record of the destruction shall be witnessed, signed and dated by 2 or more personnel licensed or registered in the health field.

3. 'Remaining controlled substances.' Any controlled substance not returned for credit and remaining after the discontinuance of a physician's orders or the discharge or death of the resident shall be inventoried on the appropriate U.S. drug enforcement agency form. One copy shall be sent to the **U.S.** drug enforcement agency and one copy shall be kept on file in the facility.

(d) *Control ofrnedications.* 1. 'Receipt of medications.' The administrator or a physician, nurse, pharmacist, or the designee of any of these may be an agent of the resident for the receipt of medications in accordance with **s.** Phar 1.19 (5).

Note: Phar 1.19 was repealed eff. 2-1-83.

2. 'Signatures.' When the medication is received by the facility, the person completing the control record shall sign the record indicating the amount received.

3. 'Discontinuance of schedule II drugs.' The use of schedule II drugs shall be discontinued after *72* hours unless the original order specifies a greater period of time not to exceed 60 days.

(e) *Proof-of-use record.* 1. For schedule II drugs, a proof-of-use record shall be maintained which lists, on separate proof-of-use sheets for each type and strength of schedule II drug, the date and time administered, resident's name, physician's name, dose, signature of the person administering dose, and balance.

2. Proof-of-use records shall be audited daily by the registered nurse or designee, except that in facilities in which a registered nurse is not required. the administrator or designee shall perform the audit of proof-of-use records daily.

(f) *Resident control and use of medications.* 1. Residents may have medications in their possession or stored at their bedside on the order of a physician.

2. Medications which, if ingested or brought into contact with the nasal or eye mucosa, would produce toxic or irritant effects shall be stored and used only in accordance with the health, safety, and welfare of all residents.

Note: See s. HFS 132.60 (5)(d) **4.** for permission for **self-administration** of **medications.**

(7) ADDITIONAL REQUIREMENTS FOR UNIT DOSE SYSTEMS. (a) *Scope.* When a unit dose drug delivery system is used, the requirements of this subsection shall apply in addition to those of sub. (6).

(b) *General procedures.* 1. The individual medication shall be labeled with the drug name, strength, expiration date, and lot or control number.

2. A resident's medication tray or drawer shall be labeled with the resident's name and room number.

3. Each medication shall be dispensed separately in single unit dose packaging exactly as ordered by the physician, and in a manner to ensure the stability of the medication.

4. An individual resident's supply of drugs shall be placed in a separate, individually labeled container and transferred *to* the nursing station and placed in a locked cabinet or cart. This supply shall not exceed 4 days for any one resident.

5. If not delivered from the pharmacy to the facility by the pharmacist, the pharmacist's agent shall transport unit dose drugs in locked containers.

6. The individual medication shall remain in the identifiable unit dose package until directly administered to the resident. Transferring between containers is prohibited.

7. Unit dose carts or cassettes shall be kept in a locked area when not in use.

History: Cr. Register. July, 1982, No. 319. eff. 8–1–82; r. and recr. (3) (b), am. (6) (a), (b) 6. and *(c)*, Register, January, 1987, No. 373. **eff.** 2–1–87; am. (3) **(b)** 2., (6) (b) 8. and (c) 1. and 3., Register, February. 1989, No. 398, eff. 3–1–89; correction in (1) (c) made under s. **13.93** (2m) (b) **7.**. Stats., Register, August, 2000, No. 536.

HFS 132.66 Laboratory, radiologic, and blood services. (1) DIAGNOSTIC SERVICES. (a) *Requirement of services.* The facility shall provide for promptly obtaining required laboratory, x–ray, and other diagnostic services.

(b) *Facility provided services.* Any laboratory and x–ray services provided by the facility shall meet the applicable requirements for hospitals provided in ch. HFS 124.

(c) *Outside services.* If the facility does not provide these services, arrangements shall be made for obtaining the services from a physician's office, hospital, nursing facility, portable x–ray supplier, or independent laboratory.

(d) *Physician's order.* No services under this subsection may be provided without an order of a physician, except that services provided to intermediate nurse care residents may be provided under the order of a physician or physician extender.

(e) Notice of findings. The attending physician shall be notified promptly of the findings of all tests provided under this subsection.

(f) *Transportation.* The facility shall assist the resident, if necessary, in arranging for transportation to and from the provider of service.

Note: For record requirements, see s. HFS 132.45.

(2) BLOOD AND BLOOD PRODUCTS. Any blood–handling and storage facilities shall be safe, adequate, and properly supervised. If the facility provides for maintaining and transferring blood and blood products, it shall meet the appropriate requirements for hospitals under ch. HFS 124. If the facility only provides transfusion services, it shall meet the requirements of s. HFS 124.17 (3).

History: Cr. Register, July, 1982, No. 319, eff. 8–1–82; **am.** (1) (d), Register, January, 1987, No. 373, eff. 2–1–87; correction in (1) (b) and (2) made under s. 13.93 (2m) (b) 7., Stats., Register. February, 1989, No. 398.

HFS 132.67 Dental services. (1) ADVISORY DENTIST. The facility shall retain an advisory dentist to participate in the staff development program for nursing and other appropriate personnel and to recommend oral hygiene policies and practices for the care of residents.

(2) ATTENDING DENTISTS. (a) *Arrangements for dental care.* The facility shall make arrangements for dental care for residents who do not have a private dentist.

(b) *Transportation.* The facility shall assist the resident. if necessary, in arranging for transportation to and from the dentist's office.

(3) DENTAL EXAMINATION OF RESIDENTS. Every resident shall have a dental examination by a licensed dentist within 6 months after admission unless a dcntal examination has been performed within 6 months before admission. Subsequent dental health care shall be provided or arranged for the resident as needed.

(4) EMERGENCY DENTAL CARE. The facility shall arrange for cmcrgency dcntal care when a rcsidcnt's attending dentist is unavailable.

Note: For record requirements. see s. HFS 132.45; for dentists' orders, sees. HFS 132.60 (5); for staff development programs about dental practices, sees. HFS 132.44 (2).

History: Cr. Register, July, 1982, No. 319, eff. 8–1–82; am. (3), Register, January, 1987. No. 373, eff. 2–1–87.

HFS 132.68 Social services. (1) PROVISION OF SERVICES. Each facility shall provide for social services in conformance with this section.

(2) STAFF. (a) *Social worker.* Each facility shall employ or retain a person full–time or part–time to coordinate the social services, to review the social needs of residents, and *to* make referrals.

(b) *Qualifications.* The person required by par. (a) shall:

1. Have a bachelor's degree in social work, sociology, or psychology; meet the national association of social workers' standards of membership; and have one year of social work experience in a health care setting; or

2. Have a master's degree in social work from a graduate school of social work accredited by the council on social work education; or

3. Shall receive at least monthly consultation from a social worker who meets the standards of subd. 1. or 2.

(3) ADMISSION. (a) *Interviews.* Before or at the time of admission, each resident and guardian, if any, and any other person designated by the resident or guardian, shall be interviewed.

(b) *Admission history.* **A** social history of each resident shall be prepared.

(4) CARE PLANNING. (a) Within 2 weeks after admission, an evaluation of social needs and potential for discharge shall be completed for each resident;

(b) A social services component of the plan of care, including preparation for discharge, if appropriate, shall be developed and included in the plan of care required by **s.** HFS 132.60 (8) (a); and

(c) Social services care and plans shall be evaluated in accordance with s. HFS 132.60 (8) (b).

(5) SERVICES. Social services staff shall provide the following:

(a) *Referrals.* If necessary, referrals for guardianship proceedings, or to appropriate agencies in cases of financial, psychiatric, rehabilitative or social problems which the facility cannot serve;

(b) *Adjustment assistance.* Assistance with adjustment to the facility, and continuing assistance to and communication with the resident, guardian, family, or other responsible persons;

(c) *Discharge planning.* Assistance to other facility staff and the resident in discharge planning at the time of admission and prior to removal under this chapter; and

(d) *Paining.* Participation in inservice training for direct care staff on the emotional and social problems and needs of the aged and ill and on methods for fulfilling these needs.

Note: For record requirements, see s. HFS 132.45 (5) (d).

History: Cr. Register, July, 1982, No. 319, eff. 8–1–82; am. **(3)** (a), (4) (a) and (5) (a). Register, January, 1987, No. 373, eff. 2–1–87.

HFS 132.69 Activities. (1) PROGRAM. **(a)** Every facility shall provide an activities program which meets the requirements of this section. The program may consist of any combination of activities provided by the facility and those provided by other community resources.

(b) The activities program shall bc planned for group and individual activities. and shall be designed to meet the needs and interests of each resident and to be consistent with each resident's plan of care.

(2) STAFF. (a) *Definition.* "Qualified activities coordinator" means:

1. In a skilled nursing facility. a person who:

a. Has a bachelor's degree in recreation therapy and is eligible for registration as a therapeutic rccrcation specialist with the national therapeutic recreation society;

b. Has 2 years of experience in a social or recreational program within the last 5 years, one year of which was full–time in a patient activities program in a health care setting; or

c. **Is** an occupational therapist or occupational therapy assistant who meets the requirements for certification by the American occupational therapy association: and

2. In an intermediate care facility, a staff member who is qualified by experience or training in directing group activity.

(b) *Supervision.* The activity program shall be supervised by:

1. **A** qualified activities coordinator; or

2. An employee who receives at least monthly consultation from a qualified activities coordinator.

(c) *Program staffing hours.* Except as provided in par. (d), activities staff shall be employed to provide at least .46 total hours of activities staff time per resident each week:

Note: The required hours are the total time that **activities** staff **must be** on duty serving residents each week, not the time directed towards each resident.

(d) *Community activities.* The length of time for which residents are involved in community activities may be included in computing the staff time provided under this subsection.

History: Cr. Register, July: 1982, No. 319, eff. **8-** 1–82; **am. (2) (a),** r. and recr. **(2)** (c), r. (2) (d) and (f), renum. (2) (e) **to** be (2) (d), Register. January. 1987, No. 373, eff. **2–1–87.**

HFS 132.695 Special requirements for facilities serving persons who are developmentally disabled. **(1)** SCOPE. The requirements in this section apply to all facilities that serve persons who are dcvclopmentally disabled.

(2) DEFINITIONS. In this section:

(a) "Active treatment" means an ongoing, organized effort to help each resident attain or maintain his or her developmental capacity through the resident's regular participation, in accordance with an individualized plan, in a program of activities designed to enable the resident to attain or maintain the optimal physical, intellectual, social and vocational levels of functioning of which he or she is capable.

(b) "Interdisciplinary team" means the persons employed by a facility or under contract to a facility who are responsible for planning the program and delivering the services relevant to a developmentally disabled resident's care needs.

(c) "IPP" or "individual program plan" means a written statement of the services which are to be provided to a resident based on an interdisciplinary assessment of the individual's developmental needs, expressed in behavioral terms, the primary purpose of which is to provide a framework for the integration of all the programs, services and activities received by the resident and to serve as a comprehensive written record of the resident's developmental progress.

(d) "QMRP" or "qualified mental retardation professional" means a person who has specialized training in mental retardation or at least one year of experience in treating or working with mentally retarded persons and is one of the following:

1. **A** psychologist licensed under ch. 455, Stats.;

2. A physician;

3. A social worker with a graduate degree from a school of social work accredited or approved by the council on social work education or with a bachelor's dcgrcc in social work from a college or university accredited or approved by the council on social work education.

4. A physical or occupational therapist who meets the requirements of **s.** HFS 105.27 or 105.28;

5. **A** speech pathologist or audiologist who meets the requirements of s. HFS 105.30 or 105.31;

6. **A** registered nurse;

7. **A** therapeutic recreation specialist who is a graduate of an accredited program or who has a bachelor's degree in a specialty area such as art, dance, music, physical education or recreation therapy; or

8. **A** human services professional who has a bachelor's degree in a human services field other than a field under subds. 1. to 7., such as rehabilitation counseling, special education or sociology.

(3) ACTIVE TREATMENT PROGRAMMING. (a) All residents who are developmentally disabled shall receive active treatment. Active treatment shall include:

1. The resident's regular participation, in accordance with the IPP, in professionally developed and supervised activities, experiences and therapies. The resident's participation shall be directed toward:

a. The acquisition of developmental, behavioral and social skills necessary for the resident's maximum possible individual independence; or

b. For dependent residents where no further positive growth is demonstrable, the prevention of regression or loss of current optimal functional status; and

2. An individual post–institutionalization plan, as part of the IPP, developed before discharge by a qualified mental retardation professional and other appropriate professionals. This shall include provision for appropriate services, protective supervision and other follow–up services in the resident's new environment.

(b) Active treatment does not include the maintenance of generally independent residents who are able to function with little supervision or who require few if any of the significant active treatment services described in this subsection.

(4) RESIDENT CARE PLANNING. (a) *Interdisciplinary team.* I. The interdisciplinary team shall develop the resident's individual program plan.

2. Mcmbcrship on the interdisciplinary team for resident care planning may vary based on the professions, disciplines and service areas that are relevant to the resident's needs but shall include a qualified mental retardation professional, a nurse and, when appropriate, a physician.

3. The resident and the resident's family or guardian shall be encouraged to participate as members of the team, unless the resident objects to the participation of family members.

(b) *Development and content of the individual program plan.* 1. Except in the case of a person admitted for short–term care, within 30 days following the date of admission, the interdisciplinary team, with the participation of the staff providing resident care, shall review the preadmission evaluation and physician's plan of care and shall develop an IPP based on the new resident's history and an assessment of the resident's needs by all relevant disciplines, including any physician's evaluations or orders.

2. The IPP shall include:

a. A list of realistic and measurable goals in order of priority, with time limits for attainment;

b. Behavioral objectives for each goal which must be attained before the goal **is** considcrcd attained;

c. **A** written statement of the methods or strategies for delivering care, for use by the staff providing resident care and by the professional and special services staff and other individuals involved in the resident's care, and of the methods and strategies for assisting the resident to attain new skills, with documentation of which

professional disciplines or which personnel providing resident care are responsibic for the nccdcd care or services;

d. Evaluation procedures for determining whether the methods or strategies are accomplishing the care objectives; and

e. A written interpretation of the preadmission evaluation in terms of any specific supportive actions, if appropriate, to be undertaken by the resident's family or legal guardian and by appropriate community resources.

(c) *Reassessment of individual program plan.* 1. 'Special and professional services review.' a. The care provided by staff from each of the disciplines involved in the resident's treatment shall be reviewed by the professional responsible for monitoring delivery of the specific service.

b. Individual care plans shall be reassessed and updated at least quarterly by the interdisciplinary team, with more frequent updates if an individual's needs warrant it, and at least every 30 days by the QMRP to review goals.

c. Reassessment results and other necessary infomiation obtained through the specialists' assessments shall be disseminated to other resident care staff as part of the IPP process.

d. Documentation of the reassessment results, treatment objectives, plans and procedures, and continuing treatment progress reports shall be recorded in the resident's record.

2. 'Interdisciplinary review'. The interdisciplinary team, staff providing resident care and other relevant personnel shall review the IPP and status of the resident at least annually and make program recommendations as indicated by the resident's developmental progress. The review shall consider at least the following:

a. The appropriateness of the IPP and the individual's progress toward meeting the plan objectives;

b. The advisability of continued residence, and recommendations for alternative programs and services; and

c. The advisability of guardianship and a plan for assisting the resident in the exercise of his or her rights.

3. 'Individual evaluation.' Individual evaluations of residents shall:

a. Make use of tests and measurements uniformly accepted within the given profession, whenever these instruments are available;

b. Provide the basis for prescribing an appropriate program of training experiences for the resident;

c. Provide written training and habilitation objectives for each resident that are based upon completed and relevant diagnostic and prognostic data and that arc stated in terms that permit the progress of each resident to be assessed; and

d. Provide evidence of services designed to meet the training and habilitation objectives for each resident.

(d) *Implementation.* Progress notes shall reflect the treatment and services provided to meet the goals stated in the IPP.

Note: See ch. HFS 134 for rules governing residential care facilities that primarily serve developmentally disabled persons **who** require active treatment.

History: Cr. Register. January, 1987, No. 373, eff. 2–1–87: am. (2) (a), **(b),** (3), **(4)**(a), (b), (c) 1., 2. intro. and a. and (d), renum. (2) (c) to (d) and am. (intro.) and 3., cr. (2) *(c),* Register, February, 1989. No. 398, eff. 3–1–89; correction in (2) (d) 4. made under s. 13.93(2m) (b) 7., Stats., Register. August. 2000. No. 536.

HFS 132.70 Special requirements when persons are admitted for short–term care. (1) SCOPE. **A** facilitymay admit persons for short–term care. **A** facility that admits persons for short–term care may use the procedures included in this section rather than the procedures included in ss. HFS 132.52 and 132.60 (8). Short–term care is for either respite or recuperative purposes. The requirements in this section apply to all facilities that admit persons for short–term care when they admit, evaluate or provide care for these persons. Except as specified in this section, all requirements of this chapter, including s. HFS 132.51, apply to all facilities that admit persons for short–term care.

(2) PROCEDURES FOR ADMISSION. (a) *Respite cure.* For a person admitted to a facility for respite carc, the following admission and resident care planning procedures may be carried out in place of the requirements under ss. HFS 132.52 and 132.60(8):

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

a. **A** summary of the major needs of the person and of the care to be provided;

b. **A** statement from the attending physician that the person is free from tuberculosis and other clinically apparent communicable diseases; and

c. The attending physician's plans for discharge.

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

3. The facility shall send a copy of the comprehensive resident assessment, the physician's orders and the plan of care under subd. 2. to the person's attending physician. The attending physician shall sign the assessment and the plan of care within 48 hours after the person is admitted.

(b) *Recuperative care.* For a person admitted to a facility for recuperative care, the following admission and resident care planning procedures may be carried out in place of the requirements under **ss. HFS** 132.52 and 132.60 (8):

1. The person may be admitted only on order of a physician accompanied by information about the person's medical condition and diagnosis, the physician's initial plan of care, and either the physician's written certification that the person is free of tuberculosis and other clinically apparent communicable diseases or an order of a physician for procedures to treat any disease the person may have.

2. A registered nurse shall prepare an initial plan of care for nursing services to be implemented on the day of admission, which shall be based on the physician's initial plan of care under subd. 1 and shall be superseded by the plan of care under subd. 5.

3. **A** physician shall conduct a physical examination of the new resident within 48 hours following admission, unless a physical examination was performed by a physician within 15 days before admission.

4. **A** registered nurse shall complete a comprehensive resident assessment of the person prior to or within 72 hours after admission. The comprehensive assessment shall include evaluation of the person's nursing dietary: rehabilitative, pharmaceutical, dental, social and activity needs. The consulting or staff pharmacist shall participate in the comprehensive assessment as provided under sub. (4) (a). **As** part of the comprehensive assessment, when the registered nurse has identified a need for a special service, staff from the discipline that provides the service shall, on referral from the registered nurse, complete a history and assessment of the person's prior health and care in that discipline.

5. The registered nurse, with verbal agreement of the attending physician, shall develop a written plan of care for the new resident within one week after admission. The plan of carc shall be

based on the comprehensive resident assessment under subd. 4., the physician's orders, and any special assessments under subd. 4.

6. The facility shall send a copy of the comprehensive resident assessment, the physician's orders and the plan of care under subd. 5. to the new resident's attending physician. The attending physician shall sign the assessment and the plan of care.

(3) ADMISSION INFORMATION. (a) This subsection takes the place of s. HFS 132.31 (1) (d) 1. for persons admitted for respite care or recuperative care.

(b) No person may be admitted to a facility for respite carc or recuperative care without signing or the person's guardian or designated representative signing an acknowledgement of having received a statement before or on the day of admission which contains at least the following information:

1. *An* indication of the expected length of stay, with a note that the responsibility for care of the resident reverts to the resident or other responsible party following expiration of the designated length of stay;

2. An accurate description of the basic services provided by the facility, the rate charged for those services, and the method of payment for them;

3. Information about all additional services regularly offered but not included in the basic services. The facility shall provide information on where a statement of the fees charged for each of these services can be obtained. These additional services include pharmacy, x–ray, beautician and all other additional services regularly offered to residents or arranged for residents by the facility;

4. The method for notifying residents of a change in rates or fees;

5. Terms for refunding advance payments in case of transfer, death or voluntary or involuntary termination of the service agreement;

6. Conditions for involuntary termination of the service agreement;

7. The facility's policy regarding possession and use of personal effects;

8. In the case of a person admitted for recuperative care, the terms for holding and charging for a bed during the resident's temporary absence; and

9. In summary form, the residents' rights recognized and protected by s. HFS 132.31 and all facility policies and regulations governing resident conduct and responsibilities.

(4) MEDICATIONS. (a) The consulting or staff pharmacist shall review the drug regimen of each person admitted to the facility for respite care or recuperative care as part of the comprehensive resident assessment under sub. **(2)** (a) 1. or (b) 4.

(b) The consulting or staff pharmacist, who is required under s. HFS 132.65(3) **(b)** to visit the facility at least monthly to review drug regimens and medications practices, shall review the drug regimen of each resident admitted for recuperative care, and the drug regimen of each resident admitted for respite care who may still be a resident of the facility at the time of the pharmacist's visit.

(c) Respite care residents and recuperative care residents may bring medications into the facility as permitted by written policy of the facility.

(5) PHYSICIAN'S VISITS. The requirements under s. HFS 132.61 (2) (b) for physician visits do not apply in the case of respite care residents, except when the nursing assessment indicates there has been a change in the resident's condition following admission, in which case the physician shall visit the rcsident if this appears indicated by the resident assessment.

(6) PRE–DISCHARGE PLANNING CONFERENCE. (a) For residents receiving recuperative care, a planning conference shall be conducted at least 10 days before the designated date of termination of the short–term care, except in an emergency, to determine the appropriateness of discharge or need for the resident to stay at the facility. At the planning conference a care plan shall bc developed for a resident who is being discharged to home care or to another health care facility. If discharge is not appropriate, the period for recuperative care shall be extended, if it was originally less than 90 days, for up to the 90 day limit, or arrangements shall be made to admit the person to the facility for care that is not short–term, as appropriate.

(b) Paragraph (a) takes the place of s. HFS 132.53(3)(b) 1. and 2. for recuperative care residents.

(7) RECORDS. (a) *Contents.* The medical record for each respite care resident and each recuperative care resident shall include, in place of the items required under s. HFS 132.45 *(5):*

1. The resident care plan prepared under sub. (2) (a) 2. or (b) 5.;

2. Admission nursing notes identifying pertinent problems to be addressed and areas of care to be maintained;

3. For recuperative care residents, nursing notes addressing pertinent problems identified in the resident care plan and, for respite care residents, nursing notes prepared by a registered nurse or licensed practical nurse to document the resident's condition and the care provided;

4. Physicians' orders;

5. A record of medications;

6. Any progress notes by physicians or health care specialists that document resident care and progress;

7. For respite care residents, a record of change in condition during the stay at the facility; and

8. For recuperative care residents, the physician's discharge summary with identification of resident progress, and, for respite care residents, the registered nurse's discharge summary with notes of resident progress during the stay.

(b) *Location and accessibility.* The medical record for each short–term care resident shall be kept with the medical records of other residents and shall be readily accessible to authorized representatives of the department.

History: Cr. Register, **January,** 1987, No. **373,** eff. 2–1–87; am. (1), *(2)* **(a)** (intro.) **and** (b) (intro.), Register, February, 1989, No. 398, eff. 3–1–89.

Subchapter VII — Physical Environment

HFS 132.71 Furniture, equipment and supplies. **(1)** FURNITURE IN RESIDENT CARE AREAS. (a) *Beds.* 1. Each resident shall be provided a bed which is at least 36 inches wide, is equipped with a headboard of sturdy construction and is in good repair. Roll–away beds, day beds, cots, or double or folding beds shall not be used.

2. Each bed shall be in good repair and provided with a clean, firm mattress of appropriate size for the bed.

3. Side rails shall be installed for both sides of the bed when required by the resident's condition.

(b) *Bedding.* 1. Each resident shall be provided at least one clean, comfortable pillow. Additional pillows shall be provided if requested by the resident or required by the resident's condition.

2. Each bed shall have a mattress pad.

3. A moisture–proof mattress cover and pillow cover shall be provided to keep each mattress and pillow clean and dry.

4. a. A supply of sheets and pillow cases sufficient to keep beds clean, dry, and odor–free shall be stocked. At least 2 sheets and 2 pillow cases shall be furnished to each resident each week.

b. Beds occupied by bedfast or incontinent residents shall be provided draw sheets.

5. A sufficient number of blankets shall be provided to keep each resident warm. Blankets shall be changed and laundered as often as necessary to maintain cleanliness and freedom from odors.

6. Each bed shall have a clean, washable bedspread.

(c) *Other furnishings.* 1. Each resident who is confined to bed shall be provided with a bedside storage unit containing at least one drawer for personal items and a drawer or compartment for necessary nursing equipment. All other residents shall be provided with a storage unit in the resident's room, containing at least one drawer for personal items and a drawer or compartment for necessary nursing equipment.

2. a. At least one chair shall be in each room for each bed. A folding chair shall not be used. If requested by the resident or guardian, a wheel–chair or geri–chair may be substituted.

b. An additional chair with arms shall be available upon request.

3. A properly shaded reading light in working condition shall be installed over or at each bed.

4. Adequate compartment or drawer space shall be provided in each room for each resident to store personal clothing and cffccts and to store, as space permits, other personal possessions in a reasonably secure manner.

5. A sturdy and stable table that can be placed over the bed or armchair shall be provided to every residcnt who does not cat in the dining area.

(d) *Towels, washcloths, and soap.* I. Clean towels and washcloths shall be provided to each resident as needed. Towels shall not be used by more than one resident between launderings.

2. An individual towel rack shall be installed at each resident's bedside or at the lavatory.

3. Single service towels and soap shall be provided at each lavatory for use by staff.

(e) *Window coverings.* Every window shall be supplied with flame retardant shades, draw drapes or other covering material or devices which, when properly used and maintained, shall afford privacy and light control for the resident.

(2) RESIDENT CARE EQUIPMENT. (a) *Personal need items.* When a resident because of his or her condition needs a mouthwash cup, a wash basin, a soap dish, a bedpan, an emesis basin. or a standard urinal and cover, that item shall be provided to the resident. This equipment may not be interchanged between residents until it is effectively washed and sanitized.

(b) *Thermometers.* If reusable oral and rectal thermometers are used, they shall be cleaned and disinfected between use.

(c) First aid supplies. Each nursing unit shall be supplied with first aid supplies, including bandages, sterile gauze dressings, bandage scissors, tape, and a sling tourniquet.

(d) *Other equipment.* Other equipment, such as wheelchairs with brakes, footstools, commodes, foot cradles, footboards, under-the--mattress bedboards, walkers, trapeze frames, transfer boards, parallel bars, reciprocal pulleys, suction machines, patient lifts, and Stryker or Foster frames, shall be used as needed for the care of the residents.

(3) MAINTENANCE. All furnishings and equipment shall be maintained in a usable, safe and sanitary condition.

(4) STERILIZATION OF SUPPLIES AND EQUIPMENT. Each facility shall provide sterilized supplies and equipment by one or more of the following methods:

(a) Use of an autoclave;

(b) Use of disposable, individually wrapped, sterile supplies such as dressings, syringes, needles, catheters, and gloves;

(c) Sterilization services under a written agreement with another facility; or

(d) Other sterilization procedures when approved in writing by the department.

(5) SANITIZATION OF UTENSILS. Utensils such as individual bedpans, urinals, and wash basins which are in use shall be sanitized in accordance with acceptable sanitization procedures on a routine schedule. These procedures shall be done in an appropriate area.

(6) DISINFECTION OF RESIDENT GROOMING UTENSILS. Hair care tools such as combs, brushes. metal instruments, and shaving equipment which are used for more than one resident shall be disinfected before each use.

(7) OXYGEN. (a) No oil or grease shall be used on oxygen cquipmcnt.

(b) When placed at the resident's bedside, oxygen tanks shall be securely fastened to a tip–proof carrier or base.

(c) Oxygen regulators shall not be stored with solution left in the attached humidifier bottle.

(d) When in use at the resident's bedside, cannulas, hoses. and humidifier bottles shall be changed and sterilized at least every 5 days.

(e) Disposable inhalation equipment shall be presterilized and kept in contamination–proof containers until used, and shall be replaced at least every 5 days when in use.

(f) With other inhalation equipment such as intermittent positive prcssurc breathing equipment, the entire resident breathing circuit, including nebulizers and humidifiers, shall be changed daily.

History: Cr. Register, July, 1982, No. **319,** eff. 8–1–82; **am.** (1) ***(e),*** (2) (a) and (3), Register, January, 1987, No. 373. eff. 2–1–87.

HFS 132.72 Housekeeping services. (1) REQUIREMENT. Facilities shall develop and implement written policies that ensure a safe and sanitary environment for personnel and residents at all times.

(2) CLEANING. (a) *General.* The facility shall be kept clean and free from offensive odors, accumulations of dirt, rubbish, dust, and safety hazards.

(b) *Floors.* Floors and carpeting shall be kept clean. Polishes on floors shall provide a nonslip finish. Carpeting or any other material covering the floors that is worn, damaged, contaminated or badly soiled shall be replaced.

(c) *Other surfaces.* Ceilings and walls shall be kept clean and in good repair at all times. The interior and exterior of the buildings shall be painted or stained as needed to protect the surfaces. Loose, cracked, or peeling wallpaper or paint shall be replaced or rcpaircd.

(d) *Furnishings.* All furniture and other furnishings shall be kept clean and in good repair at all times.

(e) *Combustibles in storage areas.* Attics, cellars and other storage areas shall be kept safe and free from dangerous accumulations of combustible materials. Combustibles such as cleaning rags and compounds shall be kept in closed metal containers.

(f) *Grounds.* The grounds shall be kept free from refuse, litter, and waste water. Areas around buildings, sidewalks, gardens, and patios shall be kept clear of dense undergrowth.

(3) POISONS. All poisonous compounds shall be clearly labeled as poisonous and, when not in use, shall be stored in a locked area separate from food, kitchenware, and medications.

(4) GARBAGE. (a) *Storage containers.* All garbage and rubbish shall be stored in leakproof, nonabsorbent containers with close- fitting covers, and in areas separate from those used for the preparation and storage of food. Containers shall be cleaned regularly. Paperboard containers shall not be used.

(b) *Disposal.* Garbage and rubbish shall be disposed of promptly in a safe and sanitary manner.

(5) LINEN AND TOWELS. Linens shall be handled, stored, proccsscd, and transported in such a manner as to prevent the spread of infection. Soiled linen shall not be sorted, rinsed. or stored in bathrooms, residents' rooms, kitchens, food storage areas, nursing units, or common hallways.

Note: For linen supplies, see s. HFS 132.71 **(1)** (b) **4;** for change of linens. see s. HFS 132.60 (I) (a) 2; for toweling, sees. HFS 132.71 **(1) (d).**

(6) PEST CONTROL. (a) *Requirement.* The facility shall be maintained reasonably free from insects and rodents, with harborages and entrances of insects and rodents eliminated.

(b) *Provision of service.* Pest control services shall be provided in accordance with the requirements of s. 94.705, Stats.

(c) *Screening of windows and doors.* All windows and doors used for ventilation purposes shall be provided with wire screening of not less than number 16 mesh or its equivalent and shall be properly installed and maintained to prevent entry of insects. Screen doors shall be self–closing and shall not interfere with exiting. Properly installed airflow curtains or fans may be used in lieu of screens.

History: Cr. Register. July, 1982. No. 319, eff. 8–1–82; am. (2) (b), **(c)** and (e), (6) *(c).* Register, January, 1987, No. 373. eff. 2–1–87.

Subchapter VIII — Life Safety, Design and Construction

HFS 132.81 Scope and definitions. (1) APPLICATION. This subchapter applies to all facilities except where noted. Wherever the rules in ss. HFS 132.83 and 132.84 modify the applicable life safety code under s. HFS 132.82, these rules shall take precedence.

(2) DEFINITIONS. The definitions in the applicable life safety code required under s. HFS 132.82 apply to this subchapter. In addition, in this subchapter:

(a) "Life safety code" means the National Fire Protection Association's standard 101.

(b) "Period A facility" means a facility or a portion of a facility which before July 1, 1964, was either licensed as a nursing home or had the plans approved by the department; a county home or county mental hospital approved under former ch. **PW** 1 or 2 before July 1, 1964, which is to be converted to nursing home use; a hospital approved under ch. HFS 124 before July 1, 1964, which is to be converted to nursing home use; or any other recognized inpatient care facility in operation before July 1, 1964, to be converted to nursing home use.

(c) "Period B facility" means a facility or a portion of a facility the plans for which were approved by the department on or after July 1, 1964, but no later than December 1, 1974; a county home or county mental hospital approved under former ch. PW 1 or 2, on or after July 1, 1964, but no later than December 1, 1974, which is to be converted for nursing home use; or any other recognized inpatient care facility in operation on or after July 1, 1964, but no later than December 1, 1974, which is to be converted to nursing home use.

(d) "Period C facility" means a facility, the plans for which were approved by the department after December 1, 1974, including new additions to existing licensed facilities and major remodcling and alterations.

History: Cr. Register, July, 1982, No. 319, eff. 8 – 4 2 ;r. and recr. (2), Register, January, 1987, No. 373. eff. 2–1–87; reprinted to restore dropped copy in (2) (b), Register, May, 1987, No. 377.

HFS 132.812 Review for compliance with this chapter and the state building code. (1) The department shall review nursing home construction and remodeling plans for compliance with this chapter and for compliance with the state commercial building code, chs. Comm 61 to 65, with the exception of s. Comm 61.31 (3). Where chs. Comm 61 to 65 refer to the department of commerce, those rules shall be deemed for purposes of review under this chapter to refer to the department of health and family services.

(2) The department shall have 45 working days from receipt of an application for plan review and all required forms, fees, plans and documents to complete the review and approve, approve with conditions or deny approval for the plan.

History: Emerg. cr., eff. 7–1–96; cr. **Register,** December, 1996, No. 492, eff. 7–1–96; corrections in (1) made under s. 13.93 (2m) (b) 7., **Stats.,** Register, **August,** 2000. No. *536;* corrections in (1) **made under s. 13.93 (2m) (b) 7., Stats.**

HFS 132.815 Fees for plan reviews. (1) REQUIREMENT. Before the start of any construction or remodeling project for a nursing home, the plans for the construction or remodeling shall be submitted to the department, pursuant to s. HFS 132.84 (17), for review and approval by the department. The fees established in this section shall be paid to the department for providing plan review services.

(2) FEE SCHEDULE. (a) *General.* The department shall charge a fee for the review under s. HFS 132.812 of plans for a nursing home capital construction or remodeling project. The fee shall be based in part on the dollar value of the project, according to the schedule under par. (b), and in part on the total gross floor area in the plans, as found in par. (c). The total fee for plan review is determined under par. (d). Fees for review of partial plans, for revision of plans, for extensions of plan approval, and for handling and copying, and provisions for the collection and refund of fees are found in par. (e).

(b) *Fee part based on project dollar value.* The part of the fee based on project dollar value shall be as follows:

1. For projects with an estimated dollar value of less than $5,000, $100;

2. For projects with an estimated dollar value of at least $5,000 but less than $25,000, $300;

3. For projects with an estimated dollar value of at least $25,000 but less than $100,000, $500;

4. For projects with an estimated dollar value of at least $ 100,000 but less than $500,000, $750;

5. For projects with an estimated dollar value of at least $500,000 but less than $1 million, $1,500;

6. For projects with an estimated dollar value of at least $1 million but less than $5 million, $2,500; and

7. For projects with an estimated dollar value of $5 million or more, $5,000.

(c) *Fee part based on total gross floor* **area.** 1. 'General.' The part of the fee based on total gross floor area shall be as provided in Table 132.815 subject to the conditions set out in this paragraph.

2. 'Building, heating and ventilation.' The fees in Table 132.815 apply to the submittal of all building and heating, ventilation and air conditioning (HVAC) plans. **A** fee for review of plans shall be computed on the basis of the total gross floor area of each building.

TABLE 132.815
Fee Part Based on Total Gross Floor Area

Area (Sq. Feet)	FEE		
	Bldg. & HVAC	Bldg. Area Only	HVAC Area Only
Up to 2,500	$320	$270	$190
2,501 – 5,000	430	320	240
5,001 – 10,000	580	480	270
10,001 – 20,000	900	630	370
20,001 – 30,000	1,280	900	480
30,001 – 40,000	1,690	1,220	690
40,001 – 50,000	2,280	1,590	900
50,001 – 75,000	3,080	2,120	1,220
75,001 – 100,000	3,880	2,600	1,690
100,001 – 200,000	5,940	4,240	2,120
200,001 – 300,000	12,200	7,430	4,770
300,001 – 400,000	17,190	11,140	6,900
400,001 – 500,000	21,220	13,790	9,020
Over 500,000	22,810	14,850	10,080

3. 'Scope of fee.' The fees indicated in Table 132.815, relating to building and heating, ventilation and air conditioning plans, include the plan review and inspection fee for all components,

whether submitted with the original submittal or at a later date. Components covered by that fee are:

a. Building plans;

b. Heating, ventilation and air conditioning plans;

c. Bleacher plans for interior bleachers only;

d. Fire escape plans;

e. Footing and foundation plans; and

f. Structural component plans, such as plans for floor and roof trusses, precast concrete, laminated wood, metal buildings, solariums and other similar parts of the building.

4. 'Building alteration.' a. The examination fee for review of plans for alteration of existing buildings and structures undergoing remodeling or review of tenant space layouts shall be determined in accordance with Table 132.815 on the basis of the gross floor area undergoing remodeling.

b. The fee specified in subd. 4. a. shall be based on the actual gross square footage of the area being remodeled. When remodeling of an individual building component affects building code compliance for a larger area, the fee shall be computed on the basis of the total square footage of the affected area.

(d) *Total fee for review of plans.* To determine the total fee for review of plans, the department shall:

1. Add the fee parts from pars. (b) and (c); and

2. Multiply the sum obtained in subd. 1. by 0.95.

(e) *Other fee* ***provisions related to review*** *of plans.* 1. 'Fee for miscellaneous plans.' Miscellaneous plans are plans that have no building or heating, ventilation and air conditioning plan submissions and for which there may not be an associated area. The fee for a miscellaneous plan shall be $250. This fee is for plan review and inspection. Miscellaneous plans include:

a. Footing and foundation plans submitted prior to the submission of the building plans;

b. Plans for industrial exhaust systems for dust, fumes, vapors and gases, for government-owned buildings only;

c. Spray booth plans, for govemment-owned buildings only;

d. Stadium, grandstand and bleacher plans, and interior bleacher plans submitted as independent projects;

e. Structural plans submitted as independent projects, such as docks, piers, antennae, outdoor movie screens and observation towers; and

f. Plans for any building component, other than building and heating, ventilation and air conditioning, submitted following the final inspection by the department.

2. 'Fee for permission to start construction.' The fee for permission to start construction shall be $80. This fee shall apply to those applicants proposing to start construction prior to the approval of the plans by the department.

3. 'Fee for plan revision.' The fee for revision of previously approved plans shall be $100. This paragraph applies when plans are revised for reasons other than those that were requested by the department. The department may not charge a fee for revisions requested by the department as a condition of original plan approval.

4. 'Fee for extension of plan approval.' The examination fee for a plan previously approved by the department for which an approval cxtcnsion [was requested] beyond the time limit specified in this chapter shall be $75 per plan.

5. 'Collection of fees.' Fees shall be remitted at the time the plans are submitted. No plan examinations, approvals or inspections may be made until fees are reccivcd.

6. 'Handling and copying fees.' a. The department shall charge a handling fee of $50 per plan to the submitting party for any plan that is submitted to the department, entered into the department's system and subsequently requested by the submitting party to be returned prior to departmental review.

b. The department may charge a photocopying fee of 25 cents per page to anyone who requests copies of construction or remodcling plans. cxccpt that a fee of $5 per plan sheet shall be charged for reproduction of plan sheets larger than legal size.

(3) HANDLING AND COPYING FEES. (a) The department shall charge a handling fee of $50 per plan to the submitting party for any plan which is submitted to the department, entered into the department's system and then the submitting party requests that it be returned prior to review.

(b) The department may charge a photocopying fee of 25 cents per page to anyone who requests copies of construction or remodeling plans, except that a fee of $5 per plan sheet shall be charged for reproduction of plan sheets larger than legal size.

History: Emerg. cr. eff. 1–1–94; cr. Register. **August,** 1994, No. 461. eff. 9–1–94; emerg. r. and recr. (2). eff. **7–1–96;** r. and recr. (2), Register, December, 1996, No. 492, eff. 1–1–97.

HFS 132.82 Life safety code. (1) 1967 CODE. Facilities with construction plans first approved by the department prior to June 1, 1976, shall meet the applicable provisions of either the 21st edition (1967) or 23rd edition (1973) of the Life Safety Code. (See Table 132.82).

(2) 1973 **CODE.** Facilities with construction plans first approved 26, 1982, shall meet the applicable provisions of the 23rd edition (1973) of the Life Safety Code. (See Table 132.82).

(3) 1981 CODE. Facilities with construction plans first approved by the department on or after November 26, 1982, but before July 1, 1994, shall meet the applicable provisions of the 25th edition (1981) of the Life Safety Code. (See Table 132.82).

(3m) 1991 CODE. Facilities with construction plans first approved by the department on or after July 1, 1994, shall meet the applicable provisions of the 1991 edition of the Life Safety Code. (See Table 132.82).

(4) **FIRE** SAFETY EVALUATION SYSTEM. **A** proposed or existing facility not meeting all requirements of the applicable life safety code shall be considered in compliance if it achieves a passing score on the Fire Safety Evaluation System (FSES), developed by the United States department of commerce, national bureau of standards, to establish safety equivalencies under the life safety code.

Note: See par. 1-3118, 1973 Life Safety Code. The FSES has been adopted for purposes of certification under the Medicaid program. See the July 28, 1980, Federal Register (45 FR 50264).

Note: Copies of the 1967, 1973 and 1981 Life Safety Codes and related codes **can** be obtained **from** the National *Fire Protection* Association, Batterymarch **Park.** Quincy, **MA** 02269. Copies are **kept** on file in the offices of the bureau of quality assurance, the secretary of state. and the revisor of statutes.

(5) APPLICABLE CODES. The applicable provisions of the life safety codes required by subs. (1), (2), (3) and (3m) shall apply to facilities as follows:

TABLE 132.82
Life Safety Code Requirements

FACILITY TYPE AND AGE	1967 NFPA 101 LIFE SAFETY CODE		1973 NFPA 101 LIFE SAFETY CODE		1981 NFPA 101 LIFE SAFETY CODE		1991 NFPA 101 LIFE SAFETY CODE	
	(Existing)	(New)	(Existing)	(New)	(Existing)	(hew)	(Existing)	(hew)
Skilled Care								
Plans approved prior to October 28. 1971	X		0		0		0	
Plans approved on or after Oct 28, 1971, but prior to June 1, **1976**		X	0		0		0	
Plans approved **on** or after June 1, 1976, but prior to Nov **26,** 1982				X	0		0	
Plans approved on or after November 26, 1982, but prior to July 1, 1994					X		0	
Plans approved on or after July 1, 1994							0	X
Intermediate Care								
Plans approved prior to March 17, 1974	X		0		0		0	
Plans approved on or after March 17, 1974, but prior to June 1, 1976		X	0		0		0	
Plans approved on or after June 1, 1976, but prior to Nov. 26, 1982		X	0		0		0	
Plans approved on or after November **26** 1982, but prior to July 1, **1994**					X		0	
Plans approved on or after July 1, 1993								X

X = Standard requirements apply.

0 = Alternate requirements, that **is.** more recent editions of the Life Safety Code, which may be substituted for standard requirements at the option of the facility.

(6) RESIDENT SAFETY AND DISASTER PLAN. (a) *Disaster plan.* 1. Each facility shall have a written procedure which shall be followed in case of fire or other disasters, and which shall specify persons to be notified, locations of alarm signals and fire extinguishers, evacuation routes, procedures for evacuating helpless residents, frequency of fire drills, and assignment of specific tasks and responsibilities to the personnel of each shift and each discipline.

2. The plan shall be developed with the assistance of qualified fire and safety experts, including the local fire authority.

3. All employees shall be oriented to this plan and trained to perform assigned tasks.

4. The plan shall be available at each nursing station.

5. The plan shall include a diagram of the immediate floor area showing the exits, fire alarm stations, evacuation routes, and locations of fire extinguishers. The diagram shall be posted in conspicuous locations in the corridor throughout the facility.

(b) *Drills.* Fire drills shall be held at irregular intervals at least **4** times a year on each shift and the plan shall be reviewed and modified as necessary. Records of drills and dates of drills shall be maintained.

(c) *Fire inspections.* The administrator of the facility shall arrange for fire protection as follows:

1. At least semiannual inspection of the facility shall be made by the local fire inspection authorities. Signed certificates of such inspections shall be kept on file in the facility.

2. Certification by the local fire authority as to the fire safety of the facility and to the adequacy of a written fire plan for orderly evacuation of residents shall be obtained and kept on file in the facility.

3. Where the facility is located in a city, village, or township that does not have an official established fire department, the licensee shall obtain and maintain a continuing contract for fire protection service with the nearest municipality providing such service. **A** certification of the existence of such contract shall be kept on file in the facility.

(d) *Fire equipment.* All fire protection equipment shall be maintained in readily usable condition and inspected annually. In addition to any other equipment, a fire extinguisher suitable for grease fires shall be provided in or adjacent to the kitchen. Each extinguisher shall be provided with a *tag* for the date of inspection.

Note: See NFPA **10,** 1973 edition.

(e) *Fire report.* All incidents of fire in a facility shall be reported to the department within ***72*** hours.

(f) *Smoking.* Smoking by residents shall be permitted only in designated areas supervised in accordance with the conditions, needs, and safety of residents.

(g) *Prevention of ignition.* Heating devices and piping shall be designed or enclosed to prevent the ignition of clothing or furnishings.

(h) *Floor coverings.* Scatter rugs and highly polished, slippery floors are prohibited, except for non--slip entrance mats. All floor coverings and edging shall be securely fastened to the floor or so constructed that they are free of hazards such as curled and broken edges.

(i) *Roads and sidewalks.* The ambulatory and vehicular access to the facility shall be kept passable and open at all times of the year. Sidewalks, drives, fire escapes, and entrances shall be kept free of ice, snow, and other obstructions.

History: Cr. Register, July, 1982. No. 319, eff. 8–1–82; r. and recr. (1) and (2), r. (4), renum. **(3)** and *(5)* to be (4) and (6), cr. (3) and (5), Register, January, **1987,** No. **373,** eff. **2–1–87;** emerg. **am.** (3), cr. (3m), r. and recr. (5) and Table. eff. 7–1–94; am. (3), cr. (3m), r. and recr. (5) and Table, Kegister, January, 1995, No. **469,** eff. 2–1–95.

HFS 132.83 Safety and systems. (1) MAINTENANCE. The building shall be maintained in good repair and kept free of hazards such as those created by any damaged or defective building equipment.

(2) CORRIDORS. (a) *Handrails.* Comdors used by residents shall be equipped with handrails firmly secured on each side of the corridor.

(b) *Size.* 1. In period **A** facilities, all corridors in resident use areas shall be at least 4 feet wide.

2. In period B facilities, all corridors in resident use areas shall be at least **7** feet wide.

3. In period C facilities, all corridors in resident use areas shall be at least 8 feet wide.

(3) DOORS. (a) *Size.* 1. Doorways to residents' rooms, between residents' rooms and exits, and exit doorways shall be at least 28 inches wide.

2. In period B and C facilities, doors to residents' rooms shall not be less than 3 feet 8 inches wide and ***6*** feet 8 inches in height, and shall be at least one and three–quarter inches solid core wood or equivalent construction.

(b) *Latches.* Each exit door shall have such latches or hardware that the door can be opened from the inside by pushing against a single bar or plate or by turning a single knob or handle.

(c) *Locks.* 1. Exit doors from the building and from nursing areas and wards may not be hooked or locked to prevent exit from the inside, unless this is authorized under s. HFS 132.33.

Note: See rules adopted under chs. Comm 61 to 65 for other restrictions on lucking of **exits.**

2. No lock shall be installed on the door of a resident's room, unless:

a. The lock is operable from inside the room with a simple one–hand, one–motion operation without the use of a key unless the resident is confined in accordance with s. HFS 132.33;

b. All personnel regularly assigned to work in a resident care area have in their possession a master–key for the rooms in that area;

c. A master–key is available to emergency personnel such as the fire department; and

d. The resident is capable of following directions and taking appropriate action for self–preservation under emergency conditions.

(d) *Toilet room doors.* In period B and C facilities. resident toilet room doors shall be not less than 3 feet *0* inches by 6 feet 8 inches, and shall not swing into the toilet room unless they are provided with two–way hardware.

(e) *Thresholds.* In period **B** and C facilities, raised thresholds which cannot be traversed easily by a bed on wheels, a wheelchair, a drug cart, or other equipment on wheels shall not be used.

(4) EMERGENCY POWER. Emergency electrical service with an independent power source which covers lighting at nursing stations, telephone switchboards, exit and corridor lights, boiler room, and fire alarm systems, shall be provided. The service may be battery operated if effective for at least 4 hours.

(5) FIRE PROTECTION. (a) *Carpeting.* Carpeting shall not be installed in rooms used primarily for the following purposes: food preparation and storage, dish and utensil washing, soiled utility workroom, janitor closet, laundry processing, hydro–therapy, toilet and bathing, resident isolation, and resident examination.

(b) *Carpet fireproofing.* Carpeting, including underlying padding, if any, shall have a flamespread rating of 75 or less when tested in accordance with standard 255 of the national fire protection association (NFPA), or a critical radiant flux of more than 0.45 watts per square centimeter when tested in accordance with NFPA standard 253, 1978 edition. Certified proof by the manufacturer of the aforementioned test for the specific product shall be available in the facility. Certification by the installer that the material installed is the product referred to in the test shall be obtained by the facility. Carpeting shall not be applied to walls in any case except where the flamespread rating can be shown to be 25 or less.

(c) *Acoustical file.* Acoustical tile shall be noncombustible.

(d) *Wastebaskets.* Wastebaskets shall be of noncombustible materials.

(e) *Vertical exit stairways.* At least one interior exit stairway shall be provided so that an enclosed protected path of at least one–hour fire–.resistive construction is available for occupants to proceed with safety to the exterior of the facility.

(f) *Fire escapes.* In period A and period B facilities, outside fire escapes are permitted as one means of egress if they meet all of the following requirements:

1. Iron, steel, or concrete or other approved noncombustible material shall be used in the construction and support of the fire escape.

2. No part of access or travel in the path of exit shall be across a roof or other part of a facility which is of combustible construction.

3. Protection against fire in the facility shall be by blank or closed walls directly under the stairway and for a distance of 6 feet in all other directions. **A** window shall be permitted within this area if it is stationary, of steel sash construction, and is glazed with wire glass of not less than 1/4–inch thickness. The size of wire glass shall not exceed 1296 square inches with no dimension exceeding 54 inches in either length or width.

4. The fire escape shall be protected with a roof and at least partial sidewalls to prevent the accumulation of snow and ice.

5. The bottom riser shall terminate at ground level, with the last riser not more than the spacing of the riser above.

6. A tubular or spiral slide–type fire escape shall not be permitted.

(g) *Housing blind, nonambulatory, or handicapped residents.* In an existing facility of 2 or more stories which is not of at least two–hour fire–resistive construction, blind, nonambulatory, or physically handicapped residents shall not be housed above the street level floor unless the facility is either of one–hour protected noncombustible construction (as defined in national fire protection standard 220), fully sprinklered one–hour protected ordinary construction, or fully sprinklered one–hour protected woodframe construction.

(h) *Storage of oxygen.* Oxygen tanks, when not in use, shall be stored in a ventilated closet designated for that purpose or stored outside the building of the home in an enclosed secured area.

(6) SPRINKLERS FOR FIRE PROTECTION. (a) *Facilities licensed prior to December I,* ***1974.*** Unless all walls, partitions, piers, columns, floors, ceilings, roofs and stairs are built of noncombustible material, and all metallic structural members are protected by a noncombustible fire–resistive covering, facilities licensed prior to December 1, 1974 shall have automatic sprinkler protection throughout all buildings.

(b) *Facilities licensed on or after December I, 1974.* Except for the following, all facilities licensed on or after December 1, 1974 shall have automatic sprinkler protection throughout all buildings.

I. In the event of an addition to, or remodeling of, a facility licensed prior to December 1, 1974, the entire facility shall have automatic sprinkler protection throughout unless there is a 2–hour fire–rated partition wall between the old and new construction, in which case only the new or remodeled area shall be sprinklered.

2. In the event of the conversion of a portion of a recognized inpatient care facility in operation prior to December 1, 1974 to a facility licensed under this chapter, the facility shall have automatic sprinkler protection throughout unless there is a 2–hour fire–rated partition wall separating the portion of the facility licensed under this chapter from the rest of the building, in which case only the portion of the facility licensed under this chapter shall be sprinklered.

(7) MECHANICAL SYSTEMS. (a) *water supply.* 1. A potable water supply shall be maintained at all times. If a public water supply is available, it shall be used. If a public water supply is not available, the well or wells shall comply with ch. NR 812.

2. An adequate supply of hot water shall be available at all times. The temperature of hot water at plumbing fixtures used by residents may not exceed 110"F. **(43"** C.) and shall be automatically regulated by control valves or by another approved device.

(b) *Sewage disposal.* All sewage shall be discharged into a municipal sewage system if available. Otherwise, the sewage shall be collected, treated, and disposed of by means of an independent sewage system approved under applicable state law and the local authority.

(c) *Plumbing.* The plumbing for potable water and drainage for the disposal of excreta, infectious discharge, and wastes shall comply with applicable state plumbing standards.

(d) *Heating and air conditioning.* 1. The heating and air conditioning systems shall be capable of maintaining adequate temperatures and providing freedom from drafts.

2. A minimum temperature of 72" F. (22" C.) shall bc maintained during the day and at least 70° F. (21° C.) during the night in all bedrooms and in all other areas used by residents.

(e) *Incineration.* 1. Facilities for the incineration of soiled dressings and similar wastes, as well as garbage and refuse. shall be provided when other methods of disposal are not available.

2. An incinerator shall not be flue fed nor shall any upper floor charging chute be connected with the combustion chamber.

(f) *Telephone.* There shall be at least one operational non–pay telephone on the premises and as many additional telephones as are deemed necessary in an emergency or required by s. HFS 132.84 (3).

(g) *General lighting.* 1. Adequate lighting shall be provided in all areas of the facility. Lighting shall be of a type that docs not produce discomfort due to high brightness, glare or reflecting surface. No candles, oil lanterns, or other open flame method of illumination may be used.

2. Period C facilities shall have night lighting.

(h) *Ventilation.* 1. The facility shall be well–ventilated through the use of windows, mechanical ventilation, or a combination of both. Rooms and areas which do not have outside windows and which are used by residents or personnel shall be provided with functioning mechanical ventilation to change the air on a basis commensurate with the type of occupancy.

2. All inside bathrooms and toilet rooms shall have mechanical ventilation to the outside.

3. In period A facilities, kitchens, bathrooms. utility rooms, janitor closets, and soiled linen rooms shall be ventilated.

4. In period B facilities, when mechanical ventilation is provided, the corridors, solaria, dining, living. and recreation areas shall be under positive pressure.

5. In period C facilities:

a. Mechanical ventilation shall be provided to the resident area corridors, solaria, dining, living and recreation areas, and nursing station. These areas shall be under positive pressure.

b. All rooms in which food is stored, prepared or served, or in which utensils are washed shall be well–ventilated. Refrigerated storage rooms need not be ventilated.

(i) *Elevators.* 1. In period B facilities, at least one elevator shall be provided when residents' beds are located on one or more floors above or below the dining or service floor. The platform size of the elevator shall be large enough to hold a resident bed and attendant.

2. In period C facilities, at least one elevator shall be provided in the facility if resident beds or activities are located on more than one floor. The platform size of the elevator shall be large enough to hold a resident bed and an attendant.

(j) *Electrical.* 1. In all facilities, nonconductive wall plates shall be provided where the system is not properly grounded.

2. In period B and C facilities:

a. At least one duplex–type outlet shall be provided for every resident's bed; and

b. Silent–typewall switches shall be provided.

3. In new construction begun after the effective date of this chapter, at least 2 duplex–type outlets shall be provided for each bed.

History: Cr. Register, **July,** 1982, No. 319, eff. 8–1–82; am (3) (c) 1., (5) (e) and (f) (intro), (6) (b), (7) (a), (f), (g) 1., (j) 2., Register, January. 1987. No. **373.** eff. 2–1–87; emerg. am. (6) (a), r. and recr. (6) (b), eff. 7–1 94; am. (6) (a), r. and recr. (6) (b), Register, January, 1995, No. **469,** eff. 2–1–95.

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

(b) *Location.* No bedroom housing a resident shall:

1. Open directly to a kitchen or laundry;

2. Be located so that a person must pass through another resident's bedroom, a toilet room or a bathroom to gain access to any other part of the facility; or

3. Be located so that a person must pass through a kitchen or laundry to gain access to the resident's room or other part of the facility.

(c) *Access to corridor and outside.* Each bedroom shall have direct access to a corridor and outside exposure with the floor at or above grade level.

(d) *Size.* 1. The minimum floor area per bed shall be 100 square feet in single rooms and 80 square feet per bed in multiple bedrooms, exclusive of vestibule, closets, built–in vanity and wardrobe, toilet rooms and built–in lockers. The department may waive this requirement in individual cases where the facility has demonstrated in writing that such variations are in accordance with the particular needs of the residents and will not adversely affect their health and safety.

2. In period C facilities, resident rooms shall be large enough to permit the sides and feet of all beds to be not less than 2 feet from the nearest walls.

3. a. In period A facilities, ceilings shall be at least 7 feet in height.

b. In period B and C facilities, ceilings shall be at least 8 feet in height.

(e) *Windows.* In period B and C facilities, the bottom sill of windows in bedrooms shall be no more than 3 feet from the floor.

(f) *Bed capacity.* No rooms shall house more than 4 beds.

(g) *Bed arrangement.* The beds shall be arranged so that the beds shall be at least 3 feet apart and a clear aisle space of at least 3 feet from the entrance to the room to each bed shall be provided.

(h) *Closet space.* A closet or locker shall be provided for each resident in each bedroom. Closets or lockers shall afford a space of not less than 15 inches wide by 18 inches deep by 5 feet in height for each resident bed.

(i) *Cubicle curtains.* 1. In period A and B facilities, each bed in a multiple–bed room shall have a flameproof cubicle curtain or an equivalent divider that will assure resident privacy.

2. In period C facilities, each bed in a multiple--bed room shall be provided with a flameproof cubicle curtain to enclose each bed and to assure privacy.

(j) *Room identification.* Each bedroom shall be identified with a unique number placed on or near the door.

(k) *Design and proximity to baths.* Residents' bedrooms shall be designed and equipped for adequate nursing care and the comfort and privacy of residents. Each bedroom shall have or shall be conveniently located near adequate toilet and bathing facilities.

(2) TOILET AND BATHING FACILITIES. (a) *General.* All lavatories required by this subsection shall have hot and cold running water. Toilets shall be water flushed and equipped with open front seats without lids.

(b) *Employee and family facilities.* Toilets, baths, and lavatories for use by employees or family members shall be separate from those used by residents.

(c) *Grab bars.* Firmly secured grab bars shall be installed in every toilet and bathing compartment used by residents.

(d) *Wheelchair facilities.* 1. On floors housing residents who use wheelchairs, there shall be at least one toilet room large enough to accommodate wheelchairs.

2. In all facilities licensed for skilled care, a bathtub or shower room large enough to accommodate a wheelchair and attendant shall be provided.

Note: Requirements for wheelchair access to public toilets are contained in **ch.** Comm 62.

(e) *Period A and B.* In period A and B facilities:

1. Separate toilet and bath facilities shall be provided for male and female residents in at least the following number:

a. One toilet and one lavatory for every 8 female residents;

b. One toilet and one lavatory for every 8 inalc residents. One urinal may be substituted for one toilet for every 24 male residents;

c. In period A facilities, one tub or shower for every 20 residents; and

d. In period B facilities, one tub or shower for every 20 female residents and one for every 20 male residents.

2. Toilet and bath facilities shall be located on the floors ofthc residents to be served, and shall be separated in such a manner that they can be used independently and afford privacy.

(f) *Period C.* In period C facilities:

1. Toilet facilities shall be provided in conjunction with each resident's room, with not more than 2 residents' rooms, and not more than 4 beds per toilet room.

2. One toilet and one lavatory for not more than 4 residents shall be provided and separate facilities shall be provided for each sex.

3. One tub or shower for every 20 residents of each sex shall be provided. The bath or shower shall be located on the same floor as the residents served. Facilities for showering with a wheeled shower chair shall be provided.

4. Every tub, shower, or toilet shall be separated in such a manner that it can be used independently and afford privacy.

5. On floors where wheelchair residents are cared for, there shall be a toilet room large enough to accommodate a wheelchair and attendant.

(g) The requirement in pars. (e) and (f) of separate facilities for male and female residents is not applicable to facilities used by married couples sharing a room, if the facilities are not used by other residents.

(3) NURSING FACILITIES. (a) *Allfacilities.* In addition to the requirements of pars. (b), (c) or (d), each facility shall have:

1. A medicine storage area;

2. Space for storage of linen, equipment, and supplies; and

3. A utility room, which shall be located, designed, and equipped to provide areas for the separate handling of clean and soiled linen, equipment, and supplies.

(b) *Period A.* 1. Period A facilities shall have a well–lighted nurse station or office in the residents' rooms area for records and charts, with at least a file cabinet, desk, residents' chart holder. and operational telephone. No nurse station shall serve more than 2 floors.

2. Each period A facility shall have a well–illuminated medication preparation area equipped with a sink and hot and cold running water.

3. In period A facilities licensed for skilled care, toilet and handwashing facilities separate from those for residents shall be provided for staff use.

(c) *Period B.* In period B facilities, each resident care area or floor shall have:

1. A lighted, centrally located nurse station with provision for records and charts, a desk or work counter, and operational telephone;

2. A medicine preparation area or room in, or immediately adjacent to, the nurse station, with a work counter, sink, and well–lighted medicine cabinet with lock;

3. A ventilated utility room with a flush–rim clinic service sink; and

4. In period B facilities licensed for skilled care, toilet and handwashing facilities separate from those of residents shall be provided for staff use.

(d) *Period C.* In period C facilities, each resident care area on each floor shall have:

1. A centrally located nurse station located to provide visual control of all resident room corridors; equipped with storage for records and charts, a desk or work counter, operational telephone, and a nurse call system as required by sub. (4);

2. A medicine preparation room immediately adjacent to the nurse station with a work counter, refrigerator, sink, and a well–lighted medicine cabinet with lock and space for medication cart. The room shall be mechanically ventilated;

3. A soiled utility room with a flush–rim siphon jet service sink, a facility for bedpan sanitization, cabinet counter, and sink with hot and cold running water. The utility room shall be mechanically ventilated and under negative pressure;

4. A clean utility area or room with a sink with hot and cold running water, counter, and cabinets;

5. Staff toilet and lavatory facilities separate from those of residents, adjacent to each nursing station; and

6. If a kitchen is not open at all times, a nourishment station with sink, hot and cold running water, refrigerator, and storage for serving between–meal nourishment. Each station may service more than one nursing area.

(4) NURSE CALL SYSTEM. (a) *Period A.* Period A facilities shall have a nurse call system as follows:

1. If licensed for skilled care, a system that registers calls at the nurse station from each resident's bed, residents' toilet rooms, and each bathtub and shower; and

2. If licensed for other than skilled care, a system that registers calls at the nurse station from each resident's room, and from each bedfast resident's bed.

(b) *Period B.* Period B facilities shall have a nurse call system as provided by par. (a), except that, in addition, the system shall register from each bed and shall register in the corridor directly outside the room and at the nurse station or office.

(c) *Period C.* In period C facilities, a nurse call station shall be installed at each resident's bed, in each resident's toilet room, and at each bathtub and shower. The nurse call at the toilet, bath, and shower rooms shall be an emergency call equipped with pull cords of sufficient length to extend to within 6 inches of the floor. All calls shall register at the nurse station and shall actuate a visible signal in the corridor at the room door, in the clean workroom, mcdicinc preparation room, soiled workroom, and nourishment station of the nursing unit. In multicorridor nursing units, additional visible signals shall be installed at corridor intersections. In rooms containing 2 or more calling stations, indicating lights shall be provided at each call station. Nurse call systems which provide two–way voice communications shall be equipped with an indicating light at each call station which lights and remains lighted as long as the voice circuit is operative. An emergency call station shall also be provided in any enclosed room used by residents.

(5) DINING. RECREATION AND ACTIVITY AREAS. (a) *Multipurpose space.* The facility shall provide one or more appropriately furnished multipurpose areas of adequate size for dining and for diversional and social activities of residents.

(b) *Lounge.* At least one dayroom or lounge, centrally located, shall be provided for use of the residents,

(c) *Size of dining rooms.* Dining rooms shall be of sufficient size to seat all residents at no more than 2 shifts. Dining tables and chairs shall be provided. TV trays or portable card tables shall not be used as dining tables.

(d) *Space.* If a multipurpose room is used for dining and diversional and social activities of residents, there shall be sufficient space to accommodate all activities and minimize their interference with each other.

(e) *Total area.* 1. In period A and B facilities, the combined floor space of dining, recreation, and activity areas shall not be less than 15 square feet per bed. Solaria and lobby sitting space may be included, but shall not include required exit paths. Required exit paths in these areas shall be at least 4 feet wide.

2. In period C facilities, the combined floor space of dining, recreation, and activity areas shall not be less than 25 square feet per bed. Solaria and lobby sitting areas, exclusive of traffic areas, shall be categorized as living room space.

(6) FOOD SERVICE. (a) *General.* The facility shall have a kitchen or dietary area which shall be adequate to meet food service needs and shall be arranged and equipped for the refrigeration, storage, preparation, and serving of food, as well as for dish and utensil cleaning and refuse storage and removal. Dietary areas shall comply with the local health or food handling codes. Food preparation space shall be arranged for the separation of functions and shall be located to permit efficient services to residents and shall not be used for nondietary fiinctions.

(b) *Period A.* In period A facilities:

1. 'Location.' The kitchen shall be located on the premises or a satisfactory sanitary method of transportation of food shall be provided.

2. 'Proximity.' Kitchen or food preparation areas shall not open into resident rooms, toilet rooms, or laundry.

3. 'Handwashing.' Adequate and convenient handwashing facilities shall be provided for use by food handlers, including hot and cold running water, soap, and sanitary towels. Use of a common towel is prohibited.

4. 'Sink.' At least a 2-compartment sink for manual dishwashing shall be provided in kitchens or dishwashing areas. A minimum three-compartment sink shall be provided for replacement.

5. 'Sanitation.' Rooms subject to sewage or wastewater backflow or to condensation or leakage from overhead water or waste lines shall not be used for storage or food preparation unless provided with acceptable protection from such contamination.

(c) *Period B.* In period B facilities:

1. 'Traffic.' Only traffic incidental to the receiving, preparation, and serving of food and drink shall be permitted.

2. 'Proximity.' Toilet facilities shall not open directly into the kitchen.

3. 'Storage.' Food day-storage space shall be provided adjacent to the kitchen.

4. 'Lavatory.' A separate handwashing lavatory with soap dispenser, single service towel dispenser, or other approved hand drying facility shall be located in the kitchen.

5. 'Dishwashing area.' A separate dishwashing area, preferably a separate room, shall be provided.

6. 'Sanitation.' Rooms subject to sewage or wastewater backflow or to condensation or leakage from overhead water or waste lines shall not be used for storage or food preparation unless provided with acceptable protection from such contamination.

(d) *Period C.* In period C facilities:

1. 'Kitchen and dietary.' Kitchen and dietary facilities shall bc provided to meet food service needs and arranged and equipped for proper refrigeration, heating, storage, preparation, and serving of food. Adequate space shall be provided for proper refuse handling and washing of waste receptacles, and for storage of cleaning compounds.

2. 'Traffic.' Only traffic incidental to the receiving, preparation and serving of food and drink shall be permitted.

3. 'Toilets.' No toilet facilities may open directly into the kitchen.

4. 'Food storage.' Food day-storage space shall be provided adjacent to the kitchen and shall be ventilated to the outside.

5. 'Handwashing.' A separate handwashing sink with soap dispenser, single service towel dispenser, or other approved hand drying facility shall be located in the kitchen.

6. 'Dishwashing.' A separate dishwashing area, preferably a separate room, with mechanical ventilation shall be provided.

7. 'Sink.' At least a 3-compartment sink shall be provided for washing, rinsing and sanitizing utensils, with adequate drainboards at each end. In addition, a single-compartment sink located adjacent to the soiled utensil drainboard shall be available for prewashing. The additional sink may also be used for liquid waste disposal. The size of each sink compartment shall be adequate to permit immersion of at least 50% of the largest utensil used. In lieu of the additional sink for prewashing, a well-type garbage disposal with overhead spray wash may be provided.

8. 'Mechanical dishwashers.' Mechanical dishwashers and utensil washers, where provided, shall meet the requirements of the current approved list from the national sanitation foundation or equivalent with approval of the department.

Note: Copies of the National Sanitation Foundation's "Listing of Food Service Equipment" are kept on tile and may be consulted in the department and in the offices of the secretary of state and the revisor of statutes.

9. 'Temperature.' Temperature gauges shall be located in the wash compartment of all mechanical dishwashers and in the rinse water line at the machine of a spray-type mechanical dishwasher or in the rinse water tank of an immersion-type dishwasher. The temperature gauges shall be readily visible, fast-acting and accurate to plus or minus 2°F. or one° C.

10. 'Fire extinguishers.' Approved automatic fire extinguishing equipment shall be provided in hoods and attached ducts above all food cooking equipment.

11. 'Walls.' The walls shall be of plaster or equivalent material with smooth, light-colored, nonabsorbent, and washable surfaces.

12. 'Ceiling.' The ceiling shall be of plaster or equivalent material with smooth, light-colored, nonabsorbent, washable, and seamless surfaces.

13. 'Floors.' The floors of all rooms, except the eating areas of dining rooms, in which food or drink is stored, prepared, or served, or in which utensils arc washed, shall be of such construction as to be nonabsorbent and easily cleaned.

14. 'Screens.' All room openings to the out-of-doors shall be effectively screened. Screen doors shall be self-closing.

15. 'Lighting.' All rooms in which food or drink is stored or prepared or in which utensils are washed shall be well-lighted.

16. 'Scwagc contamination.' Rooms subject to sewage or waste water backflow or to condensation or leakage from overhead water or waste lines shall not be used for storage or food preparation unless provided with acceptable protection from such contarnination.

(7) STORAGE. (a) ***Resident's storage.*** In period B and C facilities, one or more central storage spaces shall be provided in the facility building for the storing of residents' possessions such as trunks, luggage, and off-season clothing. The storage space shall total at least 50 cubic feet per resident bed.

(b) ***General storage.*** A general storage area shall be provided for supplies, equipment, and wheelchairs. Period ***C*** facilities shall have such storage space on each nursing unit.

(c) ***Linen.*** 1. Period B facilities shall provide a linen closet or cabinet for each floor or wing.

2. Period C facilities shall provide a linen storage space or cabinet for each nursing unit.

(8) FAMILY AND EMPLOYEE LIVING QUARTERS. Any family and employee living quarters shall be separate from the residents' area.

(9) EMPLOYEE FACILITIES. (a) In period A and B facilities, space shall be provided for employee wraps, purses, and other personal belongings when on duty, but this space shall not be located in food preparation, food storage or utensil washing areas, or in residents' rooms.

(b) In period C facilities, the following shall be provided for employees, and shall not be located in food preparation, food storage, utensil washing areas, or in resident's rooms:

1. A room or rooms for cmployec wraps, with lockers for purses and other personal belongings when on duty;

2. Handwashing lavatories with soap dispenser. single–service towel dispenser. or other approved hand drying equipment; and

3. Toilet facilities separate from those used by residents.

(10) JANITOR FACILITIES. (a) Period B facilities shall have a ventilated janitor closet on each floor equipped with hot and cold running water and a service sink or receptor.

(b) Period C facilities shall have a mechanically ventilated janitor closet of adequate size on each floor and in the food service area, equipped with hot and cold running water and a service sink or receptor.

(11) LAUNDRY FACILITIES. (a) *Facilities.* A laundry room shall be provided unless commercial laundry facilities are used. Laundry facilities shall be located in areas separate from resident units and shall be provided with necessary washing, drying, and ironing equipment.

(b) *Work room.* When commercial laundries are used, a room for sorting, processing, and storing soiled linen shall be provided and shall have mechanical exhaust ventilation.

(c) *Period C.* In addition to the requirements of pars. (a) and (b), period C facilities shall have:

1. A soiled linen sorting room separate from the laundry, which shall be mechanically ventilated and under negative pressure.

2. A lavatory with both hot and cold running water, soap, and individual towels in the laundry area.

(12) ISOLATION ROOM. (a) *Period B.* Period B facilities shall have available a room with handwashing facilities for the temporary isolation of a resident.

(b) *Period C.* For every 100 beds or fraction thereof, period C facilities shall have available one separate single room, equipped with separate toilet, handwashing, and bathing facilities, for the temporary isolation of a resident. The isolation room bed shall be considered part of the licensed bed capacity of the facility.

(13) ROOMS FOR OTHER SERVICES IN PERIOD C FACILITIES. (a) *Requirement.* Period C facilities which are licensed for skilled care shall have at least one room available for examinations, treatments, dental services, and other therapeutic procedures needed by residents.

(b) *Equipment.* The examination room shall be of sufficient size and shall be equipped to provide for resident needs.

(c) *Rooms for rehabilitative services.* Rooms for rehabilitative services shall be of sufficient size to accommodate necessary equipment and facilitate the movement of disabled residents. Lavatories and toilets designed for use by wheelchair residents shall be provided in these rooms.

(14) ADMINISTRATION AND ACTIVITY AREAS. In period C facilities:

(a) *Administration and resident activity ureas.* Administration and resident activities areas shall be provided. The sizes of the various areas will depend upon the requirements of the facility. Some functions allotted separate spaces or rooms under par. (b) may be combined, provided that the resulting plan will not compromise acceptable standards of safety, medical and nursing practices, and the social needs ofresidents.

(b) Administration department areas shall include:

1. Business office;
2. Lobby and information center;
3. Office of administrator;
4. Admitting and medical records area;
5. Public and staff toilet room;
6. Office of director of nurses; and
7. Inservice training area.

(c) Resident activities areas shall include:

1. Occupational therapy:
2. Physical therapy;
3. Activity area; and
4. Beauty and barber shop.

(15) MIXED OCCUPANCY. Rooms or areas within the facility may be used for occupancy by individuals other than residents and facility staff if the following conditions are met:

(a) The use of these rooms does not interfere with the services provided to the rcsidcnts; and

(b) The administrator takes reasonable steps to ensure that the health, safety and rights of the residents are protected.

(16) LOCATION AND SITE. For period C facilities:

(a) *Zoning.* The site shall adhere to local zoning regulations.

(b) *Outdoor areas.* A minimum of 15 square feet per resident bed shall be provided for outdoor recreation area, exclusive of driveways and parking area.

(c) *Parking.* Space for off–street parking for staff and visitors shall be provided.

(17) SUBMISSION OF PLANS AND SPECIFICATIONS. For all new construction:

(a) One copy of schematic and preliminary plans shall be submitted to the department for review and approval of the functional layout.

(b) One copy of working plans and specifications shall be submitted to and approvcd by the department before construction is begun. The department shall notify the facility in writing of any divergence in the plans and specifications, as submitted, from the prevailing rules.

(c) The plans specified in pars. (a) and (b) shall show the general arrangement of the buildings, including a room schedule and fixed equipment for each room and a listing of room numbers, together with other pertinent information. Plans submitted shall be drawn to scale.

(d) Any changes in the approved working plans affecting the application of the requirements hcrcin established shall be shown on the approvcd working plans and shall be submitted to the department for approval before construction is undertaken. The department shall notify the facility in writing of any divergence in the plans and specifications, as submitted, from the prevailing rules.

(e) If on–site construction above the foundation is not started within 6 months of the date of approval of the working plans and specifications under par. (b), the approval shall be void and the plans and specifications shall be resubmitted for reconsideration of approval.

(f) If there are no divergences from the prevailing rules, the department shall provide the facility with written approval of the plans as submitted.

History: Cr. Register, July, 1982, No. 319, eff. 8–1–82; am. (3) (b) 2. and (13) *(c)*, return. (15) and (16) to be (16) and (17), cr. (15), Register, January, 1987, No. 373, eff. 2–1–87: am. (1) (b) 2., (2) (e) 1. c. and (5) (a).

Chapter HFS 132

APPENDIX A

FOOD AND NUTRITION BOARD. NATIONAL ACADEMY OF SCIENCES–NATIONAL RESEARCH COUNCIL RECOMMENDED DAILY DIETARY ALLOWANCES. [a] Revised 1980

Designed for the maintenance of good nutrition of practically all healthy people in the U S A.

	Age	Weight		Height		Protein	Fat–Soluble Vitamins		
							Vitamin A	Vitamin D	Vitamin E
	(years)	(kg)	(lb)	(cm)	(in)	(g)	(μg RE[b])	(μg)[c]	(mg α-TE)[d]
Infants	0 0 0 5	6	13	60	24	kgx2 2	420	10	3
	0 5-1 0	9	20	71	28	kgx2 0	400	10	4
Children	1-3	13	29	90	35	23	400	10	5
	4–6	20	44	112	44	30	500	10	6
	7-10	28	62	132	52	34	700	10	7
Males	11-14	45	99	157	62	45	1000	10	8
	15-18	66	145	176	69	56	1000	10	10
	19–22	70	154	177	70	56	1000	7.5	10
	23-50	70	154	178	70	56	1000	5	10
	51+	70	154	178	70	56	1000	5	10
Females	11-14	46	101	157	62	46	800	10	8
	15–18	55	120	163	64	46	800	10	8
	19-22	55	120	163	64	44	800	7.5	8
	23-50	55	120	163	64	44	800	5	8
	51+	55	120	163	64	44	800	5	8
Pregnant						+30	+200	+5	+2
Lactating						+20	+400	+5	+3

	Age	Weight		Height		Water–Soluble Vitamins						
						Vitamin C	Thiamin	Riboflavin	Niacin	Vitamin B–6	Folacin'	Vitamin R–12
	(years)	(kg)	(lb)	(cm)	(in)	(mg)	(mg)	(mg)	(mg NE)[f]	(mg)	(μg)	(μg)
Infants	0.0–0.5	6	13	60	24	35	0.3	0.4	6	0.3	30	0.5[g]
	0.5-1.0	9	20	71	28	35	0.5	0.6	8	0.6	45	1.5
Children	1-3	13	29	90	35	45	0.7	0.8	9	0.9	100	2.0
	4-6	20	44	112	44	45	0.9	1.0	11	1.3	200	2.5
	7-10	28	62	132	52	45	1.2	1.4	16	1.6	300	3.0
Males	11-14	45	99	157	62	50	1.4	1.6	18	1.8	400	3.0
	15-18	66	145	176	69	60	1.4	1.7	18	2.0	400	3.0
	19-22	70	154	177	70	60	1.5	1.7	19	2.2	400	3.0
	23-50	70	154	178	70	60	1.4	1.6	18	2.2	400	3.0
	51+	70	154	178	70	60	1.2	1.4	16	2.2	400	3.0
Females	11-14	46	101	157	62	50	1.1	1.3	15	1.8	400	3.0
	15–18	55	120	163	64	60	1.1	1.3	14	2.0	400	3.0
	19 22	55	120	163	64	60	1.1	1.3	14	2.0	400	3.0
	23-50	55	120	163	64	60	1.0	1.2	13	2.0	400	3.0
	51+	55	120	163	64	60	1.0	1.2	13	2.0	400	3.0
Pregnant						+20	1-0.4	+0.3	+2	1-0.6	+400	+1.0
Lactating						+40	+0.5	+0.5	+5	+0.5	+100	+1.0

	Age	Weight		Height		Minerals					
						Calcium	Phosphorus	Magnesium	Iron	Zinc	Iodine
	(years)	(kg)	(lb)	(cm)	(in)	(mg)	(mg)	(mg)	(mg)	(mg)	(μg)
Infants	0.0–0.5	6	13	60	24	360	240	50	10	3	40
	0.5–1.0	9	20	71	28	540	360	70	15	5	50
Children	1–3	13	29	90	35	800	*800*	150	15	10	70
	4–6	20	44	112	44	800	800	200	10	10	***90***
	7–10	28	62	132	52	800	800	250	10	10	120
Males	11–14	45	99	157	**62**	1200	1200	350	18	15	150
	15–18	66	145	176	69	1200	1200	400	18	15	150
	19–22	70	154	177	70	800	800	350	10	15	150
	23–50	70	154	178	70	*800*	800	350	10	15	150
	51+	70	154	178	70	*800*	*800*	*350*	***10***	15	150
Females	11–14	46	101	157	62	1200	1200	300	18	15	150
	15–18	55	120	163	**64**	1200	1200	300	18	15	150
	19–22	55	120	163	64	800	800	300	18	15	150
	23–50	55	120	163	64	800	800	300	18	15	150
	51+	55	120	163	64	*800*	800	300	10	15	150
Pregnant						+400	+400	+150	h	+5	+25
Lactating						+400	+400	+150	h	+10	+50

[a] The allowances are intended to provide for individual variations among most normal persons as they live in the United States under usual environmental stresses. Diets should be based on a variety of common foods in order to provide other nutrients for which human requirements have been less well defined.

[b] Retinol equivalents. 1 retinol equivalent = 1μg retinol or 6μg carotene. See text for calculation of vitamin A activity of diets as retinol equivalents.

[c] As cholecalciferol. 10μg cholecalciferol = 400 IU of vitamin D.

[d] α-tocopherol equivalents. 1 mg *d*-α tocopherol = 1 α-TE.

[e] 1 NE (niacin equivalent) is equal to 1 mg of niacin or 60 mg of dietary tryptophan.

[f] The folacin allowances refer to dietary sources as determined by *Lactobacillus casei* assay after treatment with enzymes (conjugases) to make polyglutamyl forms of the vitamin available to the test organism.

[g] The recommended dietary allowance for vitamin B–12 in infants is based on average concentration of the vitamin in human milk. The allowances after weaning are based on energy intake (as recommended by the American Academy of Pediatrics) and consideration of other factors, such as intestinal absorption.

[h] The increased requirements during pregnancy cannot be met by the iron content of habitual American diets nor by the existing iron stores of many women; therefore the use of 30–60 mg of supplemental iron is recommended. Iron needs during lactation are not substantially different from those of nonpregnant women, but continued supplementation of the mother for 2–3 months after parturition is advisable in order to replenish stores depleted by pregnancy.

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